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FEDERAL REGISTER

Vol. 88 Friday,

No. 249 December 29, 2023

Pages 90085–90402

OFFICE OF THE FEDERAL REGISTER

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Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1819; Project Identifier MCAI–2023–00052–A; Amendment 39–22630; AD 2023–25–03]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aviation S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Piaggio Aviation S.p.A. (Piaggio) Model P–180 airplanes. This AD is prompted by a report of corrosion on the various aluminum alloy reinforcements in the horizontal stabilizer (HS) central box caused by a humid environment inside the box from water ingress and/or condensation. This AD requires a one-time detailed inspection of the HS central box for corrosion; an assessment of the corrosion level; and depending on the determination, repetitive detailed inspections of the HS central box for corrosion and the internal composite structure for surface cracks, distortion, and damage; and repair or replacement of the HS assembly. Repair or replacement of the HS assembly is terminating action for the repetitive inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 2, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 2, 2024.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No.FAA–2023–1819; 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 Piaggio Aviation S.p.A., P180 Customer Support, via Pionieri e Aviatori d'Italia, snc—16154 Genoa, Italy; phone: +39 331 679 74 93; email: *technicalsupport@piaggioaerospace.it.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2023–1819.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; 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 certain serial-numbered Piaggio Model P–180 airplanes. The NPRM published in the **Federal Register** on September 7, 2023 (88 FR 61482). The NPRM was prompted by AD 2023–0007, dated January 13, 2023 (also referred to as the MCAI), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states that an occurrence of corrosion was found inside the HS central box of a Piaggio Model P–180 airplane during scheduled maintenance. A subsequent investigation and inspection of 16 other Piaggio Model P–180 airplanes of various configurations and ages revealed that corrosion of differing levels of severity was found on various aluminum alloy reinforcements in the HS central box of all the inspected airplanes. The MCAI also states that this corrosion was caused by the formation of a humid environment inside the HS central box, from water ingress and/or condensation. Further investigation revealed that airplanes left in prolonged inactivity or parked outside are more prone to develop corrosion damage.

To address the unsafe condition, the MCAI requires a one-time detailed inspection of the HS central box for corrosion, contacting Piaggio for a determination of the corrosion level, and depending on that determination, repetitive detailed inspections of the HS central box for corrosion and the internal composite structure for surface cracks, distortion, and damage; and depending on the results, repair or replacement of the HS assembly. The MCAI states that repair or replacement of the HS assembly is terminating action for the repetitive inspections.

In the NPRM, the FAA proposed to require a one-time detailed inspection of the HS central box for corrosion; an assessment of the corrosion level; and depending on the determination, repetitive detailed inspections of the HS central box for corrosion and the internal composite structure for surface cracks, distortion, and damage; and repair or replacement of the HS assembly. Repair or replacement of the HS assembly is terminating action for the repetitive inspections.

The FAA is issuing this AD to address corrosion on the various aluminum alloy reinforcements in the HS central box. The unsafe condition, if not addressed, could result in reduced structural integrity of the HS, and loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1819.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one individual commenter. The commenter supported the NPRM and requested a change. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Revise Costs of Compliance Section of the NPRM

An individual commenter requested that the FAA contact Piaggio for the exact price per unit of replacement

parts. The commenter explained that this would provide operators with a more accurate estimate of the NPRM's economic effect and allow operators to be financially prepared.

The FAA disagrees with the commenter's request because the estimated cost for a replacement HS assembly provided in this final rule is based on a cost estimate from Piaggio. Accordingly, the FAA considers the cost estimates provided in this final rule to be sufficient and 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 comment received, and determined that air safety requires adopting this AD as proposed.

Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Piaggio Aerospace Service Bulletin 80–0489, Revision 2, dated November 30, 2022 (Piaggio SB 80–0489, Revision 2). This service information specifies procedures for a one-time detailed inspection of the HS central box for corrosion, a report of the inspection results to Piaggio for a determination of the corrosion level, repetitive inspections of the HS central box as needed, and applicable corrective actions. The corrective actions include installation of a serviceable HS assembly, which is terminating action for the repetitive inspections.

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

Differences Between This AD and the MCAI

The MCAI requires contacting the manufacturer for a determination of the corrosion level if any corrosion is found during the initial inspection of the HS central box, and if it is determined that level 2 or 3 corrosion is present, having the manufacturer provide the threshold and intervals for doing repetitive inspections of the HS central box. This AD requires contacting either the FAA, EASA, or Piaggio's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Although Piaggio SB 80–0489, Revision 2, specifies to record the image of the location of corroded areas, this AD does not require that action.

Costs of Compliance

The FAA estimates that this AD affects 102 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
Initial inspection of HS central box for corrosion	6 work-hours × $85 per hour = $510	$0	$510	$52,020

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repetitive inspections of HS central box for corrosion.	6 work-hours × $85 per hour = $510, per inspection cycle.	$0	$510, per inspection cycle.
Repetitive inspections for surface cracks, distortion, and damage.	6 work-hours × $85 per hour = $510	0	$510, per inspection cycle.
Replace HS assembly	10 work-hours × $85 per hour = $850	150,000	$150,850.

The repair of the HS assembly that may be required as a result of any inspection could vary significantly from airplane to airplane. The FAA has no data to determine the costs to accomplish the repair or the number of airplanes that may require the repair.

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:

2023–25–03 Piaggio Aviation S.p.A.: Amendment 39–22630; Docket No. FAA–2023–1819; Project Identifier MCAI–2023–00052–A.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aviation S.p.A. Model P–180 airplanes, serial numbers 1002, 1004 through 1234 inclusive, 3001 through 3012 inclusive, and 3016, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by a report of corrosion on the various aluminum alloy reinforcements in the horizontal stabilizer (HS) central box caused by a humid environment inside the box from water ingress and/or condensation. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could result in reduced structural integrity of the HS and loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the applicable compliance time specified in Table 1 to paragraph (g)(1) of this AD, do a detailed inspection of the HS central box for corrosion, in accordance with step (8), of Part A, of the Accomplishment Instructions in Piaggio Aerospace Service Bulletin 80–0489, Revision 2, dated November 30, 2022 (Piaggio SB 80–0489, Revision 2), except you are not required to record any images.

TABLE 1 TO PARAGRAPH (g)(1)—HS CENTRAL BOX ONE TIME INSPECTION

P–180 serial number	Compliance time (hours time-in-service (TIS) or calendar time, whichever occurs first after the effective date of this AD)
1002; and 1034 through 3016 inclusive.	Within 220 hours TIS or 13 months.
1004 through 1033 inclusive.	Within 320 hours TIS or 13 months.

(2) If, during the inspection required by paragraph (g)(1) of this AD, any corrosion is detected, before next flight, contact either the Manager, International Validation Branch, FAA; European Union Aviation Safety Agency (EASA); or Piaggio's EASA Design Organization Approval (DOA), for an assessment of the corrosion level (level 1, 2, or 3).

Note 1 to paragraph (g)(2): Appendix 1, Inspection Results Form, in Piaggio SB 80–0489, Revision 2, may be used when contacting the FAA, EASA, or Piaggio's EASA DOA.

(3) If level 1 corrosion is found during the inspection required by paragraph (g)(1) of this AD, no further action is required by this AD.

(4) If level 2 corrosion is found during the inspection required by paragraph (g)(1) of this AD, do the action in either paragraph (g)(4)(i) or (ii) of this AD.

(i) Before further flight replace the HS assembly or repair the HS assembly in accordance with instructions from either the Manager, International Validation Branch, FAA; EASA; or Piaggio's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(ii) Within 400 hours TIS or 12 months, whichever occurs first after the inspection required by paragraph (g)(1) of this AD, and thereafter at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first after the most recent inspection, repeat the inspection required by paragraph (g)(1) of this AD. In addition, inspect the internal composite structure of the HS central box for surface cracks, distortion, and damage. After each repetitive inspection, before further flight, assess the inspection findings as required by paragraph (g)(2) of this AD. If it is determined that the level 2 corrosion has worsened since the last inspection; or if any surface cracks, distortion, or damage is found during any inspection; before further flight, replace the HS assembly or repair the HS assembly in accordance with instructions from either the Manager, International Validation Branch, FAA; EASA; or Piaggio's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature. These inspections must be repeated at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first after the most recent inspection, until a maximum of 660 hours TIS or 13 months, whichever occurs first after the inspection required by paragraph (g)(1) of this AD has been reached, at which time the HS assembly must be repaired or replaced.

(5) If level 3 corrosion is found during the inspection required by paragraph (g)(1) of this AD, do the actions required by paragraph (g)(5)(i) or (ii) of this AD.

(i) Before further flight, after the inspection required by paragraph (g)(1) of this AD, replace the HS assembly or repair the HS assembly in accordance with instructions from either the Manager, International Validation Branch, FAA; EASA; or Piaggio's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(ii) Within 200 hours TIS or 6 months, whichever occurs first after the inspection required by paragraph (g)(1) of this AD, and thereafter at intervals not to exceed 200 hours TIS or 6 months, whichever occurs first after the most recent inspection, repeat the inspection required by paragraph (g)(1) of this AD. In addition, inspect the internal composite structure of the HS central box for surface cracks, distortion, and damage. After each repetitive inspection, before further flight, assess the inspection findings as required by paragraph (g)(2) of this AD. If it is determined that the level 3 corrosion has worsened since the last inspection; or if any surface cracks, distortion, or damage is found; before further flight, replace the HS assembly or repair the HS assembly in accordance with instructions from either the Manager, International Validation Branch, FAA; EASA; or Piaggio's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature. These inspections must be repeated at intervals not to exceed 200 hours TIS or 6 months, whichever occurs first after the most recent inspection, until a maximum of 660 hours TIS or 13 months, whichever occurs first after the inspection required by paragraph (g)(1) of this AD, at which time the HS assembly must be repaired or replaced.

(6) Repair or replacement of the HS assembly is terminating action for the repetitive inspections required by paragraphs (g)(4)(ii) and (g)(5)(ii) of this AD.

(h) Credit for Previous Actions

You may take credit for the actions required by paragraphs (g)(1) through (5) of this AD if you performed those actions before the effective date of this AD using Piaggio Aerospace Service Bulletin 80–0489, Revision 1, dated May 13, 2022.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it

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

(j) Additional Information

(1) Refer to EASA AD 2023–0007, dated January 13, 2023, for related information. This EASA AD may be found in the AD docket at regulations.gov under Docket No. FAA–2023–1819.

(2) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) Piaggio Aerospace Service Bulletin 80–0489, Revision 2, dated November 30, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Piaggio Aviation S.p.A., P180 Customer Support, via Pionieri e Aviatori d'Italia, snc—16154 Genoa, Italy; phone: +39 331 679 74 93; email: *technicalsupport@piaggioaerospace.it*.

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

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

Issued on December 8, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28769 Filed 12–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1894; Project Identifier MCAI–2022–00334–R; Amendment 39–22635; AD 2023–25–08]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model A109E, A109S, AW109SP, A119, and AW119 MKII helicopters. This AD was prompted by multiple reports of excessive axial play on the ball bearing of the lower half of the main rotor (MR) rotating scissor assembly. This AD requires one-time scissor coupling and axial play inspections and repetitive quantitative axial play inspections and, depending on the results, additional inspections and replacing certain parts. This AD also requires reporting information and prohibits installing certain parts unless certain inspections have been accomplished. These requirements are 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 February 2, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 2, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1894; 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, 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 at *ad.easa.europa.eu*.
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., 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 in the AD docket at *regulations.gov* under Docket No. FAA–2023–1894.

Other Related Service Information: For Leonardo Helicopters service information identified in this final rule, contact Leonardo S.p.A Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0031–229046; or at *customerportal.leonardocompany.com/en-US*. You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Jared Hyman, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (781) 238–7799; email *9-AVS-AIR-BACO-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 Leonardo S.p.a. Model A109E, A109S, AW109SP, A119, and AW119 MKII helicopters. The NPRM published in the **Federal Register** on October 3, 2023 (88 FR 67999). The NPRM was prompted by EASA AD 2022–0037, dated March 7, 2022; corrected March 15, 2022 (EASA AD 2022–0037), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2022–0037 states that there have been multiple reports of excessive axial play on the ball bearing of the lower half of the MR rotating scissor assembly. In some cases, this resulted in dislodgement of the ball bearing from its seat.

In the NPRM, the FAA proposed to require one-time MR rotating scissor coupling and axial play inspections and

repetitive quantitative axial play inspections and, depending on the results, additional inspections and replacing certain parts. The NPRM also proposed to require reporting information and prohibit installing certain parts unless certain inspections have been accomplished. The FAA is issuing this AD to detect and address any excessive axial play of the MR rotating scissor assembly. The unsafe condition, if not addressed, could result in failure of the MR rotating scissor assembly, loss of control of the helicopter, and subsequent damage to the helicopter and injury to occupants. See EASA AD 2022–0037 for additional background information.

You may examine EASA AD 2022–0037 in the AD docket at regulations.gov under Docket No. FAA–2023–1894.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in its AD 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.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0037 which requires, for certain applicable model helicopters, accomplishing one-time MR rotating scissor coupling and axial play checks. Depending on the results, EASA AD 2022–0037 requires repetitively measuring the axial play or replacing certain parts. For all applicable model helicopters, EASA AD 2022–0037 requires accomplishing repetitive qualitative and quantitative axial play checks and, depending on the results, repetitively measuring the axial play or replacing certain parts. Furthermore, EASA AD 2022–0037 requires reporting certain information to the manufacturer and prohibits installing certain parts on any helicopter unless the part has passed required inspections.

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**.

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin (ASB) No. 109EP–177, Leonardo Helicopters ASB No. 109S–105, Leonardo Helicopters ASB No. 109SP–149, and Leonardo Helicopters ASB No. 119–111, each Revision A and dated March 3, 2022. This service information specifies procedures for inspecting the MR rotating scissor coupling and axial play, measuring the axial play, inspecting the qualitative axial play, inspecting the quantitative axial play, and replacing components of the MR rotating scissor assembly (scissor bracket flange assembly, rotary scissor sleeve, lower scissor lever assembly, and upper scissor lever assembly) and bushings.

Differences Between This AD and the EASA AD

EASA AD 2022–0037 applies to Model A109LUH helicopters, whereas this AD does not because that model is not FAA-type certificated. EASA AD 2022–0037 refers to several actions as a ''check,'' whereas this AD refers to those actions as an ''inspection'' instead because those actions must be accomplished by persons authorized under 14 CFR 43.3. EASA AD 2022–0037 requires discarding certain parts, whereas this AD requires removing those parts from service instead.

Service information referenced in EASA AD 2022–0037 specifies to contact Leonardo Helicopters for instructions as a result of certain MR rotating scissor maximum torque force check (inspection) results, whereas this AD requires accomplishing corrective action in accordance with a method approved by the FAA, EASA, or Leonardo S.p.a. Helicopters' EASA Design Organization Approval. EASA AD 2022–0037 requires interpreting the MR rotating scissor coupling and axial play inspection results (PASSED or FAILED) by using its required service information, whereas this AD requires interpreting those results by using tables in the body of this AD and recorded results of certain inspections. Furthermore, if the scissor coupling inspection result is an ''UNCERTAIN RESULT,'' the service information referenced in EASA AD 2022–0037 specifies contacting Leonardo Helicopters, whereas this AD considers an ''UNCERTAIN RESULT'' as ''FAILED.''

EASA AD 2022–0037 requires accomplishing repetitive qualitative axial play checks, whereas this AD does not. EASA AD 2022–0037 requires quantitative axial play checks within intervals not to exceed 200 flight hours, whereas this AD requires quantitative axial play inspections within intervals not to exceed 55 hours time-in-service. The service information referenced in EASA AD 2022–0037 cautions that only approved personnel are permitted to perform the bushing replacement, whereas this AD does not include that caution.

Costs of Compliance

The FAA estimates that this AD affects 204 helicopters 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.

The one-time MR rotating scissor coupling and axial play inspections will take approximately 2 work-hours for an estimated cost of $170 per helicopter and up to $34,680 for the U.S. fleet.

A quantitative axial play inspection will take approximately 1 work-hour for an estimated cost of $85 per helicopter and $17,340 for the U.S. fleet per inspection cycle.

Measuring the axial play will take approximately 1 work-hour for an estimated cost of $85 per helicopter and $17,340 for the U.S. fleet per inspection cycle.

Certain corrective action that may be needed as a result of an inspection can vary significantly from helicopter to helicopter. The FAA has no data to determine the costs to accomplish the corrective action or the number of helicopters that may require corrective action.

Replacing the scissor bracket flange assembly will take approximately 4 work-hours and parts will cost approximately $8,099–11,574 (depending on part number) for an estimated cost of $8,439–11,914 per replacement. Alternatively, replacing its bushings will take approximately 2 work-hours and parts will cost approximately $225 for an estimated cost of $395 per replacement.

Replacing each rotary scissor sleeve will take approximately 2 work-hours and parts will cost approximately $565 for an estimated cost of $735 per replacement.

Replacing the lower scissor lever assembly (including the washer and retaining bolt) will take 2 work-hours and parts will cost approximately $3,308–3,385 (depending on part number) for an estimated cost of $3,478–3,555 per replacement. Alternatively, replacing its bushings will take approximately 2 work-hours and parts will cost approximately $225

for an estimated cost of $395 per replacement.

Replacing the upper scissor lever assembly will take approximately 2 work-hours and parts will cost approximately $2,219–3,015 (depending on part number) for an estimated cost of $2,389–3,185 per replacement. Alternatively, replacing its bushings will take approximately 2 work-hours and parts will cost approximately $225 for an estimated cost of $395 per replacement.

Reporting the inspection results to the manufacturer will take approximately 1 work-hour for an estimated cost of $85 per report.

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2023–25–08 Leonardo S.p.a.: Amendment 39–22635; Docket No. FAA–2023–1894; Project Identifier MCAI–2022–00334–R.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model A109E, A109S, AW109SP, A119, and AW119 MKII helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by multiple reports of excessive axial play on the ball bearing of the lower half of the main rotor rotating scissor assembly. The FAA is issuing this AD to detect and address any excessive axial play of the main rotor rotating scissor assembly. The unsafe condition, if not addressed, could result in failure of the main rotor rotating scissor assembly, loss of control of the helicopter, and subsequent damage to the helicopter and injury to occupants.

(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 AD 2022–0037, dated March 7, 2022; corrected March 15, 2022 (EASA AD 2022–0037).

(h) Exceptions to EASA AD 2022–0037

(1) Where EASA AD 2022–0037 defines Affected part ''as identified in the ASB;'' for this AD, replace that text with ''as identified in Table 2 of Leonardo Helicopters Alert Service Bulletin (ASB) No. 109EP–177, Leonardo Helicopters ASB No. 109S–105, Leonardo Helicopters ASB No. 109SP–149, or Leonardo Helicopters ASB No. 119–111, each Revision A and dated March 3, 2022, and as applicable to your model helicopter.''

(2) Where EASA AD 2022–0037 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where EASA AD 2022–0037 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where EASA AD 2022–0037 refers to a torque force check, this AD requires a torque force inspection. Where EASA AD 2022–0037 refers to a scissor coupling check, this AD requires a scissor coupling inspection. Where EASA AD 2022–0037 refers to an axial play check, this AD requires an axial play inspection. Where EASA AD 2022–0037 refers to a quantitative axial play check, this AD requires a quantitative axial play inspection. Where EASA AD 2022–0037 refers to a dimensional check, this AD requires a dimensional inspection.

(5) Where the service information referenced in EASA AD 2022–0037 specifies to use tooling, this AD allows the use of equivalent tooling.

(6) Where the service information referenced in EASA AD 2022–0037 specifies discarding parts, this AD requires removing those parts from service.

(7) Where the service information referenced in paragraphs (1), (4.2), (5.2), and (6) of EASA AD 2022–0037 specifies to contact Leonardo Helicopters for instructions as a result of the M/R rotating scissor maximum torque force check, this AD requires corrective action done in accordance

with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.a. Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(8) Where paragraph (1) of EASA AD 2022–0037 specifies to ''interpret the results (PASSED or FAILED) in accordance with the instructions of PART I of the ASB;'' for this AD, replace that text with, ''interpret the results by using Tables 1 and 2 to paragraph (h)(8) of this AD and the inspection results recorded in Annex E of the service information referenced in EASA AD 2022–0037.''

TABLE 1 TO PARAGRAPH (h)(8)—SCISSOR COUPLING INSPECTION INTERPRETATION

Maximum torque force check	Dimensional check	2nd maximum torque force check	Scissor coupling check outcome
Passed	N/A	N/A	Passed.
Failed	Passed	Passed	Passed.
Failed	Failed	N/A	Failed.
Failed	Passed	Failed	Failed.

TABLE 2 TO PARAGRAPH (h)(8)—AXIAL PLAY INSPECTION INTERPRETATION

Axial play value is 0.25 mm or less	Passed.
Axial play value is more than 0.25 mm or the ball bearing is dislodged.	Failed.

(9) This AD does not require compliance with paragraph (2) of EASA AD 2022–0037. This AD also does not include Note 1 of EASA AD 2022–0037.

(10) Where paragraph (3) of EASA AD 2022–0037 specifies compliance times of ''200 FH;'' for this AD, replace each instance of that text with, ''55 hours time-in-service.'' This AD does not include Note 3 of EASA AD 2022–0037.

(11) Where the service information referenced in EASA AD 2022–0037 cautions that only approved personnel (Leonardo Helicopters facilities, Leonardo authorized component repair centers within the approved capabilities or customers trained by Leonardo Helicopters for specific activities) are permitted to perform the bushing replacement; this AD does not include those cautions.

(12) Where paragraph (10) of EASA AD 2022–0037 specifies reporting inspection results (including the inspection results of no findings) to Leonardo within 30 days, this AD requires reporting inspection results at the applicable time in paragraph (h)(12)(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 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(13) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0037.

(i) Special Flight Permits

Special flight permits are prohibited.

(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) Additional Information

For more information about this AD, contact Jared Hyman, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (781) 238–7799; 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 2022–0037, dated March 7, 2022; corrected March 15, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0037, 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 at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., 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 December 14, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28773 Filed 12–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2404; Project Identifier MCAI–2023–01268–A; Amendment 39–22648; AD 2023–26–05]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. This AD was prompted by a determination that the titanium threaded bolts at the forward end of the short rudder trim tab actuating rods could be subject to unexpectedly high oscillating loads due to aerodynamic forces acting on the rudder trim tab. This AD requires periodic replacement of affected titanium threaded bolts, a one-time inspection of the rudder mass balance arm and other elements of the rudder trim tab installation for correct attachment, damage (gouges), cracks, deformation, surface finish, and corrosion on any surrounding parts and, depending on findings, accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) emergency 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 January 3, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2024.

The FAA must receive comments on this AD by February 12, 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* under Docket No. FAA–2023–2404; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material 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 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–2023–2404.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2404; Project Identifier MCAI–2023–01268–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2023–0219–E, dated December 19, 2023 (EASA Emergency AD 2023–0219–E) (also referred to as the MCAI), to correct an unsafe condition on certain Pilatus Model PC–24 airplanes. The MCAI states it was determined that the titanium threaded bolts at the forward end of the short rudder trim tab actuating rods could be subject to unexpectedly high oscillating loads due to aerodynamic forces acting on the rudder trim tab. If not corrected, this condition could lead to failure of the bolt with consequent damage to the rudder and rudder trim tab, which could result in loss of rudder control and reduced or loss of control of the airplane. The MCAI identifies the affected parts as titanium threaded bolts, part number (P/N) 527.20.24.489, installed on the rudder trim tab short control rods. The MCAI identifies the serviceable part as any threaded titanium bolt, having P/N 527.20.24.489 that is new and not previously installed. To address the unsafe condition, Pilatus, pending the development of a new design installation, issued Pilatus PC–24 Service Bulletin 27–009, dated December 18, 2023, which specifies instructions to replace the affected part and a one-time inspection of the rudder mass balance arm and other elements of the rudder trim tab installation for correct attachment, damage, cracks, deformation, surface finish, and corrosion on any surrounding parts. The MCAI requires periodic replacement of affected parts, a one-time inspection of the rudder mass balance arm and other elements of the rudder trim tab installation and, depending on findings, accomplishment of applicable corrective actions.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2404.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2023–0219–E specifies procedures for periodic replacement of affected parts, a one-time inspection of the rudder mass balance arm and other elements of the rudder trim tab installation and, depending on findings, accomplishment of applicable corrective actions.

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**.

FAA's Determination

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 described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in EASA Emergency AD 2023–0219–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and EASA Emergency AD 2023–0219–E.''

Differences Between This AD and EASA Emergency AD 2023–0219–E

Paragraph (4) of EASA Emergency AD 2023–0219–E requires contacting Pilatus

for corrective actions if damage is found on the rudder mass balance arm during the one-time inspection, but this AD requires approval for corrective actions in accordance with a method approved by the Manager, International Validation Branch, FAA; EASA; or Pilatus' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because failure of titanium threaded bolts installed at the forward end of the short rudder trim tab actuating rods, if not addressed, could lead to damage to the rudder and rudder trim tab, which could result in loss of rudder control and reduced or loss of control of the airplane. Analysis shows that these bolts could fail without notice once the airplane accumulates 300 hours time-in-service (TIS) and of the 112 airplanes affected by this AD, 75 have already accumulated more than 300 hours TIS and need these bolts replaced within 10 hours TIS after the effective date of this AD. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 112 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
Replacement of affected titanium threaded bolts.	9 work-hours × $85 per hour = $765 per replacement cycle.	$220 per replacement cycle.	$985 per replacement cycle.	$110,320 per replacement cycle.
Inspection of rudder mass balance arm and other elements of the rudder trim tab installation.	1 work-hour × $85 per hour = $85.	$0	$85	$9,520.

The corrective actions that may be required as a result of the inspection could vary significantly from airplane to airplane. The FAA has no data to determine the costs to accomplish the corrective actions or the number of airplanes that may require corrective actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

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:

2023–26–05 Pilatus Aircraft Ltd.: Amendment 39–22648; Docket No. FAA–2023–2404; Project Identifier MCAI–2023–01268–A.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–24 Airplanes, as identified in European Union Aviation Safety Agency (EASA) Emergency AD 2023–0219–E, dated December 19, 2023 (EASA Emergency AD 2023–0219–E), certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2721, Rudder Tab Control System.

(e) Unsafe Condition

This AD was prompted by a determination that the titanium threaded bolts installed at the forward end of the short rudder trim tab actuating rods could be subject to unexpectedly high oscillating loads due to aerodynamic forces acting on the rudder trim tab. The FAA is issuing this AD to address the unsafe condition. The unsafe condition, if not addressed, could result in failure of titanium threaded bolts with consequent damage to the rudder and rudder trim tab, which could result in in loss of rudder control and reduced or loss of 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 paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA Emergency AD 2023–0219–E.

(h) Exceptions to EASA Emergency AD 2023–0219–E

(1) Where EASA Emergency AD 2023–0219–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA Emergency AD 2023–0219–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where paragraph (4) of EASA Emergency AD 2023–0190–E specifies to ''contact Pilatus to obtain approved instructions, and within the compliance time(s) specified therein, accomplish those instructions accordingly;'' for this AD, replace that text with ''accomplish corrective action in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Pilatus EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(4) Where the service information referenced in EASA Emergency AD 2023–0190–E specifies to ''Return bellcrank bolts with damage to Pilatus Aircraft Ltd.'' and ''Return the two threaded bolts (3) (that you removed) to Pilatus Aircraft Ltd.'', this AD does not require those actions.

(5) Where the service information referenced in EASA Emergency AD 2023–0190–E specifies ''Discard the two lock washers (2)'', for this AD, replace that text with ''Remove the two lock washers (2) from service.''

(6) This AD does not adopt the Remarks paragraph of EASA Emergency AD 2023–0190–E.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Additional Information

For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@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) European Union Aviation Safety Agency (EASA) Emergency AD 2023–0219–E, dated December 19, 2023.

(ii) [Reserved]

(3) For EASA Emergency AD 2023–0219–E, 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 Emergency AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 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 December 22, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–28866 Filed 12–27–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0907]

RIN 1625–AA00 Safety Zone; Fireworks Display, Pacific Ocean, Westport, WA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Pacific Ocean. This action is necessary to provide for the safety of life on these navigable waters near Westport, Washington, during a fireworks display on January 1, 2024. This regulation prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 11:30 p.m. on December 31, 2023, to 1 a.m. on January 1, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0907 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 Lieutenant Carlie Gilligan, Waterways Management Division, Sector Columbia River, Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
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

On October 23, 2023, an organization notified the Coast Guard that it will be conducting a fireworks display from 12 to 12:30 a.m. on January 1, 2024. The fireworks are to be launched from a site in Westport, WA, at approximate location 46°54′17″ N; 124°05′59″ W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display will be a safety concern for anyone within a 600-foot radius of the launch site.

In response, on December 4, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Fireworks Display, Pacific Ocean, Westport, WA (88 FR 84249). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 20, 2023, we received one comment unrelated to the proposed rulemaking.

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 is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with the fireworks to be used in this January 1, 2024, display will be a safety concern for anyone within 600 feet of the launch site. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no relevant comments on our NPRM published December 4, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 11:30 p.m. on December 31, 2023 to 1 a.m. January 1, 2024. The safety zone will cover all navigable waters within 600 feet of the launch site in Westport, WA located at approximate location 46°54′17″ N; 124°05′59″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 12 to 12:30 a.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under 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, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Pacific Ocean for less than 2 hours on an evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and 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 1.5 hours that will prohibit entry within 600 feet of a launch site on the Pacific Ocean. 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.T13–0907 to read as follows:

§ 165.T13–0907 Safety Zone; Fireworks Display, Pacific Ocean, Westport, WA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Pacific Ocean, surface to bottom, 600 feet from the fireworks display site at approximately 46°54′17″ N; 124°05′59″ W. These coordinates are based on the launch site located on the Pacific Ocean near Firecracker Point, Westport, WA.

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

Designated representative means a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to a unit under the operational control of the U.S. Coast Guard Sector Columbia River and designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.*

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 11:30 p.m. on December 31, 2023, through 1 a.m. on January 1, 2024.

Dated: December 22, 2023.

J.W. Noggle,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2023–28757 Filed 12–28–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0961]

RIN 1625–AA00

Safety Zone; Laguna Madre, South Padre Island, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters in the Laguna Madre. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firework display launched from a stationary barge in the Laguna Madre, South Padre Island, Texas. Entry of vessels or persons into this zone or remaining in the zone when it is in effect is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 9 p.m. on December 31, 2023, through 1 a.m. on January 1st, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0961 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule

without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display, and we lack sufficient time to provide a reasonable comment period and consider any comments submitted before issuing the rule.

Under 5 U.S.C. 553(d)(3), and for the same reason provided above, the Coast Guard finds that good cause also exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Corpus Christi (COTP) has determined that potential hazards associated with the fireworks displays occurring from 9 p.m. on December 31, 2023, through 1 a.m. on January 1st, 2024, will be a safety concern for anyone in the waters of the Laguna Madre area within a 700 yard radius of the following point; 26°6′02.1″ N, 97°10′17.7″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the display of the fireworks takes place in the Laguna Madre.

IV. Discussion of the Rule

This rule establishes a temporary safety zone beginning on the night of December 31, 2023, and continuing into the early morning of January 1st, 2024. The safety zone will encompass certain navigable waters of the Laguna Madre, and is defined by a 700 yard radius around the launching platform, which will be located at the following point: 26°6′02.1″ N, 97°10′17.7″ W. No vessel or person is permitted to enter the temporary safety zone during the period when it is in effect without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz), or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be in effect for the short period of 4 hours, beginning the night of December 31, 2023, into the early morning of January 1st, 2024. The zone is limited to the area with a 700 yard radius of the launching position in the navigable waters of the Laguna Madre. Prohibiting vessel traffic within that zone does not completely restrict the traffic within the waterway, and the rule allows mariners to request 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 temporary 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 contact 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or Tribal Government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, 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 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.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.T08–0961 to read as follows:

§ 165.T08–0961 Safety Zone; Laguna Madre, South Padre Island, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Laguna Madre encompassed by a 700-yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W.

(b) *Enforcement period.* This section is in effect, and subject to enforcement, from 9 p.m. on December 31, 2023, through 1 a.m. on January 1st, 2024.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, remaining in, or entry into this temporary safety zone are prohibited unless authorized by the Captain of the Port, Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: December 22, 2023.

Jason Gunning,

Captain, U.S. Coast Guard, Captain of the Port, Sector Corpus Christi.

[FR Doc. 2023–28756 Filed 12–28–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

[NPS–WASO- 36913; PPWOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024–AE57

Commercial Visitor Services; Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service revises regulations that govern the solicitation, award, and administration of concession contracts to provide commercial visitor services at National Park System units under the authority granted through the Concessions Management Improvement Act of 1998 and the National Park Service Centennial Act. The changes reduce administrative burdens and expand sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.

DATES: This rule is effective January 29, 2024.

ADDRESSES: The comments received on the proposed rule and an economic analysis are available on *https://www.regulations.gov* in Docket ID: NPS–2020–0003.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Chief of Commercial Services Program, National Park Service; (202) 513–7202; *kurt_rausch@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authority and Purpose

The National Park Service (NPS) enters into contracts with concessioners to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and guided recreation. Each year, concession contracts generate approximately $1.5 billion in gross revenues and return approximately $135 million in franchise fees to the NPS. The National Park Service Concession Policies Act of 1965 (1965 Act) (Pub. L. 89–249) provided the first statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101901–101926. A revision to the 1998 Act was also included in section 502 of the 2016 National Park Service Centennial Act (Centennial Act) (Pub. L. 114–289). NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts. The NPS promulgated these regulations in April 2000 (65 FR 20630) and since that time has made only minor changes to them (see, *e.g.,* 79 FR 58261).

In August of 2018, as part of the Department of the Interior's implementation of Executive Order 13777, *Enforcing the Regulatory Reform Agenda,* and in response to a request for public input on how the Department of the Interior can improve implementation of regulatory reform initiatives by identifying regulations for modification (82 FR 28429), the NPS's external concessions partners provided the Secretary of the Interior (Secretary) with suggestions for improving existing concession regulations. The Department of the Interior considered the suggestions provided by the concessions partners, and those suggestions are reflected in this rule. In addition, Secretary's Order 3366, *Increasing Recreational Opportunities on Lands and Waters Managed by the U.S.*

Department of the Interior, signed by the Secretary in April of 2018, directed the NPS to look for ways to streamline and improve the contracting process for recreational concessioners as part of the Department's efforts to expand access to and improve the infrastructure on public lands and waters, including through the use of public-private partnerships. The directives set forth in that Secretary's Order are intended to provide the public with more recreational opportunities and memorable experiences on the Department's public lands and waters. This rule is responsive to these directives, suggestions received, and areas for improvement identified by the NPS. Finally, the NPS received a variety of comments on the proposed revisions to the rule during the public comment period including suggestions for additional improvements to the rule. The NPS considered these comments and has incorporated some of the suggestions in this final rule.

Each of the changes to 36 CFR part 51 is explained below and corresponds to the subparts of the existing regulations that are amended under this rule. In total, this final rule makes 12 changes to the existing regulations, which are numbered to assist with ease of reading. Some of the changes are implemented for new contracts, while others are effective for both current and new contracts as identified in the explanation for each change. The overall purpose of these changes is to update and improve the regulations governing concession contracts so that the public is better served when visiting our nation's most cherished public lands and waters.

Subpart C—Solicitation, Selection, and Award Procedures (36 CFR 51.4–51.22)

The regulations in Subpart C set forth the processes and rules governing the solicitation, selection, and award of concession contracts. The NPS makes four changes to this subpart, as explained below.

Change 1: New Concession Opportunities

The NPS recognizes that the needs for commercial visitor services in parks may change over time, including the need to provide new services that are not currently provided. Recent examples include wireless connectivity services at Lake Mead National Recreation Area, parking management at Muir Woods National Monument, and bike rentals at Grand Canyon National Park. The NPS considers evolving visitor needs through its commercial services planning processes. Each unit of the national park system is required to have a park foundation document, that provides basic guidance for all planning and management decisions and from which the NPS develops a park's planning portfolio. The planning portfolio is the assemblage of individual plans, studies, and inventories that guide park decision-making. For commercial services, these may range from broader planning efforts such as visitor use studies and commercial services strategies to more focused studies such as climbing or horse management plans. Commercial visitor services planning also occurs through the concession contract prospectus development process. During this process, the NPS reviews the services currently provided, conducts market studies, and may solicit public comments to assess new commercial visitor service opportunities.

The final rule recognizes this planning framework by requiring the solicitation and consideration of suggestions for new concession opportunities. Section 51.4(c) states that the Director will issue a prospectus for a new concession opportunity when the Director determines that a new concession opportunity is necessary and appropriate for public use and enjoyment of the park area and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. This standard for evaluating new opportunities is consistent with the 1998 Act. 54 U.S.C. 101912(b)(1)–(2). Section 51.4(d) requires the Director to establish procedures to annually solicit and consider suggestions from the public for new commercial services in NPS units. While the regulation does not specify the procedures for the solicitation, the regulation does require the Director to make all proposals and the Director's evaluation of them public.[1] Section 51.4(e) establishes relevant factors that the Director will consider when deciding whether to issue a prospectus for a new concession opportunity in addition to the determination that a commercial visitor service is necessary and appropriate for public use and enjoyment of the park area and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. These factors shall include whether the suggested concession opportunities are already adequately provided within the unit; the potential for augmented resources for park area operations; the effects of the suggested concession operations on the park area; the sustainability of the suggested concession opportunities; the innovative quality of the suggestions; and the potential impacts on park area visitation and on communities located near the park area. Paragraph (f) clarifies that the NPS may not, during the competitive evaluation process, give preference to any party that suggests an opportunity that is subsequently offered by the NPS simply because the party originally suggested the idea. The 1998 Act recognizes only two categories of concession contracts that provide preferential rights to incumbent concessioners. 54 U.S.C. 101913(7), (8). The final rule recognizes, however, that in some circumstances the Director may award a contract without competition under 36 CFR 51.25. Section 51.4(g) provides the Director discretion to amend an existing contract to allow a concessioner to provide new or additional services under 36 CFR 51.76. This preserves the authority of the Director to adjust the services being provided in response to changing visitor needs over the term of the contract, consistent with the fundamental business opportunity that was offered in the concession prospectus. Paragraph (h) states that nothing in the new processes to be established by the Director would limit the Director from soliciting, considering, or collecting information related to new concession opportunities.

Change 2: Timing of Issuing Prospectuses

Section 51.4(b) of the existing regulations states that the Director will not issue a prospectus for a concession contract earlier than 18 months prior to the expiration of a related existing concession contract. The original purpose of this restriction was to ensure that an existing concessioner would not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative (65 FR 20637). The proposed rule would have eliminated the 18-month restriction for new concession contract prospectuses to allow the NPS the flexibility to issue a prospectus earlier in circumstances where there are unusually significant commitments required of potential offerors to acquire personal property, such as vessels, or to obtain financing or to manage reservations. The NPS proposed this change on the view that

[1] The NPS will specify solicitation procedures in policy and in instructions that will be posted on public-facing websites, such as the website for the NPS Commercial Services Program (*https://www.nps.gov/orgs/csp/index.htm*).

this additional time would provide for more offerors, which benefits the NPS and the public because increased competition generally results in higher quality offers.

Based on comments, however, the NPS retains the 18-month rule but provides an exception for when the Director determines releasing a prospectus earlier is necessary to provide additional time to potential offerors, such as when additional time is needed to avoid issuing a prospectus during a busy operating season or where potential offerors must make significant financial commitments to meet the requirements of the contract. Such additional time must be as short as prudent.

Change 3: Publishing Notice of a Prospectus

Section 51.8 of the existing regulations states that the Director will publish notice of the availability of a prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The rule updates this provision to require publication in the System for Award Management (SAM). The rule expands the description of the types of electronic media that will be used to advertise opportunities to include websites and social media.

Change 4: Weighting Selection Factors

The fourth change is to § 51.16 of the existing regulations. Section 51.16 is closely related to § 51.17 of the existing regulations, which identifies selection factors that must be applied by the Director when assessing the merits of a proposal. Section 51.17(a) lists five primary selection factors:

Principal selection factor 1: The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area.

Principal selection factor 2: The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates.

Principal selection factor 3: The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract.

Principal selection factor 4: The financial capability of the offeror to carry out its proposal.

Principal selection factor 5: The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director.

The Director must consider these five factors under the 1998 Act. 54 U.S.C. 101913(5)(A).

Section 51.17(b) identifies one secondary selection factor (secondary selection factor 1) and allows the Director to use additional secondary selection factors where appropriate and otherwise permitted by law. Secondary selection factor 1 is the quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. The NPS may exclude this factor for small contracts and those expected to have limited impacts on park resources. Secondary selection factors are permitted, but not required, to be considered under the 1998 Act. 54 U.S.C. 101913(5)(B). Although the 1998 Act is silent on how the Director should weigh each factor, § 51.16 requires the Director to assign a score for each selection factor that reflects the merits of the proposal compared to other proposals received, if any.

The final rule retains the relative scoring relationships of the 2000 rule but provides additional flexibility for the NPS by increasing the possible number of total points from 30 to 40. The final rule also requires that each selection factor used must provide for a maximum score of at least one point. Further, the final rule provides that secondary selection factor 1 must have a maximum score less than the maximum score for the principal selection factor for franchise fees and the aggregate score of all other secondary selection factors must have a maximum score less than the maximum score for the principal selection factor for franchise fees. The final rule also assigns a score of one point for agreeing to the prospectus franchise fee (as defined in § 51.78) or, when the Director determines use of the prospectus franchise fee inappropriate, the minimum acceptable franchise fee set forth in the prospectus. The proposed rule did not specify minimum or maximum points for selection factors and provided that the principal selection factor for franchise fees could have the same possible score as the other principal selection factors. The revisions to § 51.16 will apply to all prospectuses issued after the effective date of the final rule and will provide the NPS with greater flexibility to weigh the factors according to how important they are to the NPS and for the specific contract.

Change 5: Adding Secondary Selection Factor for Consideration of New Services

The final rule features the benefit of providing new commercial visitor services. For several years, the NPS occasionally has included a secondary selection factor asking offerors to identify ways they could add additional services and programs within the scope of the subject contract. The NPS has revised § 51.17(b)(2) specifically to provide that the Director will include such a secondary selection factor when appropriate. This revision will apply to all prospectuses issued after the effective date of the final rule.

Subpart G—Leasehold Surrender Interest (36 CFR 51.51–51.67)

The regulations in Subpart G explain how a concessioner can obtain leasehold surrender interest (LSI) in capital improvements to visitor service facilities that are made under the terms of a concession contract. The NPS makes one change to this subpart, as explained below under Change 6. This change applies to future concession contracts.

The NPS manages concession contracts to ensure concessioners maintain and repair the facilities assigned as required under the terms of their contract. The NPS also seeks to encourage concessioners to make capital improvements in order to ensure facilities are structurally sound, updated, and adequate to meet the needs of the visiting public. When the NPS approves the concessioner to fund and construct capital improvements to expand, update, and rehabilitate facilities, the concessioner receives LSI for the associated costs in each capital improvement. The NPS considers the costs associated with these improvements, as well as the opportunity for receiving LSI, when it determines the concessioner's reasonable opportunity for net profit and sets the prospectus or minimum franchise fee for the contract. The 1998 Act outlines, in general terms, what constitutes a capital improvement eligible for LSI and how to value LSI. 54 U.S.C. 101915. Details about which types of construction activities are eligible for LSI and how it is valued are found in subpart G.

LSI is unique to NPS concession contracts and is not used in the private sector. In the private sector, an owner

bears the risk of changes when an asset increases or decreases in value. The owner may realize a return on its investment for capital improvements when it sells an improved property, if the value has appreciated, or lose money if the value has declined. In contrast, under concession contracts with the NPS, the concessioner invests in facilities they do not own. As a result, since the concessioner cannot receive a return on the investment through a sale of the property, LSI provides them that opportunity in the form of a guaranteed return to the concessioner of its investment.

Although the NPS seeks to encourage concessioners to make capital investments, it must balance the benefits of such investments with the need to address the LSI generated from such investments. If the incumbent concessioner wins the new contract, the concessioner retains the LSI value, which continues through the term of the next contract. If there is a new concessioner, the LSI is often transferred to a new concessioner by the new concessioner compensating the outgoing concessioner for the value of the LSI. This can create a significant investment hurdle that limits competition on the contract. A higher initial investment can lead to reduced competition because fewer entities have access to the large buy-in amounts for certain contracts or because the return on their investment is not as attractive as other opportunities. When there is the likelihood of less competition, the incumbent also may not be incentivized to offer as many new enhancements when providing the services required, which can lessen the visitor experience. If, instead, the NPS pays the value of the LSI to the outgoing concessioner, the funds expended are unavailable to support other NPS needs, such as prospectus development or managing the new concessioner during the term of the contract and improving visitor operations and facilities.

Change 6: Definition of Major Rehabilitation

Section 51.51 defines terms used in subpart G to explain how LSI is applied.

The NPS revises the definition of ''major rehabilitation'' in order to simplify and more appropriately characterize what qualifies as a major rehabilitation with the intent of encouraging investment in commercial visitor service capital improvements by concessioners. These changes apply for future concession contracts.

First, the NPS simplifies the definition of a major rehabilitation by removing the term ''comprehensive'' because it is vague and suggests a limitation on investments that is not intended to be included in the concept of a planned ''major'' rehabilitation as defined in the regulation.

Second, the NPS removes the term ''that the director approves in advance'' as § 51.54 already requires such approval for any capital improvement, including major rehabilitations.

Third, the NPS removes the requirement that, unless special circumstances exist, the Director must determine the rehabilitation project is completed within 18 months from the start of the rehabilitation work. Projects must be approved by the Director and any approval would include a project schedule. Eighteen months is a timeframe typical for such projects. In practice, however, the Director approves the timeline for major rehabilitation projects based on the complexity and scope of the project. The result is that the 18-month requirement in the existing regulation has been rendered superfluous and does not provide any benefit to the public. Removing this requirement simplifies and clarifies the definition to match existing practice.

Fourth, the NPS decreases the construction cost threshold for what constitutes major rehabilitation from 50% of the pre-rehabilitation value to 30% of the pre-rehabilitation value. This allows for a broader range of major commercial visitor service capital improvement construction projects to qualify for increased LSI under § 51.64 or new LSI under § 51.66.

The NPS selected the 30% threshold through industry research. The International Facility Management Association identifies 30% as the threshold for when a rehabilitation is ''critical'' to the structure. The NPS believes the 30% threshold better aligns with this industry standard than does the 50% threshold in the existing definition. Further, the NPS believes that broadening the situations in which the Director may approve the availability of LSI will facilitate important and needed capital improvement projects that will improve the conditions of facilities and help ensure a safe and enjoyable experience for park visitors.

While the 1998 Act intended to promote private investment in concession structures by providing LSI to concessioners, the 50% threshold contained in the existing regulations has limited the Director's ability to allow concessioners' opportunities to make investments of the type envisioned by Congress. Concerns have been raised that the current regulations actually discourage investment in concessions structures. The NPS seeks to improve the regulations to encourage concessioners to invest in capital improvements.

Broadening the scope of projects that can be supported by the availability of LSI will have other consequences to the concession contract and its management. For example, the utilization of LSI for rehabilitation projects allows for the recovery of investment by the concessioner where insufficient remaining contract term could make the investment financially imprudent without LSI lowering the risk of that investment. This lower risk associated with the ability of a concessioner to incur LSI will be considered in the NPS analysis of the opportunity and may result in a higher franchise fee set in the prospectus consistent with the statutory requirements to set a fee appropriate to the probable value of the contract and thus possibly result in a higher franchise fee paid to the government. Franchise fee revenue may also increase if increased concessioner investment in higher quality facilities results in increased visitor demand for NPS concessions. The NPS could use the new fee revenue for other NPS needs or when appropriate to buy down LSI incurred on the contract as a result of the concessioner investment. This assumes that revenue projections for the contract are realized and adequate franchise fees are available, since franchise fees are calculated as a function of revenue. The use of franchise fees for this purpose will be balanced against the use of these funds for other NPS needs in light of all funding sources. An analysis of the expected relationship between LSI and franchise fees as a result of this change can be found in the report entitled ''36 CFR [part] 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *https://www.regulations.gov* in Docket ID: NPS–2020–0003.

Fifth, the NPS added to the definition of a major rehabilitation, that it must improve visitor health, safety, and enjoyment or the health and safety of concessioner employees and will either enhance the property's overall value, prolong its useful life, or adapt it to new uses. This adopts a common industry definition for the scope of capital investment to aid concessioners in understanding the scope of LSI-eligible projects.

The changes to the definition of ''major rehabilitation'' do not negate the requirement that the Director must approve in advance any major

rehabilitation project in accordance with § 51.54. Although the changes to the definition will likely increase the opportunities for concessioners to seek approval for major rehabilitation projects, the NPS considers many factors when deciding whether to approve a capital investment. For example, the NPS may decide that the value of LSI that would result from the capital improvement would decrease competition for future contracts, outweighing the benefit of the improvement. As a result, the availability of LSI may not generate the desired outcome of increased investment in all cases. However, in these cases the NPS may pay for the capital improvements itself to avoid generating imprudent levels of LSI. The NPS would need to evaluate the benefits of the investment against the opportunity costs of diverting funds from other projects, and how that would impact the quality of other concession facilities and visitor services.

Subpart I—Concession Contract Provisions (36 CFR 51.73–51.83)

The regulations in subpart I govern key provisions in concession contracts. The NPS makes six changes to this subpart, as explained below.

Change 7: Term of Concession Contracts

Section 51.73 of the existing regulations governs the length of concession contracts and contained a phrase not required by the statute that concessioner contracts should be as short as is prudent considering certain factors. The final rule deletes the reference to ''as short as is prudent'' to better align § 51.73(a) with the provisions of the 1998 Act (54 U.S.C. 101914). The final rule states that contracts may not exceed 20 years in length and generally will be awarded for ten years or less, unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. The regulations also say that it is the policy of the Director that the terms should account for the financial requirements of the concession contract, resource protection, and visitor needs, and other factors the Director may deem appropriate.

The NPS also revises § 51.73 to allow the Director to include contract provisions allowing for an optional term or terms of one year or more (but not to exceed three years in total), provided that the total term of the contract, including all optional terms, does not exceed 20 years. As proposed, the concessioner would need to meet the performance criteria described in the contract. In the final rule, the NPS states the subject contract will set out the evaluation rating requirements and other performance criteria rather than regulating the rating standard. The final rule also provides that the concessioner may exercise the option(s) only if the Director has determined the concessioner has met the performance criteria. This change applies to future contracts only.

The final rule has a separate provision allowing the Director and concessioner to agree to amend a contract to lengthen the original term of a contract when the Director determines there has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner. These substantial interruptions could include, for example, cessation of operations due to extended fire season, severe hurricane damage, or lengthy administrative closures ordered by the government. This change allows the NPS and the concessioners a better opportunity to receive the benefits that both anticipated during the solicitation process and upon execution of the contract. This change applies to current concession contracts still within the original term of the contract as well as future contracts; it does not apply when the concessioner is operating under either a temporary concession contract or an extension of an existing concession contract awarded pursuant to subpart D of this part, as the NPS may only award a temporary contract or a contract extension ''for a term not to exceed 3 years,'' and only ''[t]o avoid interruption of services to the public[.]'' 54 U.S.C. 101913(11)(A). The NPS expects that this change will increase competition for contracts and avoid situations where concessioners reduce services, facility management, or other aspects of their contracted requirements to cover lost revenue.

Change 8: New or Additional Services

The Centennial Act revised 54 U.S.C. 101913(9) to allow the NPS to amend an existing contract to provide new and additional services that do not represent a material change to the required and authorized services under the contract. This language may provide new opportunities to enhance commercial services under existing contracts allowing concessioners to meet changing visitor needs where appropriate. Before the Director authorizes such new or additional services under a contract, the rule will continue to require the Director to determine that the services are necessary and appropriate for public use and enjoyment of the NPS unit where they will be provided and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of that unit in accordance with the Centennial Act and the 1998 Act. 54 U.S.C. 101912(b) and 10913(9).

The final rule also regulates the administrative practice of allowing minor changes to the scope of existing services (such as extending operating hours) as part of the revisions to this section.

The proposed rule would have retained a provision that prohibited the Director from including a provision in a concession contract that would grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract (defined as a right of a concessioner to a preference in the nature of a right of first refusal). The Centennial Act replaced the statutory basis for this regulatory prohibition, so the NPS excludes it from the final rule.

This change applies to current and future concession contracts.

Change 9: Setting Franchise Fees

Section 51.78 reflects the requirement of the 1998 Act that concession contracts provide for payment to the government of a franchise fee in consideration of the probable value to the concessioner of the privileges granted by the contract. The regulations describe how probable value will be determined and how the fee may be adjusted during the term of the contract. The final rule modifies § 51.78 in several ways to clarify how the NPS will set the franchise fee to encourage competition and provide enhanced or higher quality service offerings while considering the reasonable opportunity for net profit in relation to capital invested and the obligations of the contract.

First, the NPS modifies language in § 51.78(a) to clarify that the consideration in the capital invested to determine reasonable opportunity for net profit includes those funds required to be placed in special accounts identified in § 51.81, and the obligations of the contract as described in the prospectus.

Second, the NPS provides a new subsection (b) providing alternative methods for the Director to determine the type of franchise fee to include in a prospectus. Congress has charged the NPS with ensuring that the franchise fee reflects ''the probable value to the concessioner of the privileges granted by the particular contract involved,'' 54

U.S.C. 101917(a). Historically, the NPS implemented this statutory directive by setting a minimum acceptable franchise fee in the prospectus and allowing competition to determine whether a higher franchise fee better reflects the contract's probable value to the offeror in consideration of the capital invested and obligations of the contract including any enhancements in visitor services that might be offered. In the final rule, the NPS has included an additional means of meeting the statutory directive by using a ''prospectus franchise fee,'' which will be set at a level to encourage competition for the concession opportunity through offers of either higher franchise fees, or lower franchise fees combined with enhanced or higher quality service offerings that exceed the requirements included in the prospectus. The NPS will use the prospectus franchise fee unless such use is inappropriate, in which case the NPS will use the minimum acceptable franchise fee.

Third, the final rule adds in a new paragraph (c) that requires that the Director use relevant industry data when determining the applicable franchise fee and to provide the basis for this determination in the prospectus. These additions to the regulation are consistent with historical NPS practice in prospectus development that already provides the basis for the calculation of a franchise fee based on the probable value of the contract to the offeror. This addition to the regulation will further transparency in prospectuses.

These changes apply to all prospectuses issued after the effective date of the final rule. As noted, however, many of these requirements reflect historical NPS practice.

Change 10: Special Accounts

Section 51.81(b) of the existing regulations allows concession contracts to require the concessioner to set aside a percentage of its gross receipts in a repair and maintenance reserve to be used, at the direction of the Director, solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct improvements that would be eligible for LSI. The proposed rule merely changed the name of the ''repair and maintenance reserve'' to ''component renewal reserve to reduce confusion about how the funds in this reserve may be used.'' The final rule retains that change (which applies to current, if amended, and future contracts) and well as the following changes that will improve the understanding of the reserve.

First, the rule specifies that the NPS should identify the anticipated timing and estimated costs of component renewal projects in the prospectus. This change applies to all prospectuses issued after the effective date of the final rule.

Second, to further avoid confusion, the rule describes that the component renewal reserve provides a mechanism for a concessioner to reserve monies to fund component renewal projects, and that concessioner obligations to maintain assigned concession facilities, including component renewal, are not limited to the monies in the component renewal reserve. This change does not change how the NPS and concessioners treat the component renewal reserve or the concessioners' maintenance obligations.

Change 11: Concessioner Rates

Section 51.82(a) of the existing regulations states that concession contracts must allow concessioners to set reasonable rates and charges to the public for visitor services, subject to approval by the Director. Paragraph (b) explains how the Director will determine whether rates and charges are reasonable, by comparison with rates and charges for facilities and services of comparable character under similar conditions with due consideration to the following factors: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and types of patronage. Rates and charges may not exceed market rates and charges for comparable facilities, goods, and services, after considering certain factors. These requirements are taken directly from the 1998 Act. 54 U.S.C. 101916.

The 1998 Act also states that the rate approval process shall be as prompt and as unburdensome to the concessioner as possible and rely on market forces to establish the reasonableness of rates and charges to the maximum extent practicable. 54 U.S.C. 101916(b)(1). The NPS finalizes several changes to § 51.82 to meet these requirements. These changes apply to current and future concession contracts.

First, the NPS codifies the requirements in the 1998 Act and provides that the NPS will rely on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable.

Second, the NPS adds a new paragraph (c) that requires the Director to identify the rate approval method for each category of facilities, goods, and services in the prospectus. Unless the Director determines that market forces are not sufficient to establish the reasonableness of rates and charges, the rule requires the Director to make a competitive market declaration (rather than using other NPS annual rate approval methods), and further provides that rates and charges will be approved based upon what the concessioner determines the market will bear. The Director will determine this by reviewing the services being provided by the current concessioner relative to the comparable set of offerings in the market. Other rate approval methods will be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. For example, this may occur for lodging or food and beverage outlets where there are no alternatives, guiding services for one-of-a-kind recreational experiences, and transportation to NPS units where there is only one way to access the site (*e.g.* ferry service to the Statue of Liberty). This rule requires the Director to monitor rates and charges and competition and allows the Director to change the rate approval method during the term of the contract to reflect changes in market conditions. This last provision allows the NPS to respond to market pressures on rates for concessioner services that did not historically exist. This has occurred where lodging and other visitor services have expanded in gateway communities, aided by online searches and booking methods that provide more options for visitors. In addition, competitors in some locations use dynamic pricing to set rates, which means that prices are adjusted to reflect demand. The task of approving reasonable and appropriate rates and charges in these scenarios is burdensome. Unlike private sector companies, concessioners must undergo an annual rate approval process each year where maximum rates are set through a complex comparability process that occurs months in advance of the season. The concessioners are then not as able to quickly and efficiently adjust rates, particularly in times when visitor demand is higher than was forecasted. This rule acknowledges this fact and allows the NPS to more fully consider competitive, demand-driven pricing methods where it makes sense to lessen this burden. The NPS monitors the rates of the concessioner. In the event that the concessioner's rates set based upon a competitive market declaration no

longer reflect changes in market conditions taking into account the varied characteristics and quality of services offered, the Director may determine that this rate approval method is not providing reasonable and appropriate rates and may change the rate approval method to one that will meet these conditions. The Director will monitor rates and charges and competition and may change the rate approval method during the term of the contract to reflect changes in market conditions.

The enhanced use of competitive market methods may result in increased rates and revenue with no change in expenses to the concessioner. These changes in the financial opportunity of the contract will be accounted for through contract requirements that would benefit the public using the concession services. An analysis of the expected relationship between rates and such contract changes can be found by reading the report entitled ''36 CFR [part] 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *https://www.regulations.gov* in Docket ID: NPS–2020–0003. The NPS notes that the competitive market declaration and other rate methods establish reasonable and appropriate rates for the services that are being offered. This is separate than the determination of what services are necessary and appropriate, including the range of offerings and associated price points. That determination is conducted through the NPS planning process.

Third, the NPS adds a new paragraph (d) that establishes rules for how the Director responds to requests from existing concessioners to change rates and charges to the public so that they are as prompt and as unburdensome as possible to the concessioner. The new language requires each contract to include a schedule for rate requests and describe the information necessary to include in a complete rate request. This clarifies a current NPS practice to include this information in the concession contract operating plan. The rule further requires, upon receipt of a request for a change in rates or charges, the NPS, as soon as practicable but not more than 20 days of receipt of the request, to provide the concessioner with a written determination that the request is complete, or, if not, a description of the information required for the request to be determined complete. Where changes in rates and charges have been requested and the NPS deems the request complete, concessioners may notify visitors making reservations 90 or more days in advance of the anticipated rates subject to review and adjustment, if necessary, at or before the time of the visit pursuant to the NPS's timely decision to approve or reject the rate change. The NPS will issue a final decision approving or rejecting a request by a concessioner to change rates and charges to the public within 10 days of receipt of a complete request in accordance with the conditions described in the contract, except for those change requests requiring a full comparability study, for which the NPS will issue a decision as soon as possible and in no event longer than 30 days after receipt of the complete request. If the NPS does not approve of the rates and charges proposed by the concessioner, the NPS must provide in writing the substantive basis for any disapproval. These timeframes will be exceeded only in extraordinary circumstances and the concessioner must be notified in writing of such circumstances. If the NPS fails to meet the timeframes described above, and has not notified the concessioner in writing of the existence of extraordinary circumstances justifying delay, a concessioner may implement the requested change to rates and charges until the Director issues a final written decision. If the Director denies the requested change to rates and charges after implementation by the concessioner, the Director will not require the concessioner to retroactively adjust any rates or charges for services booked prior to the Director's denial.

Under current policy, the NPS responds to rate requests within 45 days, but does not have any specific timeframes as outlined in the revisions to the rule. The specific response requirements included in the final rule will improve responsiveness and provide more certainty to concessioners by ensuring prompt and transparent decisions regarding requests for rates and charges. Additionally, the advance rate practices described in the rule provide the concessioner flexibility so they are not encumbered in their ability to advertise, take reservations and charge reasonable and appropriate rates during the rate request and approval process. The NPS clarifies that charging advanced rates outside the rate request schedule in the contract and rate request and approval procedures in paragraph (c) of § 51.82 may be allowed if specified in the contract. Such allowances may occur when additional advanced rate practices are determined by the NPS as appropriate and consistent with comparable services and when they are conducted in accordance with NPS rate administration policy.

Change 12: Subpart J—Assignment or Encumbrance of Concession Contracts (36 CFR 51.84–51.97).

The regulations in Subpart J set forth rules for executing assignments and encumbrances of concession contracts. The proposed rule included a prohibition on submitting requests to approve an assignment of a concession contract within twenty-four months following the effective date of the contract unless the proposed assignment was compelled by circumstances beyond the control of the assigning concessioner. After receiving many comments criticizing this prohibition as too restrictive, the NPS has decided to withdraw the rule change. Instead of imposing an additional restriction on the assignment of concession contracts, the NPS will pursue its policy objectives through the current regulatory framework.

Final Rule

Summary of Changes

After internal deliberations and in response to comments, the NPS made the following changes to the proposed rule. For a more detailed discussion of these changes, refer to the next section entitled ''Summary of Public Comments'' and bureau responses, organized by topic.

Title 36	Description of change
§ 51.4	How will the Director invite the general public to apply for the award of a concession contract and how will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided? • NPS retained the 18-month rule with exceptions for issuing prospectuses earlier. • NPS added a requirement for an annual process to invite ideas for new services and requires public disclosure of proposals and evaluations. • NPS changed the factors considered when issuing a prospectus for new concession opportunities. • NPS added a reference to the authority for noncompetitive award of concession contracts.
§ 51.8	§ 51.8 Where will the Director publish the notice of availability of the prospectus?

Title 36	Description of change
	• NPS kept the language as proposed with editing improvement.
§ 51.16	How will the Director evaluate proposals and select the best one? • NPS added a maximum aggregate score of 40 points. • NPS added a requirement that each selection factor used must have a maximum score of at least one point. • NPS provided that the maximum score for the principal selection factor for franchise fees remains subordinate to the other principal selection factors listed in § 51.17(a). • NPS provided that an offerors will receive one point for agreeing to the prospectus franchise fee or the minimum acceptable franchise fee, whichever is applicable. • NPS included the prospectus franchise fee option when describing the scoring for the principal selection factor for franchise fees. • NPS provided that the scores for secondary selection factors reflect the relationship between principal and secondary selection factors.
§ 51.17	What are the selection factors? • NPS added a requirement to include a secondary selection factor for new services when appropriate.
§ 51.51	What special terms must I know to understand leasehold surrender interest? • The NPS is removing the term ''comprehensive'' from the definition of a major rehabilitation. • The NPS is removing the term ''that the director approves in advance'' from the definition of major rehabilitation in paragraph (a). • The NPS is removing the word ''solely'' from the definition of leasehold surrender interest because it is unnecessary. This is a non-substantive edit that will not change the meaning of the definition.
§ 51.73	What is the term of a concession contract? • NPS clarified the conditions for including option terms based on performance factors in new concession contracts including a three-year limit for such options. • NPS clarified when the Director and concessioner may amend a concession contract to lengthen the term of a contract due to a substantial interruption of or change to operations including a three-year limit.
§ 51.76	May the Director amend a concession contract to provide new or additional visitor services or grant a concessioner a preferential right to provide new or additional visitor services? • NPS included the administrative practice of amending operating plans for minor changes to visitor services. • NPS included a list of possible changes that could lead to an operating plan or contract amendment. • NPS deleted the provision regarding granting concessioners a preferential right to new or additional services. • NPS added a provision that the Director should consider whether other operators adequately provide a service when considering whether to amend an existing contract to add a new service.
§ 51.78	Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment? • The NPS is modifying the language in paragraph (a) clarifying that the consideration in the capital invested to determine reasonable opportunity for net profit includes those funds required to be placed in special accounts identified in § 51.81. • The NPS is moving requirements regarding the consideration of revenue to the Government compared to other factors to paragraph (c). • The NPS is adding a new paragraph (b) providing a new means for the Director to determine the franchise fee for the contract as an alternative to the minimum franchise fee. This alternative method would include in the prospectus, a ''prospectus franchise fee'' set at a level to encourage competition for the concession opportunity through offers of higher franchise fees or lower franchise fees combined with enhanced or higher quality service offerings that exceed prospectus requirements. • The NPS provides that the NPS will use the prospectus franchise fee unless such use is inappropriate, in which case the NPS will use the minimum acceptable franchise fee.
§ 51.81	May the Director include ''special account'' provisions in concession contracts? • The NPS is revising paragraph (b) to add a requirement that the anticipated timing and estimated costs of component renewal projects should be identified in the prospectus. • The NPS is expanding paragraph (b) to clarify that the component renewal reserve provides a mechanism for a concessioner to reserve monies to fund component renewal projects and that concessioner obligations to maintain assigned concession facilities including component renewal are not limited to the monies in the component renewal reserve.
§ 51.82	Are a concessioner's rates required to be reasonable and subject to approval by the Director? • The NPS is removing the requirement provided in the proposed rule that the Director respond to rate requests within 30 days. • The NPS is adding a new paragraph (d) that establishes more defined rules for how the Director responds to requests from concessioners to change rates and charges to the public. The provision requires that each contract include a schedule for rate requests and describe the information necessary to include in a complete rate request. Specific timelines for various rate approval actions by the Director and advanced rate charging allowances during the rate approval process have been included.
§ 51.87	Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance? • The NPS removed the requirement in paragraph (i) that the request for approval of the assignment must be received 24 months or more after the effective date of the contract unless the requested assignment is compelled by circumstances beyond the control of the concessioner.

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on July 20, 2020, (85 FR 43775) and accepted comments on the proposed rule through the mail, by hand delivery, and through the Federal eRulemaking Portal at *https://www.regulations.gov.* The comment period closed on September 18, 2020. The NPS received 68 comments on the proposed rule from individuals and organizations. A summary of the pertinent issues raised in the comments and NPS responses are provided below. In general, the concessioner community generally supported the proposed rule. Some individual members of the public objected to expanding commercial

operations in national parks. Non-governmental organizations generally supported the proposed rule as a whole while objecting to some changes, citing perceived detrimental effects on the National Park System, small business, and the visitor experience. After considering public comments and after additional review, the NPS made several substantive changes in the final rule that are explained in the responses to comments below. Additionally, the NPS made non-substantive stylistic, formatting, and structural changes in the final rule.

General Comments

1. Comment: Several commenters do not support allowing for commercial visitor service opportunities in the National Park System and expressed concerns that this will have a detrimental effect to both resources and the public, could change the nature of the visitor experience, and is contrary to the Organic Act.

NPS Response: The NPS disagrees with these commenters. In accordance with statutory requirements contained in 1998 Act, the NPS provides commercial visitor services only when they are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. These statutory conditions are restated in the rule in regard to the introduction of any new or additional services. NPS adheres to these tenets in planning, solicitation and award and management of concession contracts.

2. Comment: Several commenters assert that the rule could damage or disadvantage existing small businesses.

NPS Response: The NPS disagrees that the rule will damage or disadvantage small businesses. The regulatory impact analysis conducted for this rule resulted in a determination that the rule will have a positive impact on small businesses. First, the rule changes are designed to improve the way that NPS solicits, evaluates, and administers concessions contracts. The vast majority of concessioners operating in parks (estimated 96%) are small businesses as defined by the Small Business Administration (SBA) and, as such, will benefit from the changes to the rule. Solicitations for concession contracts are full and open and any qualified businesses, including small businesses, may compete in such solicitations. In regard to whether new or additional services may impact small businesses outside the park unit, the NPS must consider the potential impacts on communities located near the park area when evaluating the potential to offer new and/or additional services. This includes potential impacts on small businesses. Additionally, when considering whether to amend the applicable terms of an existing concession contract to provide new or additional services, the rule requires the Director to consider the potential benefit to the visitor experience where other commercial operators (most of which are small businesses) in the same park area already adequately provide those services.

3. Comment: One commenter requested that the NPS include in the rule a statement ''that concessions agreements are a legitimate strategy for meeting the financial needs for both park protection and infrastructure creation, operation and maintenance directly associated with visitor needs.''

NPS Response: NPS declines to make this addition as the purpose of concession contracts are clearly stated in the 1998 Act and are reaffirmed in the regulation as currently written.

4. Comment: One commenter expressed concern that the NPS failed to include regulations pertaining to the Visitor Experience Improvements Authority (VEIA) in the rule.

NPS Response: The NPS declines to address the VEIA in this rule as these revisions to 36 CFR part 51 focus on concession contracts and not on other contract types for commercial visitor service that may be authorized under the VIEA.

New Concession Opportunities

5. Comment: The NPS received some comments generally opposed to increasing commercial operations in parks and listed types of activities the NPS should prohibit in the regulation such as Amazon deliveries, food trucks, cell towers, Wi-Fi services, and other ''urban amenities.'' The NPS also received comments that the NPS should consider only the expansion of existing services rather than allowing entirely new services.

NPS Response: NPS declines to include such a list because some of those activities may be necessary and appropriate in some parks and during some time periods. For example, food trucks for special events at the National Mall in Washington, DC, would provide additional visitor services during well attended events. Rather than listing specific activities to allow or disallow, the NPS relies on existing planning processes and the necessary and appropriate determination process to make park-by-park determinations of visitor services to include in a concession contract. In some instances, services available to the NPS and its employees are not subject to concession contracts (Amazon deliveries and Wi-Fi services). The NPS manages cell towers in the National Park System through other authorities and not concession contracts. The decision of what commercial visitor services to allow in individual parks considers park specific conditions. The NPS regional directors, upon advice from park superintendents, decide what commercial visitor services are necessary and appropriate. NPS avoided regulating any specific commercial visitor service to allow this discretion by those most familiar with park-specific conditions.

6. Comment: Many commenters generally supported the idea of expanding visitor services citing topics such as economic development, modernization, and technology. Others suggested developing comprehensive criteria to evaluate new visitor service suggestions. The NPS also received a comment that the NPS should reevaluate currently provided commercial services that may be inadequate and should consider the public benefits of having multiple providers of a service, or multiple variations of a service, to suit differing visitor needs.

NPS Response: The NPS appreciates these comments. The 1998 Act provides that the NPS may issue concession contracts only for commercial visitor services determined to be necessary and appropriate and consistent to the highest practicable degree with the preservation and conservation of the National Park System unit. The NPS complies with this direction through public planning processes guided by NPS Management Policies and related guidance. The NPS chooses to allow park managers and regional directors discretion to consider circumstances and conditions unique to a System unit rather than define one regulatory standard for the entire National Park System. Experience has shown that the existing policies and guidance provide sufficient standards to ensure continued preservation and conservation of System units as required by law.

7. Comment: One commenter encouraged the NPS to establish an annual process for the Director to solicit ideas for new services (in addition to the recognition in the proposed rule that the NPS would do this during park-level planning processes). That commenter also stated the NPS should commit to consider a minimum number of proposals each year (suggesting 10).

NPS Response: Considering these comments, NPS has included in the rule a provision to require the Director to annually solicit visitor service ideas through a process separate from the park planning processes. Proposals received for new visitor service and concession opportunities will be encouraged, reviewed, and responded to; however, NPS chose not to set a minimum number of proposals to consider as the NPS cannot predict or control how many such proposals it will receive.

8. Comment: As proposed, the regulation stated no party will have a preference to a new contract that authorizes a suggestion submitted by that party. One commenter suggested deleting that language and creating a method to provide that party ''appropriate credit'' in the rating process. That commenter also suggested the NPS allow the suggesting party, if awarded the contract, to credit against franchise fees a ''portion of the costs incurred . . . in generating a proposal for new or additional visitor services . . .'' The commenter suggested regulatory language to incorporate these concepts.

NPS Response: The NPS declines to make such revisions. The 1998 Act included preferences for only two categories of concessioners—those whose operations generate under $500,000/year and those who met specific qualifications as outfitters and guides. The NPS thinks providing credit as suggested by this commenter would create a preference system not authorized by law. In addition, allowing a deduction for the costs of developing a suggestion to the Director could also provide a preference for the offeror that submitted the idea, as knowing it would recoup some of the cost of development might allow it to propose a higher franchise fee than other offerors, and, therefore, receive more points for the principal selection factor for franchise fees during the competitive evaluation process. Furthermore, allowing for the recoupment of development costs is uncommon in the private sector and other government contracting actions. The NPS sees no benefit in allowing such for concession contracts.

In consideration of these concerns, however, the NPS added a new provision to § 51.17(b) providing that the NPS will include a secondary selection factor requesting suggestions for new services when appropriate. This reflects a practice the NPS has used off and on for several years to encourage new ideas for commercial visitor services within the scope of the contract included in a prospectus and should allow entities that seek to provide new services in a park area to develop such ideas and receive appropriate credit as part of the competitive process.

9. Comment: NPS received several comments expressing concerns that allowing new services may adversely affect businesses in nearby towns or the operations of other park concessioners or commercial operators.

NPS Response: The final rule addresses this concern. In determining whether to issue a prospectus for a concession contract to provide such new concession opportunities, the Director shall consider relevant factors including whether the suggested opportunities are adequately provided within the park area by other authorized commercial providers; the potential for augmented resources for park area operations; the effects of the suggested concession operations on the park area; the sustainability of the suggested concession opportunities; the innovative quality of the suggestions; and the potential impacts on park area visitation and on communities located near the park area.

10. Comment: The NPS received several comments about using the innovative quality of the suggested new services as one of the evaluation factors because some visitor service ideas, such as bicycle rentals, may not be innovative but could still provide a valued additional visitor service. Another commenter suggested NPS consider the impacts of new services to park operations and the sustainability of the new concession operation.

NPS Response: The NPS chooses to keep the innovative nature of the visitor service as a factor to consider, however, it is by no means a controlling factor or intended to work to exclude new visitor services that are not considered innovative. The NPS also included consideration of the impacts of new services to park operations and the sustainability of the new concession operations.

11. Comment: One commenter stated the NPS should set clear criteria in determining what visitor services to provide within a park, suggesting that this would include making the necessary and appropriate determinations. For many years, the NPS has relied on policy to guide this exercise of discretion.

NPS Response: Both NPS Management Policies 2006 and the Commercial Services Guide have information on this process. The NPS declines to regulate more specific criteria for this decision process.

12. Comment: One commenter stated the NPS should set a deadline for developing the process of seeking proposals for new visitor services. Another commenter recommended the NPS include broad agency input and include some outside parties in its evaluations. Finally, a commenter suggested creating a unique plan for Alaska.

NPS Response: While the rule does not contain a specific timeframe for soliciting and reviewing proposals for new visitor services, it does require an annual process. The NPS, therefore, intends to implement the first solicitation of ideas as soon as practicable and before the end of the calendar year following the effective date of the final regulations. The NPS will consider suggestions for broad input in evaluating proposals for developing new visitor service opportunities, including those in currently underdeveloped Alaska park areas as the NPS constructs the new visitor service opportunity solicitation process and related guidance.

Timing of Issuing Prospectuses

13. Comment: Several comments generally opposed or generally supported the elimination of the requirement to issue prospectuses not sooner than 18 months before the contract expires. Some commenters raised specific objections, often contradicted by other commenters (for example: ''it will increase competition'' and ''it will have no effect on competition;'' ''it will decrease the quality of bids'' and ''it will increase the quality of bids'').

NPS Response: The NPS has decided to keep the language in the existing regulation retaining what we call the 18-month rule but allowing the Director to issue a prospectus earlier when necessary to provide additional time to potential offerors, such as when additional time is needed to avoid issuing a prospectus during a busy operating season or where potential offerors must make significant financial commitments to meet the requirements of the contract. This additional time will be as short as prudent.

14. Comment: One commenter supported keeping the 18-month rule and suggested adding a requirement that the NPS not issue a prospectus during a busy operating season.

NPS Response: The NPS has chosen to keep the 18-month rule. Some limited circumstances, however, could result in the need to depart from the 18-month rule. Generally, the NPS issues contracts with a January 1 start date, rather than having contract start dates scattered over the year, keeping the inventory of contracts on a calendar year basis. Consequently, the 18-month rule would

prohibit the NPS from issuing a prospectus sooner than July 1 the year before the current contract expires. Since most recreation providers are busiest during the summer season, the 18-month rule results in the NPS either issuing a prospectus during the operator's busy season or delaying release until later that year. Preparing an offer during the busiest time of year can present many challenges for concessioners, especially for small businesses with limited staff. Delaying the release until later in the year, however, can result in the NPS needing to extend an existing contract for another year because of the time it takes the NPS to complete its evaluation process, announce the selection of the best proposal, and award the contract. In some circumstances the potential for contract extension out of necessity should be avoided by the issuing of a prospectus in advance of 18 months prior to contract expiration, but as close to contract expiration as is prudent.

15. Comment: Several commenters said the NPS should use the ability to extend contracts to provide more time during the solicitation and evaluation period rather than eliminating the 18-month rule.

NPS Response: Contract extensions may be appropriate when necessary to ensure the continuity of visitor services and as such serve as a remedy where the circumstances surrounding the solicitation and evaluation of proposals within the allotted 18-month period may give rise to interruptions of services to the public. However, such extensions should be the exception and not the rule. The final rule, therefore, provides the NPS with flexibility in certain circumstances to use additional time for prospectus solicitation, evaluation and award, provided that additional time is a short as is prudent. This added flexibility to the 18-month rule is necessary, as the 18-month rule can leave insufficient time to solicit, evaluate, select and award contracts for several reasons. First, as described above, to avoid issuing prospectuses during the concessioners' (and likely competitors') busy seasons, the NPS has delayed issuing a prospectus until later in the year, which frequently leads to extending contracts. Second, for more complex contracts, the NPS frequently allows offerors four to five months to compile and submit proposals. Many of these contracts require notice to Congress at least 60 days prior to award (see 54 U.S.C. 101913(6)). All of this extra time often leads to the need for a contract extension. Third, even for less complex contracts, the rigorous evaluation and selection processes, providing the selected offeror time to review the terms of the contract, and allowing reasonable transition time also may give rise to the need for extensions of contracts.

16. Comment: Several commenters pointed to the justification for including the 18-month rule in the 2000 regulations, that issuing prospectuses sooner that 18 months before contract expiration would result in too much uncertainty and speculation.

NPS Response: The concerns raised have led to keeping the 18-month rule in the final regulations as a matter of general application, but with limited exceptions. Over the past 20 years, the NPS has developed a professional and reliable process to analyze information and develop prospectuses. The NPS relies on the incumbent concessioner's operating history and on industry metrics and the experience of long-time financial consultants and A&E firms. Where it is necessary due to operating circumstances to issue a prospectus more than 18 months in advance, the reliability of this information will not diminish by issuing a prospectus a few months earlier. That said, the NPS remains concerned with information becoming stale when issuing a prospectus too far in advance of a contract effective date. The NPS also anticipates for most contracts where circumstances require early release of a prospectus, the timing of such releases will move less than six months. In other rare circumstances, for example, the NPS may release a prospectus two years before expiration to accommodate a new concessioner's need to acquire expensive personal property such as passenger ferries. The NPS may award those well before operations commence to provide the new concessioner an awarded concession contract to rely upon to enter into acquisition agreements and necessary financing.

17. Comment: Several commenters suggested keeping the 18-month rule and adding language requiring the NPS to demonstrate a need for an earlier prospectus release.

NPS Response: The NPS has added criteria for the NPS to use to issue a prospectus earlier than 18 months before a contract expires. Applying these criteria will be the exception to the 18-month rule and will be supported by an administrative record. Modifying the 18-month rule to allow for earlier releases when necessary provides the NPS with the ability to time the issuance of prospectuses to meet many goals, including that of relieving concessioners of the burden of preparing proposals during a busy operating season, and of alleviating the uncertainty associated with a concessioner's future operations. As stated in the preamble to the proposed rule, it also allows the NPS to better design competition and award for contracts with substantial personal property investment. The NPS recognizes the concern represented by commenters opposing this change and will develop guidance on factors the NPS should consider in determining when to release a prospectus as well as additional steps the NPS could take to improve competition and the quality of proposals.

18. Comment: A commenter suggested several processes the NPS should use to encourage more and better proposals including earlier disclosure of contract requirements, two rounds of questions and answers, and a more thorough debriefing process.

NPS Response: The NPS will consider these as suggestions to consider in developing additional policy guidance but does not find it necessary to include such guidance in the final rule.

Publishing Notice of a Prospectus

19. Comment: The NPS received three comments related to the publication of the notice of a prospectus release. None of the comments addressed the change in the regulation. One commenter suggested changes to the NPS practices of posting expected prospectus releases on the WASO Commercial Services Program website. Two supported publishing notice in trade publications (included in the existing rule). One suggested taking steps to notify the incumbent concessioner directly.

NPS Response: The NPS sees no need to make changes to the rule as proposed based on these comments, which addressed the title of the publication and not the method, but will consider this input in developing any additional policy guidance regarding publication methods.

Weighting Selection Factors

20. Comment: The NPS received one comment opposing the additional flexibility the proposed changes would provide the NPS due in part to the ambiguities in the proposed rule. On the other hand, the NPS also received many comments supporting additional flexibility in scoring proposals but asking for further clarification. Additional comments noted that each selection factor used should be worth at least one point.

NPS Response: The proposed rule language, which provided considerable flexibility to the NPS to design proposal packages that reflected park area goals, unfortunately was vague and led to

differing interpretations of how the scoring would work. The final rule clarifies the scoring and recognizes the subordination of franchise fees and other consideration to the government to other principal selection factors. For consistency and clarity, the new language for § 51.16(a) includes a maximum aggregate total point score of 40, which is 10 points higher than provided for in the existing regulations. The NPS believes the new maximum will provide additional flexibility for the NPS and reliability for those who submit proposals for new concession contracts. The final rule also includes a requirement that each selection factor used must have a maximum score of at least one point. In § 51.16(a)(2) and (3), the final rule clarifies the scoring for secondary selection factors to reflect the relative scoring structure of the existing regulations, to wit: the maximum score for the secondary selection factor in § 51.17(b)(1) must be lower than the maximum score for the principal selection factor for franchise fees and the maximum aggregate score for all other secondary selection factors must be lower than the maximum score for the principal selection factor for franchise fees. This retains the current scoring structure and continues to differentiate between principal and secondary selection factors.

21. Comment: Many commenters pointed out the proposed rule did not provide that franchise fees and other consideration to the government would be subordinate to other principal selection factors as required by the 1998 Act and as incorporated into the existing regulations. In a related vein, several commenters requested that experience receive higher consideration than consideration of franchise fees and other consideration to the government, especially for high risk recreation activities.

NPS Response: In § 51.16(a)(1), the NPS added language to reflect the 1998 Act requirement that consideration of franchise fees and other consideration to the government will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates, which are two of four statutorily mandated ''principal selection factors.'' Even though the foregoing statutory requirement subordinates consideration of franchise fees and other consideration to the government only to these two principal selection factors, the NPS decided to maintain the relative scoring structure of the existing regulations and also subordinate consideration of franchise fees and other consideration to the government to the experience and related background of offerors and the financial capability of offerors, which are the other two principal selection factors. The NPS also agree that experience in high risk operations should matter more than consideration of franchise fees and other consideration to the government, but thinks it should matter in all circumstances. And while the NPS did not receive comments asking to maintain the higher consideration for the principal selection factor regarding the financial capability of offerors over the principal selection factor for franchise fees and other consideration to the government, we recognize from twenty years of evaluating proposals that those supported by strong financial capability and understanding of the business opportunity translate into financially sustainable concession operations. As a result, the final rule provides that the maximum score for the principal selection factor regarding franchise fees and other consideration to the government must be less than the maximum score for the other principal selection factors set out in § 51.7(a).

22. Comment: The NPS received comments that supported continuing to award one point for agreeing to the minimum franchise fee.

NPS Response: The NPS revised the proposed language to provide that the score for agreeing to the prospectus franchise fee or the minimum franchise fee (as applicable) set out in the prospectus would be one point.

23. Comment: Several commenters pointed out that the scoring scheme in the proposed rule could result in a scoring anomaly where the franchise fee is undervalued inappropriately.

NPS Response: The NPS thinks that the maximum aggregate score of 40 points resolves this concern.

24. Comment: One commenter suggested the NPS limit the score for franchise fees to 15% of the total score for all selection factors asserting that would retain the current approximate weight of that selection factor as against the other selection factor scores.

NPS Response: The NPS declined to do this for two reasons. First, this could lead to a situation where the minimum and maximum scores for the principal selection factor for franchise fees would be other than a whole number, which would unduly complicate the panel evaluation process. For example, rather than having a range of scores from zero to four, the range could be zero to 3.705 or 5.47. Second, by adding the maximum score of 40 points, our calculations for various scenarios resulted in scores for principal selection factor 5 at or near levels under the existing regulations or around 15%. To reflect the change under § 51.78 defining a new method of developing a ''prospectus franchise fee,'' the NPS included a reference to that type of franchise fee in discussing the scoring for the principal selection factor on franchise fees.

25. Comment: The NPS received comments stating we should require disclosure of subfactor scores for every subfactor.

NPS Response: The NPS declines to make this part of the regulatory change because each prospectus includes proposal instructions that vary little from one prospectus to the next. Those instructions contain a provision (which has been included in the prospectus instructions for many years) that all subfactors will receive the same weight unless the NPS specifies otherwise. The NPS believes this instruction sufficient for offerors to understand when we do and do not assign different scoring weights among subfactors. To enhance transparency, however, the NPS will develop guidance to disclose when subfactors are considered of equal weight beyond the language in the prospectus instructions.

26. Comment: The NPS received a variety of comments suggesting we require specific topics for secondary selection factors such as using local businesses to support concession operations, efforts to attract lower income visitors, demonstrated knowledge or the NPS or the park area involved, and recommending additional visitor services.

NPS Response: The NPS agrees these are good topics for secondary selection factors and have used variations of these in past prospectuses. Rather than requiring specific topics, however, the NPS thinks it important to develop topics for secondary selection factors as appropriate for the specific concession contract. The NPS will consider adding to existing policy guidance some of these topics to remind those who develop prospectuses of the value of these ideas.

27. Comment: The NPS received comments asking the NPS to provide that certain commitments would receive additional points such as favoring minority or women-owned businesses or specific nonprofit organizations.

NPS Response: The current regulatory language in § 51.17(b)(2) provides direction in this regard.

28. Comment: Several commenters stated the NPS should include requirements in the regulations to explain the allocation of points in each

prospectus and how we determined the minimum franchise fee.

NPS Response: The NPS thinks the existing structure of proposal packages, which identify the NPS's objectives for protecting, conserving and preserving park resources and of providing necessary and appropriate visitor services at reasonable rates, currently discloses this reasoning. The NPS, however, will review existing policy guidance and consider whether we need to develop additional guidance on these topics considering the changes to the scoring as reflected in the new regulatory language. In addition, in Proposed Change # 8, the NPS has provided additional information on how it determines the minimum franchise fee.

29. Comment: The NPS received a variety of comments suggesting additional process changes or guidance topics not directly related to the revision of scoring in the proposed rules. Those topics include making sure page limitations reflect the relative scoring weights among subfactors, having less restrictive operating plans to provide more opportunity for creative proposals, provide more detailed debriefing opportunities, exercise better contract management to enforce commitments made in proposals, and recognition of concessioners working with certain nonprofit organizations.

NPS Response: The NPS will consider these when reviewing existing guidance.

Definition of Major Rehabilitation

30. Comment: Several commenters did not support the change in the definition of major rehabilitation and proposed the existing definition should be retained. One of these commenters suggested the change in definition would lead to more LSI credit for maintenance that should have been routine, that the concessioner will delay and bundle projects in order to achieve more LSI at the lower threshold, and stated there is no evidence that franchise fees will be increased under the reduced threshold. A commenter suggested that the options presented all transfer costs to the NPS.

NPS Response: NPS disagrees with these comments. As outlined in the preamble, the NPS accounts for LSI-eligible projects through the prospectus development process and considers these investments in the franchise fee analysis for the contract. The NPS has and will maintain procedures to approve facility improvement projects, monitor maintenance and component renewal needs, and other activities to ensure LSI-eligible projects are conducted in a timely manner and avoid unplanned LSI-eligible events.

31. Comment: One commenter suggested that it should be explicitly stated that concessioners are responsible for maintenance and that clear standards should be set for maintenance and LSI eligibility.

NPS Response: NPS declines to include a statement in the rule regarding maintenance responsibilities as those responsibilities are clearly defined in the standard concession contract. NPS already has standards for maintenance and LSI eligibility in the standard concession contract and policy but will review its policy and update as necessary.

32. Comment: One commenter recommended that NPS remove the term ''comprehensive'' from the definition of major rehabilitation in Section 51.51 because existing criteria in the regulation make clear that LSI applies only where the investment is substantial and adding the undefined term ''comprehensive'' appears unnecessary and risks confusing the standard.

NPS Response: NPS agrees that the term ''comprehensive'' is vague and an unnecessary modification of the term ''major rehabilitation'' and therefore has been removed from the rule. A major rehabilitation is a planned rehabilitation of an existing structure that will either enhance the property's overall value, prolong its useful life, or adapt it to new uses and therefore could involve a number of separate planned actions that collectively and in combination are a major rehabilitation that benefits the subject structure.

33. Comment: Several commenters recommended additional modifications to the definition of major rehabilitation projects eligible for LSI. Commenters proposed that a LSI-eligible major rehabilitation should include ''any qualified capital investment approved by the Director in advance and vital to the visitor health, safety and enjoyment or the health and safety of NPS and concession employees with the life expectancy of at least 30 years.'' Commenters also proposed that a LSI-eligible major rehabilitation should be any ''*Capital Improvements as defined by Generally Accepted Accounting Principles (GAAP)* or *. . . is a qualified capital investment approved by the Director. . .*''. The commenter separately indicated that the criteria for what work on existing capital improvements can qualify for LSI must incorporate the Congressional intent of ''capital improvements,'' whether as defined under GAAP or some other commonly used industry definition.

NPS Response: The NPS declines to incorporate these recommendations as presented, but has included a more detailed definition of major rehabilitations eligible for LSI to provide clarity and more closely track industry standards. NPS has described why the use of GAAP is not an appropriate standard for this purpose in the report titled 36 CFR [part] 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *https://www.regulations.gov* in Docket ID: NPS–2020–0003. Instead, the final rule defines an LSI-eligible major rehabilitation to be a planned rehabilitation of an existing structure where the construction cost exceeds thirty percent of the pre-rehabilitation value of the structure and the work performed improves visitor health, safety, and enjoyment or the health and safety of concessioner employees and will either enhance the property's overall value, prolong its useful life, or adapt it to new uses. The NPS selected the 30% threshold through industry research, specifically the International Facility Management Association, and the requirement that the work ''either enhance the property's overall value, prolong its useful life, or adapt it to new uses'' relies on common industry understanding of the term ''capital improvement.'' The NPS declines to include projects for NPS employee safety in the definition of LSI-eligible major rehabilitations since projects for that purpose are not specifically relevant to concession contracts. NPS does not include a 30-year life expectancy condition for qualifying major rehabilitations but does include that the work must either enhance the property's overall value, prolong its useful life, or adapt it to new uses.

34. Comment: One commenter suggested the proposed changes to the LSI eligibility threshold should apply to existing contracts and not only new contracts.

NPS Response: NPS declines this recommendation. NPS will not apply changes to the LSI eligibility to existing contracts as changing the LSI structure would change the financial terms of the concession contract and would be a material change to the opportunity that was initially solicited.

35. Comment: One commenter suggested that the NPS allow LSI for employee housing for concessioners or for the housing of both NPS and concessioner employees.

NPS Response: No change is needed to the rule. Concessioners may already obtain LSI for capital improvements for

employee housing where it is determined to be necessary during the prospectus process. However, a concessioner cannot build dedicated NPS-employee housing under a concession contract as such capital improvements are not a commercial visitor service.

36. Comment: One commenter proposed that the criteria for defining fixtures be modified through policy.

NPS Response: NPS is not taking any action in the rule but may consider this recommendation if appropriate in policy as suggested.

37. Comment: One commenter encouraged the NPS to use the alternative method formula (aka straight-line depreciation) allowed for contracts where LSI is estimated to exceed $10 Million.

NPS Response: The NPS already uses this formula where the NPS determines it is appropriate.

38. Comment: One commenter suggested that NPS allow concessioners to negotiate third party agreements that provide the concessioner with reimbursement rights that survive both during and after the length of the concession contract. For example, a ferry concessioner may negotiate with the third party for the right to recover a docking fee for use of the constructed facility over a certain number of years, extending beyond the end of the concession contract, as well as a provision for an incoming concessioner to buy out that right. While the NPS would not confer these rights to the concessioner, NPS would allow these agreements, and would have to disclose them to a new incoming concessioner. The commenter suggested that allowing concessioners a better third-party reimbursement approach could incentivize and encourage even more essential and complementary projects—dock and dock repairs, seawalls, roadways, parking, lighting, shelters—that greatly improve visitor services for the park.

NPS Response: NPS is not taking any action in the rule but may consider this recommendation if appropriate in policy as suggested. There is nothing currently in the regulation that requires NPS approval of these third-party arrangements; however, when the NPS determines that third-party capital investment could potentially be required, the NPS takes this investment into consideration when determining the franchise fee for the contract.

Term of Concession Contracts

Most commenters supported the proposed changes to § 51.73 that primarily set out circumstances when the NPS may add additional operating time to a concession contract without invoking the extension authority of § 51.23 to avoid an interruption of visitor services. When reviewing the proposed changes to the rule, the NPS noticed an error in § 51.73(a) in the following sentence: ''The Director will issue a contract with a term longer than 10 years when the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or other potential investments related to providing *both* required *and authorized* services, warrant a longer term (emphasis added).'' To clarify, when developing the financial analysis for a new concession contract, the NPS analyzes the financial profile of providing the *required* visitor services but not the *authorized* visitor services as a concessioner may choose not to offer the authorized visitor services. Consequently, the final rule deletes the italicized words in the quoted language above to accurately reflect the financial requirements of the new contract.

39. Comment: Several commenters wanted the NPS to retain the phrase ''should be as short as prudent'' in § 51.73(a), stating the phrase reinforced Congressional intent to support competition for concession contracts.

NPS Response: The proposed rule deleted the phrase ''should be as short as is prudent'' from § 51.73(a). The phrase was not reflective of the statutory requirements, as the language of the 1998 Act expresses no preference for the shortest possible term.

40. Comment: One commenter wanted the NPS to delete the phrase ''years (unless extended in accordance with this part)'' from the end of the first sentence of § 51.73(a) asserting it was inconsistent with Congress limiting the length of concession contracts to 20 years.

NPS Response: The NPS declines to make that change. The subject phrase appears in the existing regulation, recognizing that the authority under § 51.23 to extend contracts to avoid an interruption of visitor services applies to concession contract no matter the length of the term.

41. Comment: The proposed language for § 51.73 (b) appeared to create confusion among commenters and may not have accurately reflected the NPS's intent for the two situations for option terms.

NPS Response: The NPS has revised the language to clarify these provisions. The first situation provides that the NPS may include contract terms that allow a concessioner to have additional option years for meeting NPS-defined performance criteria, which includes evaluation ratings criteria (the NPS refers to this as the performance option). The second situation provides that the Director (outside the express terms of a concession contract) may provide a concessioner additional operating terms for substantial interruption in operations (the NPS refers to this as the interruption option). For the performance option, the NPS would develop opportunities for new concession contracts providing additional operating years if the concessioner performs at a defined evaluation level and meets other performance metrics (for example, occupancy during shoulder season or visitor satisfaction scores). The NPS would describe those performance metrics in the draft contract included in a prospectus to reflect the NPS's priorities for that operation. The NPS will develop additional guidance on this process.

42. Comment: Some commenters expressed concern with the timing of exercising performance options.

NPS Response: The NPS understands the issues with timing and the prospectus process. The NPS has used this in one current contract, which set out the time by which the Director must determine the concessioner has met the performance criteria and the time in which the concessioner must agree to exercise the option. That contract also had provisions for continued levels of performance after exercise of the option to support continued successful operations. The timing recognizes the need for the NPS to commence prospectus development for a new contract at a certain point should the concessioner not achieve the performance criteria or decide to not exercise the option for additional time.

For the interruption option, the Director would exercise his or her discretion to amend an existing unexpired contract to provide additional operating time when events outside the control of the concessioner cause a substantial interruption of or change to operations. This ability of the Director to take such action does not need to be an express part of a concession contract and is an exercise of the Director's discretion and authority under the 1998 Act.

The NPS added language clarifying that both options are subject to the statutory requirement that concessions contracts, including options, are limited to terms of 20 years. One commenter wanted that limitation struck from the regulation, but the NPS does not find the statutory authority to do so. Other commenters urged the NPS to limit the

length of performance options and one suggested a limit of three years like contract extensions. The NPS agrees and has included language for such limitation, thereby adopting for option years Congress' expressed preference of a three-year maximum when it comes to increasing the length of time a concessioner may provide visitor services.

43. Comment: Several commenters asked for clarification surrounding the issue of ''favorable annual ratings'' for performance options as used in the proposed rules. Several commenters asked the NPS to define ''favorable.''

NPS Response: The NPS has a comprehensive concessioner evaluation system that has the following levels of ratings: superior, satisfactory, marginal, and unsatisfactory. Just a few years ago, the superior level did not exist, but was added as a matter of guidance. NPS believes it important to retain the flexibility to adjust how we evaluate concession operations and describe performance levels as a matter of guidance and not of regulation. At this time, a favorable rating would be at the satisfactory or superior level.

44. Comment: Several commenters objected to the requirement of a favorable annual rating for every year of the contract citing issues with the NPS's evaluation system and subjectivity of park managers. Some commenters wanted the NPS to eliminate any requirement regarding evaluation ratings.

NPS Response: NPS agrees that a favorable rating, which documents that a concessioner is meeting the terms of the concession contract, should not be required for every year of the contract but otherwise disagrees with those comments. Generally, a favorable rating indicates that a concessioner is meeting the terms of the concession contract, which seems a minimum expectation, but an unusual instance of poor performance should not be used to frustrate the award of additional operating time where performance otherwise justifies such an award. Rather than define the requirement in the regulation, however, the NPS proposes to define all performance requirements in the individual contracts, including the operational goals the concessioner must meet and the evaluation ratings the concessioner must achieve.

45. Comment: NPS received one comment suggesting the rule authorize amending a contract to provide an additional operating term for new or unanticipated mid-contract investments.

NPS Response: NPS declines to include this in the final rule as it has not evaluated the potential economic consequences of such a change.

46. Comment: NPS received a comment suggesting additional actions NPS could take to encourage high performance from concessioners such as reducing franchise fees in later years of a contract.

NPS Response: NPS did not analyze the consequences of reducing franchise fees in later years of contracts and does not understand the economic consequences of such action, especially as it would affect the NPS's ability to plan for use of franchise fees. Also, NPS did not include such item in the proposed rule and receive public comment on such action.

47. Comment: A commenter suggested the NPS solicit additional ideas from concessioners to incentivize their performance and earn performance options.

NPS Response: The NPS declines to add such process to the regulation but may consider it in guidance. The NPS intends to use performance options to meet its goals. The NPS is not sure if meeting the concessioners' goals would meet the NPS's objectives and needs to evaluate such an idea further. The NPS also received comments raising questions about how we would implement performance options when a park has multiple operators providing the same or similar service under a group of contracts. The NPS will address these situations on a case by case basis as it develops prospectuses using such options.

48. Comment: Several commenters stated the NPS should not shorten the ''base term'' in order to provide for options.

NPS Response: The NPS interprets ''base term'' as meaning ten years and thinks the comment means that contracts with performance options should have an initial term of ten years before options. The NPS appreciates this perspective, but will not add language to the regulation to include such a provision. The NPS will consider the concern in developing guidance for performance options. It is not the intent of the rule to have the availability of performance options affect the base term in any way. The base term must reflect the financial requirements of the contract. Several commenters stated the concessioner should be able to refuse to exercise an option. The final rule provides that it is the concessioner that would exercise the option once the Director has determined the concessioner has met the performance criteria. An allowance to exercise an option includes the ability to decline the exercise of the option.

49. Comment: For interruption options, one commenter stated the rule should specify that the NPS can require no other contract changes unless the concessioner agrees.

NPS Response: The NPS chooses not to include such a restriction in the regulation, believing that it could unduly constrain the Director's discretion.

50. Comment: The NPS received comments on other incentives it could offer to enhance concessioner performance as well as encouragement to increase the length of contracts.

NPS Response: The NPS appreciates these comments. As for contract length, the NPS again reminds commenters that Congress defined the maximum contract term as 20 years and that stated contracts generally should be ten years or less.

New or Additional Services

Many comments supported the concept of adding new or additional services to existing concession contracts. The NPS received suggested revisions from industry trade groups and some individual concessioners.

51. Comment: For § 51.76(a), one commenter suggested revising the regulatory language to specifically allow for adjustments to existing services that could be provided by changes to the operating plan (which is an exhibit to and part of a concession contract). That commenter proposed using a metric measured against existing gross receipts as a method for determining when new or additional services could simply be added to a contract's operating plan by a superintendent or must be added to the main body of the contract through a formal amendment executed by the Director.

NPS Response: The NPS declines to make this change as it overly complicates current practices not subject to a specific rule, such as expanding operating hours for a store or extending operating seasons for a lodging facility.

52. Comment: A commenter proposed to add criteria for consideration involving contribution to visitor enjoyment and understanding of the System unit and the National Park System.

NPS Response: The NPS-proposed language in § 51.76(a) is nearly identical to the statutory language in the Centennial Act, and the NPS declines to add to the statutory criteria. Additionally, the suggested supplemental criteria, enhancing visitor experiences and contributing to visitor understanding and appreciation of a

unit, already are part of the necessary and appropriate determination.

53. Comment: A commenter proposed rule language that would require keeping the franchise fee at the existing level after adding new or additional visitor services.

NPS Response: The NPS declines to make that change. Although rare, some changes could provide substantial revenue gains to the concessioner without significant added expense. For example, increasing the number of passengers a concessioner could transport on a vessel creates little additional expense but adds considerable additional revenue on a passenger by passenger basis. The NPS sees no reason to prohibit the NPS from sharing the financial benefits of such a change.

54. Comment: A commenter proposed a sample list of actions that could be considered new or additional services.

NPS Response: The NPS included a list of such actions in the rule.

55. Comment: Several commenters requested a provision prohibiting adding new and additional services to a concession contract if other concessioners already provide the service in the System unit.

NPS Response: 36 CFR 51.77 provides ''Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this [Part 51].'' The NPS thinks that these commenters raised a valid concern, and § 51.77 allows recognizing such concern. Consequently, the NPS has added language stating the Director should consider whether other commercial operators in the park area already provide the services adequately. Although the NPS received no comments on the proposed subsection (b), we deleted it because it implemented a provision in the 1998 Act replaced in the Centennial Act.

Setting Franchise Fees

56. Comment: Several commenters supported the proposed changes to the rule clarifying how the NPS sets the franchise fee.

NPS Response: No proposed action or response is required.

57. Comment: One commenter indicated that the NPS should expand the scope of the data it uses to determine the minimum franchise fee beyond ''relevant hospitality industry data'' to include outdoor recreation industry data.

NPS Response: The NPS currently uses such data and has incorporated such revisions to the rule.

58. Comment: One commenter suggested that the NPS should use current practices to establish the minimum acceptable franchise fee and then reduce that minimum franchise fee by 25% when posting that minimum franchise fee in the prospectus. The commenter suggested that it would allow offerors to compete as Congress intended by letting offerors propose what they believe is the best balance of efforts to protect park resources and provide quality visitor services (which are the primary selection criteria) along with the most competitive fee.

NPS Response: After reviewing comments and internal deliberation, NPS will provide an alternative to its current practice of setting a minimum franchise fee. This alternative will be to set a ''prospectus franchise fee'' and allow offerors to either propose a higher franchise fee, or a lower franchise fee when combined with enhanced or higher quality visitor services offerings that exceed prospectus requirements, as allowed in the 1998 Act.

59. Comment: Several comments indicated NPS should expand on data provided in the prospectus to include additional hospitality statistics, profitability measures, return on investment assumptions or more thoroughly describe the steps associated with calculating the franchise fee.

NPS Response: The NPS declines this suggestion. NPS indicated in the proposed rule that it would provide the basis for its franchise fee analysis and retains this proposal in the final rule. However, NPS will not expand the information provided beyond this basis because NPS will continue to expect offerors to complete their own due diligence to present their understanding of the business opportunity.

60. Comment: One commenter recommends NPS adopt a policy of setting minimum franchise fees below ''breakeven,'' to maintain essential flexibility and to guard against bids that are pre-planned to reduce the performance levels. The same commenter suggested that the NPS set the minimum franchise fee to balance requirements, risks, costs and potential challenges throughout the contract.

NPS Response: The NPS declines this suggestion. Any franchise fee set by the NPS is determined in accordance with the 1998 Act, considering the probable value to the concessioner of the privileges granted by the particular contract involved based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Artificially lowering the fee below this determination would be contrary to this statuary requirement. However, the NPS has included in the rule a new, alternative means to set the franchise fee in the contract. This alternative approach allows the NPS to use a ''prospectus franchise fee,'' which is still based upon the probable value determination mentioned above, but also allows offerors to offer a higher franchise fee, as they have traditionally done, or a lower franchise fee when combined with enhanced or higher quality visitor service offerings that exceed the requirements of the prospectus. The NPS also retains the current means to establish a minimum acceptable franchise fee when the NPS determines using a ''prospectus franchise fee'' is inappropriate for the particular concession opportunity.

61. Comment: One commenter provided a statement that references uniformity in franchise fees in situations where there are multiple contracts for outfitting, guiding, river running or similar services. This NPS assumes this is in reference to Sec. 411 of the 1998 Act (54 U.S.C. 101921). The commenter also provided a statement that suggests that this would discourage bidding up of franchise fees.

NPS Response: No proposed action or response to the commenter's statements is required. NPS abides by the terms of the 1998 Act when setting the minimum franchise fee for these types of contracts.

Special Accounts

62. Comment: All commenters on these changes supported replacing the term ''Repair and Maintenance Reserve'' with ''Component Renewal Reserve.''

NPS Response: None.

63. Comment: A few commenters suggested that the NPS should consistently set out a description of CRR-eligible projects in the prospectus to help offerors more accurately assess and take into account the scope and cost of these activities.

NPS Response: The NPS agrees with the commenters, and the final rule requires that the timing and estimated costs of anticipated component renewal projects be identified in the contract.

64. Comment: Several commenters suggested changes to how the NPS distributes any CRR that remains at the end of the contract, which is currently returned to the park as franchise fees. One commenter suggested NPS issue administrative guidelines that would allow concessioners to share in any excess funds being left in the CRR fund.

The commenter indicated this would incentivize concessioners to seek cost savings when undertaking CRR-eligible projects. The same concessioner suggested the NPS include in the rule, a process for funding unanticipated CRR costs that arise during the term of the contract through an addition to the special account resulting from either a reduction in franchise fee rate or generated from other revenues, such as surcharges on concessioner-offered goods and services. A second commenter stated that the funds left in the reserve should be returned to the park unit as something other than franchise fees because the commenter believes that returning the funds as franchise fees allows the NPS to spend the funds for park unit needs that are not concession related.

NPS Response: The NPS disagrees with these recommendations. In regard to the NPS adjusting the franchise fee or otherwise funding the concessioner for unanticipated CRR projects, the component renewal reserve provides a mechanism for a concessioner to reserve monies to fund component renewal projects. However, concessioner obligations to maintain assigned concession facilities are not limited to the monies in the component renewal reserve. Additionally, franchise fee changes, including for the purpose of adjusting the component renewal reserve, cannot occur during the term of the contract unless it is in accordance with the franchise fee reconsideration procedures in the 1998 Act. In regard to allowing concessioners to retain a portion of the unspent CRR that remains at the end of the contract, this could create an incentive for the concessioner to avoid spending the CRR, not just be more efficient in their expenditure. Historically, the balance of the reserve was returned to the concessioner as has been recommended, and the NPS found these funds in fact, were often not expended when appropriate and facilities were inadequately maintained. Further, the concessioner has already benefited from the CRR as the reserve percentage is accounted for in the probable value calculation used to set the franchise fee. Regarding CRR funds that might be returned to the NPS as a franchise fee, the NPS has policies that prioritize use of franchise fees paid to the NPS for concession-related purposes such as prospectus development, saving for LSI payment and concession program management before any other park unit needs. Furthermore, to avoid the need to convert such component renewal reserves, NPS has in place and continues to develop processes including periodic reserve audits, to ensure that reserve funds are used during the term of the contract to address appropriate component renewal projects and avoid deferred maintenance for concession facilities.

65. Comment: One commenter suggested that concessioners should be able to ''deposit'' additional reserve funds during the contract term to address projects that need more funding than what is available in the reserve.

NPS Response: The NPS declines to address this in the rule. The NPS will consider the proposal for forward funding to address such needs as a change in policy and/or contract terms.

66. Comment: One commenter recommends that the NPS include, as part of the solicitation, a prospectus selection factor to gain ''points'' for proposals that include, as a commitment, an increase in the reserve percentage.

NPS Response: NPS declines this recommendation. Concessioners are responsible for all maintenance regardless of the amount of funds that are available in the CRR. Offerors should not be given extra points just to meet what is a contractual obligation because they reserved such funds. Concessioners may set aside additional reserves outside the CRR as an internal business practice.

Concessioner Rates

67. Comment: Several commenters expressed concern regarding the change to the rule that would emphasize competitive market pricing, indicating that prices to visitors will rise due to the change and visitors will be priced out of staying in parks. A different commenter suggested that it is the concessioner's goal to set prices as high as possible, not considering the diversity of park visitors from a variety of income levels. That commenter stated visitors should pay reasonable rates and concessioners should help encourage all visitors to enjoy our national parks and the services and products concessioners provide, implying perhaps that the rule changes would prevent this from happening. Another commenter provided statements that it is not clear on how competitive market declaration pricing will impact rates (some could be higher, others, lower).

NPS Response: The NPS disagrees with these comments. The changes in the rule to provide in most cases for competitive market declaration (''CMD'') pricing implement rather than depart from statutory requirements. The final rule clarifies the NPS's commitment to ensuring that rates and prices are set in accordance with market forces to the maximum extent possible, as the1998 Act requires; that is, rates are reasonable and appropriate, and the process for approving rates is as unburdensome to the concessioner as possible. CMD represents the best means to meet these objectives. As noted in the preamble, the NPS recognizes there may be situations where market forces are not adequate for a CMD to provide for reasonable and appropriate rates. The NPS will use other rate approval methods such as direct comparability in those circumstances. With regard to meeting the needs of a diversity of visitors, the NPS strives to offer a variety of service levels, thereby providing options to account for diverse preferences. For example, dependent upon the size of park, there may be upscale to rustic (*e.g.* camping) lodging options, and food and beverage options from fast casual to formal sit-down restaurants offering a range of price points as dictated by the market.

68. Comment: One commenter suggested the revisions to the rule would curtail the ability of the Director to approve rates, that they would not be effective because some parks are located in remote locations where competitive markets are scarce and that this market emphasis would place significant burden on the NPS to prove the inadequacy of market forces.

NPS Response: The NPS disagrees with this comment. The burden upon the NPS to complete rate approvals has not changed; the NPS remains responsible for determining whether to use CMD or the appropriate alternative rate method, to monitor the operations to ensure the rate method continues to be appropriate, to approve rates when CMD is not being used, and monitor rates. These features of the rate administration process remain unchanged. The rule reinforces that CMD is the preferred method and should be used unless rates using this method would not be reasonable and appropriate. The NPS has, however, defined specific timelines that will apply in order to ensure it takes action to review and approve rate requests in a reasonable timeframe.

69. Comment: One commenter suggested the rule should include a statement to address improved accessibility as a requirement for new contracts or modified pricing.

NPS Response: The NPS disagrees with this comment. Concessioners, as expressly set forth in their contracts, are already required to provide accessible services as operational and facility requirements in accordance with statutes, regulations, and NPS policy.

Additionally, the requirement for accessibility is not directly relevant to prices and rates.

70. Comment: One commenter suggested the NPS should consult with the Interior Business Center (IBC) or an alternative external source (*i.e.,* hospitality consultants) as part of its rate review process.

NPS Response: The NPS declines to add this requirement to the rule. The IBC does not have the hospitality expertise to complete such reviews. The NPS currently uses trained concession specialists to complete analyses to review rate requests and already uses its hospitality consultants as needed to provide assistance, particularly during the prospectus development process and when there are especially complex issues. The NPS will continue these practices. The NPS also notes that involvement by third parties in all circumstances would inhibit the ability for a timely response to concessioners.

71. Comment: Numerous commenters supported the change in the rule that requires the NPS to codify and reduce the current policy-defined response time for rate requests from 45 to 30 days when possible. Many commenters suggested that additional steps should be taken (either independently or in some combination) such as:

(a) Notifying concessioners within a certain window of time if a request is not ''complete and timely,'' no later than 10 days after receipt of request;

(b) Removing the ''when possible'' qualifier that describes the 30-day approval window;

(c) De facto approval of rates in 45 days without NPS action;

(d) That NPS notify a concessioner within 15 days of receipt of a rate request if additional information to support the rate request is necessary; and

(e) Defining what constitutes a ''response'' from NPS.

NPS Response: The NPS agrees that any rate requests should be responded to in a substantive and timely manner. To that end, NPS has established in the final rule detailed timelines and procedures the NPS will follow in responding to rate requests. These timelines will be met unless there are extraordinary circumstances. In the event that the timeline is not met and there are no extraordinary circumstances, the concessioner will be able to charge the requested rates until the Director makes a rate approval determination without being subject to retroactive adjustment.

72. Comment: Numerous commenters had varying comments on rate structures and CMD. Most commenters supported using CMD but had different suggestions surrounding its application, either to policy or the rule itself. For example, one commenter suggested the NPS should eliminate clarifying examples provided in the preamble to the rule on when CMD might not apply because there is not a competitive market. A commenter wanted the rule to state that a comparability study is not required to establish CMD reasonable rates. Another commenter suggested that rate setting for comparability should be based on ''unbundled rates'' (likely referring to situations such as a tour service where the tour price may have associated fees attached such as for an audio-tour provided through another party) and that such situations should be identified in the rule as a ''due consideration'' factor in 51.82 (b). The same commenter also suggested changes to the rule to create distinctions between what it calls ''market rate'' (the highest visitors show they are willing to pay), ''direct price'' (stated as lower than market price) and ''final'' prices paid by the consumer. One commenter expressed concern that CMD rates could result in increased franchise fees to be paid to the NPS without accounting for the trend in increasing expenses to the concessioner and that additional requirements could be imposed if NPS changes the rate approval method during the term of the contract.

NPS Response: The NPS may consider these comments if appropriate, when it establishes or adjusts policy for rate administration to implement this regulation, but the NPS declines to address these recommendations in the rule.

73. Comment: A commenter recommended that NPS should provide national permission to use an anticipated rate method where competitive market declaration is not utilized.

NPS Response: The NPS declines to include this recommendation in the rule. The NPS already allows advanced rates as a matter of policy where appropriate and will continue this practice. The NPS has, however, included in the rule specific advance rate procedures for the time after a concessioner has submitted a complete rate request but before the NPS has made a decision approving or disapproving the request to ensure that the concessioner can take appropriate steps to advertise and take reservations during this period.

Timing of Assigning Contracts

74. Comment: A number of commenters disagreed with the proposed restriction on assigning concession contracts. Most of these commenters focused on the unique circumstances of concessioners holding qualified contracts and, thus, holding a right of preference to a new concession contract. Commenters asserted that the combination of needing to operate satisfactorily for two years under an existing contract and a 24-month delay in submitting a request to transfer the contract to a new operator unfairly restricts the transfer of such contracts.

NPS Response: Although the NPS thinks it is reasonable to require 24 months of operations under a concession contract before submitting a request to transfer the contract, we have decided to withdraw this proposed change in consideration of the many comments criticizing this prohibition as too restrictive. The NPS will develop policy and procedures, however, that require the authority approving requests for assignments of contracts to carefully scrutinize the ability of the purported new concessioner to provide the required services based on that entity's specific experience and financial ability to carry out the terms of the concession contract.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements. The potential costs and benefits of this rule were assessed by Industrial Economics, Incorporated (IEc), on behalf of the NPS, in a Regulatory Impact Analysis (prepared for the proposed rule) and associated Memorandum (assessing the costs and benefits of the changes from the proposed rule in the final rule) that can be accessed at *https://www.regulations.gov* in Docket ID: NPS–2020–0003.

Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The head of this agency certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*). An Initial Regulatory Flexibility Analysis (IRFA) was prepared pursuant to the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). The analysis is available in the report prepared by Industrial Economics, Incorporated (IEc), on behalf of the NPS, entitled ''36 CFR [part] 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)'' that can be accessed at *https://www.regulations.gov* in Docket ID: NPS–2020–0003—specifically, Chapter 5 of that report. The analysis in the IRFA concluded that the potential impact on small concessioners is likely to be positive. The IRFA estimated that the majority (96%) of the entities that have concession contracts are small businesses and that this makeup is likely to be similar in the future. Furthermore, the IRFA conducted a qualitative analysis to determine the likely impacts of the rule on concessioners that focused on key changes to the rule related to LSI, rates and franchise fees. While the NPS lacks the ability to quantify the impact, the IRFA found that the impacts are likely to be beneficial to concessioners in general, without any particular bias toward small or large businesses. Since the majority of contracts are held by small businesses, the IRFA concluded that the impacts to small businesses would therefore be positive.

The IRFA stated that, due to uncertainties associated with quantifying the impact on small entities, the ''potential exists for the proposed rule to result in a significant beneficial impact on a substantial number of small entities.'' Based upon a further review of the impacts described in the IRFA, the NPS now believes the beneficial impact on small entities will not be significant and will not affect a substantial number of small entities. This certification is based upon the following statements and upon the analysis contained in a Memorandum prepared by IEc that concludes that the small entities holding concession contracts that would be affected by this rule represent less than 0.1 percent of the small entities providing similar services in the United States. This Memorandum is available on *https://www.regulations.gov* in Docket ID: NPS–2020–0003.

The IRFA estimated the annual transfer payments associated with changes in the eligibility threshold for LSI in the rule as $4.2 million from concessioners to the NPS in increased franchise fees and up to $4.2 million from NPS to concessioners in the form of LSI buy downs for a total net financial impact of zero to the concessioner community. There are no changes between the proposed and final rule that the NPS believes would change this analysis.

The IRFA identified that the implementation of market-based pricing in the rule could result in transfers of $54 million in franchise fee revenue from concessioners to the NPS. As stated in the IRFA, an increase in rates resulting from the rule, without any change in service or amenities, would be reflected as an increase in revenue to the concessioner without any increase in expense. Because the base franchise fee as determined using the current rate approval methods (without enhanced market-based pricing) already provides a reasonable opportunity for the concessioner, the NPS assumed in the IRFA that all of the additional profit would pass-through flow to the government in the form of the $54 million in franchise fees for a total net financial impact of zero to the concessioner community. There are no changes between the proposed and final rule that the NPS believes would change this analysis.

One change was made to the final rule in response to public comments that required further consideration relative to potential impacts to the concessioner community. That change is in § 51.78, Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment? The final rule provides as an alternative, the ability for the NPS to provide in the prospectus, a proposed franchise fee based on the probable value determination in the prospectus (''prospectus franchise fee''). The Offerors may bid either (i) higher franchise fees or (ii) lower franchise fees in combination with enhanced or higher quality service offerings that exceed prospectus requirements. Any investment made by the concessioner to provide enhanced or higher quality offerings is intended to be offset by an adjustment in the franchise fee offered, such that the total net financial impact to the concession community is estimated at zero.

Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2), the CRA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact

statement. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and has determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This rule contains no new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In addition, the environmental effects of this rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into concession contracts will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211; although the rule is significant under Executive Order 12866, the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OIRA has not otherwise designated the rule as a significant energy action. A Statement of Energy Effects in not required.

List of Subjects in 36 CFR Part 51

Commercial services, Government contracts, National parks, Visitor services.

Signing Authority

The Assistant Secretary for Fish and Wildlife and Parks has delegated authority to the Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks, to electronically sign this document for purposes of publication in the **Federal Register**.

In consideration of the foregoing, the National Park Service is amending 36 CFR part 51 as follows:

PART 51—CONCESSION CONTRACTS

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 54 U.S.C. 101901–101926 and title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

■ 2. Amend § 51.4 by revising the section heading and paragraph (b) and adding paragraphs (c) through (h) to read as follows:

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract and how will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided?

* * * * *

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a new prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing contract except when the Director determines it is necessary to provide additional time to potential offerors, such as when additional time is needed to avoid issuing a prospectus during a busy operating season or where potential offerors must make significant financial commitments to meet the requirements of the contract. This additional time should be as short as prudent.

(c) The Director will issue a prospectus for a new concession opportunity in a park area when the Director determines, in the Director's discretion, that a new concession opportunity is necessary and appropriate for public use and enjoyment of the park area and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area.

(d) The Director will establish procedures to solicit and consider suggestions for new concession opportunities within park areas from the public (including from potential concessioners) through the National Park Service's planning processes for such opportunities as well as through annual invitations for proposals for improving visitor experiences through third-party providers. The Director shall fully review all proposals received, provide a written evaluation for each proposal, and make all proposals and completed evaluations available to the public.

(e) In determining whether to issue a prospectus for a concession contract to provide such new concession opportunities, the Director will consider relevant factors including whether the suggested concession opportunities are adequately provided within the park area by other authorized commercial providers; the potential for augmented resources for park area operations; the effects of the suggested concession operations on the park area; the long-term viability of the suggested concession opportunities; the innovative quality of the suggestions; and the potential impacts on park area visitation and on communities located near the park area.

(f) No preference to a concession contract shall be granted to a party based on that party's having submitted a proposal for a new concession opportunity described in this section. The Director, however, may award a contract noncompetitively to such a party when determined appropriate as described in § 51.25.

(g) The Director may consider suggestions for new services as

additional services to be provided through an existing concession contract as described in § 51.76.

(h) Nothing in this section shall constrain the discretion of the Director to solicit or consider suggestions for new concession opportunities or collect other information that can be used by the Director in connection with a new concession opportunity.

■ 3. Revise § 51.8 to read as follows:

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the System for Award Management (SAM) where Federal business opportunities are electronically posted, or in a similar publication if this site ceases to be used. The Director, if determined appropriate, may also publish notices electronically on websites including social media and in local or national newspapers or trade magazines.

■ 4. Amend § 51.16 by revising paragraph (a) to read as follows:

§ 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The maximum aggregate score available for all selection factors will be 40 points, and every selection factor used must have a maximum score of one point or higher. Each selection factor will be scored as identified in the prospectus, subject to the following criteria:

(1) The maximum score assignable for the principal selection factor described in § 51.17(a)(5) will be less than the lowest maximum score of the other principal selection factors described in § 51.17(a) with a score of one point for agreeing to the prospectus franchise fee (as defined in § 51.78) or, when the Director determines appropriate, the minimum acceptable franchise fee set forth in the prospectus.

(2) The maximum score assignable for the secondary selection factor set forth in § 51.17(b)(1) will be less than the maximum score for the principal selection factor described in § 51.17(a)(5); and,

(3) The maximum scores assignable for any additional secondary selection factors set forth in § 51.17(b) will be such that the maximum aggregate score assignable for all additional secondary selection factors will be less than the maximum score for the principal selection factor described in § 51.17(a)(5).

* * * * *

■ 5. Amend § 51.17 by revising paragraph (b)(2) to read as follows:

§ 51.17 What are the selection factors?

* * * * *

(b) * * *

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including, where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian Tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract. When appropriate, the Director will include a secondary selection factor requesting suggestions for new services.

* * * * *

■ 6. Amend § 51.51 by:

■ a. Removing the word ''solely'' from the term ''Leasehold surrender interest solely''; and

■ b. Revising the definition of the term ''Major rehabilitation''.

The revision reads as follows:

§ 51.51 What special terms must I know to understand leasehold surrender interest?

* * * * *

Major rehabilitation means a planned rehabilitation of an existing structure that the Director determines:

(1) The construction cost of which exceeds thirty percent of the pre-rehabilitation value of the structure; and

(2) Improves visitor health, safety, and enjoyment or the health and safety of concessioner employees and will either enhance the property's overall value, prolong its useful life, or adapt it to new uses.

* * * * *

■ 7. Revise § 51.73 to read as follows:

§ 51.73 What is the term of a concession contract?

(a) A concession contract will generally be awarded for a term of 10 years or less and may not have a term of more than 20 years (unless extended in accordance with this part). The Director will issue a contract with a term longer than 10 years when the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or other potential investments related to providing required services, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should take into account the financial requirements of the concession contract, resource protection, visitor needs, and other factors the Director may deem appropriate.

(b) The Director may include in a concession contract, as advertised in the applicable prospectus, an optional term or terms in increments of at least one year and not to exceed three years in total, where the total term of the contract, including all optional terms, does not exceed 20 years. The Director shall specify in the contract the performance criteria (including evaluation ratings) the concessioner must meet to be eligible to exercise such option term or terms. Such contract also shall provide that the concessioner may exercise an optional term or terms only if the Director determines that the concessioner has met the performance criteria defined in the contract.

(c) When the Director determines, in his or her sole discretion, that a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government-ordered interruptions, warrants lengthening the original term of a concession contract, the Director and the concessioner may amend the contract to add the amount of time to the term of the contract deemed appropriate by the Director, which in no case may be longer than three years and where the total term of the contract, including any added time, may not exceed 20 years.

■ 8. Revise § 51.76 to read as follows:

§ 51.76 May the Director amend a concession contract to provide new or additional visitor services or grant a concessioner a preferential right to provide new or additional visitor services?

(a) The Director may provide for new or additional services under the annual operating plan of the concessioner or through a contract amendment, as appropriate, where the Director determines the new or additional services are necessary and appropriate for public use and enjoyment of the park area in which they are located. New or additional services must be consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. Such new or additional services shall not represent a material change to the required and authorized services as set

forth in the applicable prospectus or contract. Changes may include, but are not limited to, extensions of seasons, operating hours and increases in capacity limitations.

(b) When considering whether to amend the applicable terms of an existing concession contract to provide new or additional services, the Director should consider the benefit to the visitor experience where other concessioners or holders of commercial use authorizations in the same park area already provide those services.

(c) A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

■ 9. Revise § 51.78 to read as follows:

§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested, including any funds required to be placed in special accounts identified in § 51.81, and the obligations of the contract as described in the prospectus.

(b) Each prospectus shall include one of the following:

(1) A proposed franchise fee based on the probable value determination in the prospectus (''prospectus franchise fee''). The prospectus franchise fee should be set at a level to encourage competition for the concession opportunity through offers of either:

(i) Higher franchise fees; or

(ii) Lower franchise fees in combination with enhanced or higher quality service offerings that exceed prospectus requirements.

(2) Alternatively, when the Director determines that using a prospectus franchise fee is inappropriate for the particular concession opportunity, a minimum acceptable franchise fee based on the probable value determination and set at a level to encourage competition.

(c) In determining the minimum acceptable franchise fee or prospectus franchise fee to include in a prospectus, the Director shall use relevant industry data for similar operations (*e.g.,* hospitality, recreation) and provide in the prospectus the basis for the determination of the minimum acceptable franchise fee or prospectus franchise fee. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for public use and enjoyment of the park area in which they are located at reasonable rates.

(d) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

■ 10. Amend § 51.81 by revising paragraph (b) to read as follows:

§ 51.81 May the Director include ''special account'' provisions in concession contracts?

* * * * *

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a component renewal reserve to be used at the direction of the Director solely for renewal of real property components located in park areas and utilized by the concessioner in its operations. The anticipated timing and estimated costs of component renewal projects should be identified in the prospectus. Component renewal reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Component renewal reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from these reserves will be expended only for the renewal of real property components as identified in the contract and assigned to the concessioner by the Director for use in its operations. The component renewal reserve provides a mechanism for a concessioner to reserve monies to fund component renewal projects. Concessioner obligations to maintain assigned concession facilities including component renewal are not limited to the monies in the component renewal reserve.

* * * * *

■ 11. Amend § 51.82 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

* * * * *

(b) The Director shall approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as unburdensome to the concessioner as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and changes for facilities, goods and services of comparable character under similar conditions with due consideration to the following factors and other factors deemed relevant by the Director: length of season; peakloads; average percentage of occupancy; accessibility; availability and cost of labor; and types of patronage.

(c) The Director shall identify the rate approval method to be used for each category of facilities, goods, and services to be provided when preparing the prospectus for a concession contract. The Director will use the least burdensome and most market-based comparability method. Unless the Director determines that market forces are not sufficient to determine reasonable and appropriate rates, the Director shall make a competitive market declaration as the means of comparability, and rates and charges will be approved based upon what the concessioner determines the market will bear. Other rate approval methods will be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. The Director will monitor rates and charges and competition and may change the rate approval method during the term of the contract to reflect changes in market conditions.

(d) Each contract shall include a schedule for rate requests and describe the information necessary to include in a complete rate request. Upon receipt of a request for a change in rates or charges the Director shall, as soon as practicable but not more than 20 days of receipt of the request, provide the concessioner with a written determination that the request is complete, or where the Director determines the request incomplete, a description of the information required for the request to be determined complete. Where changes in rates and charges have been requested and the request has been deemed complete, concessioners shall be allowed to notify visitors making reservations 90 or more days in advance of the anticipated rates. Those rates are subject to adjustment prior to the visit based upon the Director's review and final decision about the requested rate change . The Director shall issue a final decision approving or rejecting a request by a concessioner to change rates and charges to the public within 10 days of receipt of a complete request in accordance with the conditions described in the contract, except for those change requests requiring a full comparability study, for which the Director shall issue a decision as soon as possible and in no event longer than 30 days after receipt of the complete request. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the substantive basis for any disapproval. These timeframes will be exceeded only in extraordinary circumstances and the concessioner must be notified in writing of such circumstances. If the Director fails to meet the timeframes described above, and has not notified the concessioner in writing of the existence of extraordinary circumstances justifying delay, a concessioner may implement the requested change to rates and charges until the Director issues a final written decision. If the Director denies the requested change to rates and charges after implementation by the concessioner, the Director will not require the concessioner to retroactively adjust any rates or charges for services booked prior to the Director's denial.

Maureen Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–28659 Filed 12–28–23; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 70

RIN 2900–AS03

Changes in Rates VA Pays for Special Modes of Transportation; Delay of Effective Date

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** on February 16, 2023, a final rule to amend its beneficiary travel regulations to establish a new payment methodology for special modes of transportation available through the VA beneficiary travel program. The preamble of that final rule stated the effective date was February 16, 2024. This rulemaking delays that effective date to February 16, 2025.

DATES: The effective date for the final rule published February 16, 2023, at 88 FR 10032, is delayed from February 16, 2024, until February 16, 2025.

FOR FURTHER INFORMATION CONTACT: Ben Williams, Director, Veterans Transportation Program (15MEM), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (404) 828–5691. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 5, 2020, VA proposed amending its beneficiary travel regulations to implement the discretionary authority in 38 U.S.C. 111(b)(3)(C), which permits VA to pay the lesser of the actual charge for ambulance transportation or the amount determined by the Centers for Medicare and Medicaid Services (CMS) Medicare Part B Ambulance Fee Schedule (hereafter referred to the CMS ambulance fee schedule) established under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), unless VA has entered into a contract for that transportation. We provided a 60-day comment period that ended on January 4, 2021, and we received six comments, five of which were substantive. Those five comments all raised similar concerns to 38 CFR 70.30(a)(4) introductory text and (a)(4)(i) and (ii) as proposed, related to using the CMS ambulance fee schedule or, in the case of travel by modes other than ambulance, the posted rates from each State. We responded to all comments in a final rule published in the **Federal Register** on February 16, 2023 (88 FR 10032), wherein we stated that we would not make changes from the proposed rule related to application of the CMS ambulance fee schedule but would delay the effective date of the final rule by one year (to be February 16, 2024) to ensure that ambulance providers have adequate time to adjust to VA's new methodology for calculating ambulance rates (88 FR 10035). We further stated in the final rule that such adjustment could include ambulance providers entering negotiations with VA to contract for payment rates different than those under the CMS ambulance fee schedule, as contemplated in the final rule.

Since publication of the final rule, however, VA has received feedback from both internal and external stakeholders, including VA employees, ambulance providers, and industry experts, that more time is necessary for successful implementation of the rule. Specifically, the delay of the effective date is necessary to accommodate unforeseen difficulties in air ambulance broker contracting. These difficulties relate to air ambulance brokers requiring a contract or subcontract in place with all potential air ambulance providers that covers emergency, non-VA initiated trips. Based on this feedback and evaluation of the continued effort that would be required by air ambulance brokers to negotiate and enter into contracts before February 16, 2024, VA is delaying the effective date of the regulation by one year. VA believes a 12-month delay is appropriate based on its experience with contracting, especially in circumstances like this where subcontracting actions are required.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice of proposed rulemaking and to solicit public comment. However, pursuant to 5 U.S.C. 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''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.''

VA finds that there is good cause under the APA to issue this rule without prior notice and opportunity for public comment. The final rule published at 88 FR 10032 will become effective February 16, 2024. Given the

imminence of the effective date, seeking prior notice and the opportunity for public comment on this delay is impractical. Specifically, if prior notice and opportunity for public comment are required to delay the effective date to February 16, 2025, this final rule will not be issued prior to February 16, 2024. As a result, the current final rule will become effective February 16, 2024, and ambulance providers without contracts in place would be subject to those payment methodologies until contracts have been implemented. For those entities engaged in the contracting process, this is likely to cause confusion and uncertainty.

VA also finds that prior notice and opportunity for comment would be contrary to the public interest because it could adversely impact veteran care or result in veterans being billed directly for services. Under the new regulation, VA will pay the lesser of actual charge associated with an air ambulance service, or the CMS ambulance fee schedule rate for that service, unless a separate rate has been established based on local contracts between air ambulance providers and local VA medical centers. As discussed above, since publication of the final rule, VA has received feedback that more time is necessary to accommodate unforeseen difficulties in air ambulance broker contracting, which relate to air ambulance brokers requiring a contract or subcontract in place with all potential air ambulance providers that covers emergency, non-VA initiated trips. The negotiation and implementation of these contracts will not be completed by February 16, 2024. As a result, absent the delayed effective date, the current final rule will go into effect on February 16, 2024, and ambulance providers would be subject to those payment methodologies until contracts have been implemented. This could be especially concerning for those entities whose negotiated rates could be higher than the applicable CMS ambulance fee schedule rate in the event VA determines it may be justified based on local considerations, such as for rural areas. Air ambulance providers contend that the Medicare reimbursement rate that would apply absent a contract is unsustainable for their business operations, potentially leading to reduction in the availability of air ambulance services for veterans. While VA is not aware that veterans are currently receiving preferential treatment from air ambulance providers by virtue of VA paying billed charges, or that such preferential treatment would stop were VA to pay CMS ambulance fee schedule rates in the absence of a contract, VA acknowledges that there is a risk that veterans could be billed directly for the difference between the Medicare rate that VA pays for emergency, non-VA initiated trips and the amount billed by the ambulance provider. For these reasons, VA finds that good cause exists to dispense with the prior notice and public comment procedures for this final rule, as it concludes that such procedures are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B).

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 22, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–28726 Filed 12–28–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0907; FRL–11174–02–R6]

Air Plan Approval; Arkansas; Revisions to Rule 19 of the Arkansas Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of the revisions to the Arkansas State Implementation Plan (SIP) including revisions to the Arkansas Pollution Control and Ecology Commission's (''Commission'' or APC&EC) Rule No. 19, *Rules of the Arkansas Plan of Implementation for Air Pollution Control* submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) via the Arkansas Governor's Office on June 22, 2022. Most of the revisions are administrative in nature and make the SIP current with Federal rules.

DATES: This rule is effective on January 29, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0907. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Clovis Steib, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–7566, *steib.clovis@epa.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our August 22, 2023, proposal (88 FR 57014) and the accompanying Technical Support Document (TSD), available in the docket for this rule. In our August 2023 proposal we proposed to approve portions of the revisions to the Arkansas State Implementation Plan (SIP) including revisions to the Arkansas Pollution Control and Ecology Commission's Regulation No. 19, *Rules of the Arkansas Plan of Implementation for Air Pollution Control* submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) via the Arkansas Governor's Office on June 22, 2022. The proposal included revisions to remove certain outdated provisions and update other provisions that are incorporated into Regulation 19. Specific provisions to be partially repealed are those in Chapter 10 of APC&EC Regulation 19 regarding the control of volatile organic compounds (VOC) from certain source categories in Pulaski County, and provisions repealed from the Clean Air Interstate Rule (CAIR) in Chapter 14, and informational provisions regarding sources eligible or subject to best available retrofit technology (BART) requirements for Regional Haze in Chapter 15. All of the repealed provisions were either superseded by other rules or otherwise no longer necessary. One of the revisions restructured the regulations and organized them as ''rules,'' such that ''Regulation No. 19'' became ''Rule No. 19,'' *Rules of the Arkansas Plan of*

Implementation for Air Pollution Control, with corresponding chapters and appendices. Most of the revisions are administrative in nature and make the Arkansas SIP current with applicable Federal Rules. We did not receive any comments during the requisite comment period regarding our August 2023 proposal.

II. Final Action

We are approving portions of the revisions submitted by the State of Arkansas on June 22, 2022. We are finalizing the action without changes from our August 2023 proposal. Specifically, we are approving the following submitted revisions to Regulation 19: Revisions to Chapters 1, 2, 3, 4, 5, 6, 7, 9, 11, 13, 15, and Appendices A and B; the partial repeal of Regulation 19, Chapter 10 and repeal of Regulation 19, Chapters 14, and 16; and the new provision of Regulation 19, Chapter 18. Finally, we are approving the revision to rename Regulation 19 as Rule 19. These changes reflect the current organizational structure of ADEQ, remove outdated information, and make non-substantive formatting edits. This action is being taken under section 110 of the Act.

III. Environmental Justice Consideration

The EPA reviewed demographic data for groups of populations living within Pulaski County, Arkansas. The EPA then compared the data to the State of Arkansas and the national average for each of the demographic groups. The result of this analysis is discussed in detail in our proposal; and is provided for informational and transparency purposes.

This final action revises portions of the Arkansas SIP including revisions to Regulation 19 of the Arkansas Plan of Implementation for Air Control. We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the State of Arkansas, including people of color and low-income populations. The revisions provide updates to the SIP and improve clarity in the SIP so that the public can read and understand what is currently in the SIP. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Arkansas regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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. 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.'' [1] 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.'' [2]

ADEQ 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 performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

[1] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[2] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

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).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart E—Arkansas

■ 2. In § 52.170, the table in paragraph (c), entitled ''EPA-Approved Regulations in the Arkansas SIP,'' is amended by revising the heading and entries for ''Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control'' to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/effective date	EPA approval date	Explanation
Rule No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
Chapter 1: Title, Intent and Purpose				
Rule 19.101	Title	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.102	Applicability	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.103	Intent and Construction	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.104	Severability	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.105	Incorporation by Reference	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 2: Definitions				
Chapter 2	Definitions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 3: Protection of the National Ambient Air Quality Standards				
Rule 19.301	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.302	Division Responsibilities	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.303	Regulated Sources Responsibilities.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.304	Delegated Federal Programs	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 4: Minor Source Review				
Rule 19.401	General Applicability	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.402	Approval Criteria	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.403	Owner/Operator's Responsibilities	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.404	Required Information	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.405	Action on Application	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.406	Public Participation	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.407	Permit Amendments	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.408	Exemption from Permitting	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.409	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.410	Permit Revocation and Cancellation.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.411	General Permits	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.412	Dispersion Modeling	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.413	Confidentiality	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.414	Operational Flexibility—Applicant's Duty to Apply for Alternative Scenarios.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.415	Changes Resulting in No Emissions Increases.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/effective date	EPA approval date	Explanation
Rule 19.416	Permit Flexibility	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.417	Registration	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 5: General Emission Limitations Applicability to Equipment				
Rule 19.501	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.502	General Rules	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.503	Visible Emission Rules	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.504	Stack Height/Dispersion Rules	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.505	Revised Emissions Limitation	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 6: Upset and Emergency Conditions				
Rule 19.601	Upset Conditions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.602	Emergency Conditions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 7: Sampling, Monitoring, and Reporting Requirements				
Rule 19.701	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.702	Air Emissions Sampling	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.703	Continuous Emissions Monitoring	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.704	Notice of Completion	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.705	Record Keeping and Reporting Requirements.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.706	Public Availability of Emissions Data.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 9: Prevention of Significant Deterioration				
Rule 19.901	Title	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.902	Purposes	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.903	Definitions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.904	Adoption of Rules	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 10: Rules for the Control of Volatile Organic Compounds in Pulaski County				
Rule 19.1001	Title	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1002	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1003	Definitions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1004	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1005	Provisions for Specific Processes	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1006	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 11: Major Source Permitting Procedures				
Chapter 11	Major Source Permitting Procedures.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 13: Stage 1 Vapor Recovery				
Rule 19.1301	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1302	Applicability	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1303	Definitions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1304	Exemptions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1305	Prohibited Activities	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1306	Record Keeping	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1307	Inspections	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1308	Vapor Recovery Systems	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1309	Gasoline Delivery Vessels	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1310	Owner/Operator Responsibility	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1311	Test Methods	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1312	Effective Date	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 14: [RESERVED]				
Chapter 15: Best Available Retrofit Technology				
Rule 19.1501	Purpose	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1502	Definitions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1503	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

State citation	Title/subject	State submittal/effective date	EPA approval date	Explanation
Rule 19.1504	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1505	Best Available Retrofit Technology Requirements.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1506	Compliance Provisions	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Rule 19.1507	[Reserved]	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Chapter 18: Effective Date				
Rule 19.1801	Effective Date	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Appendix A: Insignificant Activities List				
Appendix A	Insignificant Activities List	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
Appendix B: National Ambient Air Quality Standards List				
Appendix B	National Ambient Air Quality Standards List.	6/22/2022	12/29/2023, [Insert **Federal Register** citation].	
*	*	*	*	*	*	*

* * * * *

■ 3. Section 52.173 is amended by adding paragraph (j) to read as follows:

§ 52.173 Visibility protection.

* * * * *

(j) *Revisions to the Arkansas Pollution Control and Ecology Commission's (APC&EC) Rule No. 19, Chapter 15.* Revisions to APC&EC Rule No. 19, Chapter 15, submitted on June 22, 2022, are approved.

[FR Doc. 2023–28497 Filed 12–28–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0936–AA14

Action to Delay Effective Date Consistent With Congressionally Enacted Moratorium

AGENCY: Office of Inspector General (OIG), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This action stays certain amendments to the safe harbors to the Federal anti-kickback statute that were promulgated in a final rule (''Fraud And Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees'') published in the **Federal Register** on November 30, 2020 (the 2020 Final Rule). In response to a moratorium enacted by Congress on implementation of the 2020 Final Rule, most recently in section 11301 of the Inflation Reduction Act of 2022, which extended previous moratoria on implementation, administration, or enforcement of the 2020 Final Rule until January 1, 2032, the new effective date for the amendments set forth in the 2020 Final Rule is January 1, 2032.

DATES: As of December 29, 2023, 42 CFR 1001.952(h)(5)(viii), 42 CFR 1001.952(h)(6) through (9), 42 CFR 1001.952(cc), and 42 CFR 1001.952(dd) are stayed until January 1, 2032.

FOR FURTHER INFORMATION CONTACT: Aaron Zajic, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** published on November 30, 2020, the Department issued the 2020 Final Rule establishing four changes to the regulatory safe harbors to the Federal anti-kickback statute (section 1128B(b) of the Social Security Act).[1] Specifically, the 2020 Final Rule: (i) amended 42 CFR 1001.952(h)(5) to remove safe harbor protection for reductions in price for prescription pharmaceutical products provided to plan sponsors under Part D by making punctuation changes to subparagraphs (5)(vi) and (vii) and adding new subparagraph paragraph (h)(5)(viii), (ii) added new paragraphs (6)–(9) to 42 CFR 1001.952(h), (iii) created a new safe harbor at 42 CFR 1001.952(cc) for certain point-of-sale reductions in price offered by manufacturers on prescription pharmaceutical products that are payable under Medicare Part D or by Medicaid managed care organizations that meet certain criteria, and (iv) created a new safe harbor at 42 CFR 1001.952(dd) for fixed fees that manufacturers pay to pharmacy benefit managers for services rendered to the manufacturers that meet specified criteria. The 2020 Final Rule was published with an effective date of January 29, 2021, except for the amendments to 42 CFR 1001.952(h)(5), which were to be effective on January 1, 2022.

On January 12, 2021, a lawsuit challenging the final rule was filed in the U.S. District Court for the District of Columbia.[2] Because of orders in this lawsuit and in response to a Government memorandum regarding postponing effective dates of rules that had not yet taken effect, the effective dates of various sections of these amendments to the safe harbors were extended multiple times between January and March of 2021, and, ultimately, the effective date of the regulatory revisions established by the

[1] 85 FR 76666 (Nov. 30, 2020).

[2] *Pharmaceutical Care Management Association* v. *United States Department of Health & Human Services et al.,* No. 1:21–cv–00095 (D. DC. filed Jan. 12, 2021).

2020 Final Rule was extended to January 1, 2023.[3]

Subsequently, Congress extended this effective date three times: (i) section 90006 of the Infrastructure Investment and Jobs Act, Public Law 117–58, prohibited implementation, administration, or enforcement of the regulatory revisions established by the 2020 Final Rule prior to January 1, 2026; (ii) section 13101 of the Bipartisan Safe Communities Act, Public Law 117–159, extended the moratorium on implementation, administration, or enforcement until January 1, 2027; and (iii) section 11301 of the Inflation Reduction Act of 2022, Public Law 117–169, further extended the moratorium on implementation, administration, or enforcement of the 2020 Final Rule until January 1, 2032.

II. Final Rule

This final rule stays the amendments made to the safe harbor regulations through the 2020 Final Rule, specifically the new paragraphs added at 42 CFR 1001.952(h)(5)(viii), 42 CFR 1001.952(h)(6)–(9), 42 CFR 1001.952(cc), and 42 CFR 1001.952(dd). Pursuant to the most recent congressional mandate in section 11301 of the Inflation Reduction Act of 2022, Public Law 117–169, the 2020 Final Rule's revisions to the safe harbor regulations will be stayed until January 1, 2032.

III. Regulatory Impact Statement

As set forth below, we have examined the impact of this final rule as required by the Administrative Procedure Act, Executive Order 12866, the Regulatory Flexibility Act of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

A. Administrative Procedure Act

To the extent that 5 U.S.C. 553 applies to this action, implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The postponement of the effective date, until January 1, 2032, is required by law. Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issue and implementation of regulations.

B. Executive Order 12866 and the Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act do not apply. Furthermore, this document does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or Tribal Governments in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). We believe that this final rule will not impose any mandates on State, local, or Tribal Governments or the private sector that would result in an expenditure of $100 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

D. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has federalism implications. In reviewing this final rule under the threshold criteria of Executive Order 13132, Federalism, we have determined that this final rule would not significantly limit the rights, roles, and responsibilities of State or local governments. We have determined, therefore, that a full analysis under Executive Order 13132 is not necessary.

IV. Paperwork Reduction Act

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are required to solicit public comments, and receive final approval from the Office of Management and Budget, on any information collection requirements set forth in rulemaking. This final rule will not impose any information collection burden or affect information currently collected by OIG.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Social Security.

For the reasons set forth above, the following provisions of 42 CFR part 1001 are stayed as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302; 1320a–7; 1320a–7b; 1395u(j); 1395u(k); 1395w–104(e)(6), 1395y(d); 1395y(e); 1395cc(b)(2)(D), (E), and (F); 1395hh; 1842(j)(1)(D)(iv), 1842(k)(1), and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. In § 1001.952, paragraphs (h)(5)(viii), (h)(6) through (9), (cc), and (dd) are stayed until January 1, 2032.

Dated: December 26, 2023.

Xavier Becerra,

Secretary.

[FR Doc. 2023–28775 Filed 12–28–23; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 30 and 150

[Docket No. USCG–2022–0327]

RIN 1625–AC73

2022 Liquid Chemical Categorization Updates

Correction

In rule document 2023–25026, appearing on pages 81184 through 81234 in the issue of Tuesday, November 21, 2023, make the following corrections:

§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter. [Corrrected]

■ 1. On page 81188, in the second column, on the fourth line from the bottom, ''(≤75%)'' should read ''(>75%)''.

■ 2. On the same page, in the same column, on the third and second lines from the bottom, ''(≤85%)'' should read ''(>85%)''.

■ 3. On page 81189, in the table, in the eighteenth row, ''(≤75%)'' should read ''(>75%)''.

■ 4. On the same page, in the same table, in the nineteenth row, ''(≤85%)'' should read ''(>85%)''.

■ 5. On the same page, in the same table, following the twenty-fourth row,

[3] See *Pharmaceutical Care Management Association* v. *United States Department of Health & Human Services et al.,* No. 1:21–cv–00095 (D. D.C. Jan. 30, 2021) (order granting joint stipulation and postponing effective date), Doc. No. 19; *see also* 86 FR 7815 (Feb. 2, 2021), 86 FR 10181 (Feb. 19, 2021), and 86 FR 15132 (Mar. 22, 2021).

insert a new row reading ''* * * * * * *''.

■ 6. On the same page, in the same table, in the twenty-sixth row, ''Long-chain alkylphenol (C18–C30) *https://fedimpact.com/request-to-meet/*'' should read ''Long-chain alkylphenol (C18–C30)''.

Table 2 to Part 150 Grouping of Cargoes [Corrected]

■ 7. On page 81225, in the table, in the twenty-fourth row, ''(<25% but <99% by volume)'' should read ''(>25% but <99% by volume)''.

[FR Doc. C1–2023–25026 Filed 12–28–23; 8:45 am]

BILLING CODE 0099–10–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–1179; MB Docket No. 23–302; RM–11965; FR ID 193053]

Radio Broadcasting Services; Lac Du Flambeau, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by allotting FM Channel 225A at Lac Du Flambeau, Wisconsin, as a Tribal Allotment. The staff engineering analysis indicates that Channel 225A can be allotted to Lac Du Flambeau, Wisconsin, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 12.1 km (7.5 miles) northwest of the community. The reference coordinates are 46–01–14 NL and 89–44–54 WL.

DATES: Effective February 2, 2024.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted December 18, 2023, and released December 19, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

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

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
* * * * *	
Wisconsin	
* * * * *	
Lac Du Flambeau	225A
* * * * *	

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[FR Doc. 2023–28468 Filed 12–28–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221206–0261]

RIN 0648–BM72

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2023–2024 Biennial Specifications and Management Measures; Inseason Adjustments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS published a final rule on November 29, 2023, to announce routine inseason adjustments to management measures in commercial and recreational groundfish fisheries for the 2024 fishing year. That rule is intended to allow commercial and recreational fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks. This action corrects the trip limits for the limited entry (LE) fixed gear and open access (OA) fleets for ''Other Flatfish'' (butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole) south of latitude (lat.) 40°10′ North (N). This correction is necessary so that the implementing regulations are accurate and implement the action as intended by the Pacific Fishery Management Council (Council). This action also corrects a final rule published on December 1, 2023.

DATES: The corrections are effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–526–4655, *keeley.Kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS published the final rule to implement harvest specifications and management measures for the 2023–2024 biennium for most species managed under The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) on December 16, 2022 (87 FR 77007). The harvest specifications and mitigation measures developed for the 2023–2024 biennium used data through the 2021 fishing year to help various sectors of the fishery attain, but not exceed, the catch limits for each stock. Based on updated fisheries information

that was unavailable when the analysis for the current harvest specifications was completed, Council recommended that NMFS extend the duration of several measures implemented through an inseason action published on October 2, 2023 (88 FR 67656), to continue the minimization of mortality of quillback rockfish off California for the 2024 fishing season. The Council also recommended NMFS reset trip limits for several species for the 2024 fishing season. NMFS published a final rule on November 29, 2023 (88 FR 83354), that announces routine inseason adjustments to management measures in commercial and recreational groundfish fisheries for the 2024 fishing year.

Need for Correction

The November 29, 2023, final rule modified tables 2 north and south to part 660, subpart E, and tables 3 north and south to part 660, subpart F. NMFS implemented an area-based trip limit for LE and OA fleets between lat. 42° N and lat. 36° N seaward of the non-trawl Rockfish Conservation Area (RCA) for lingcod and other flatfish for all cumulative periods in 2024. The trip limits for other flatfish for the LE and OA fleets south of lat. 40°10' N were inadvertently changed from those that were intended by the final rule by switching the trip limits in areas lat. 40°10' N to lat. 36° N and south of lat. 36° N. The preamble to the final rule correctly notes that by reducing the ''other flatfish'' trip limit to 0 lbs/2 months between lat. 42° N and lat. 36° N inside the Non-Trawl RCA, and maintaining the current trip limits seaward of the Non-Trawl RCA, the inseason action would help prevent the possible interaction with quillback rockfish within the Non-Trawl RCA.

This action changes the trip limit to what was originally intended by correcting table 2 south to part 660, subpart E and table 3 south to part 660, subpart F in the regulations. For LE fixed gear between lat. 42° N to lat. 36° N, the trip limit for other flatfish will be 0 lbs/month inside the Non-Trawl RCA and 10,000 lbs/month seaward of the Non-Trawl RCA. For LE fixed gear south of lat. 36° N, the trip limit for other flatfish will be 10,000 lbs/month with no area restriction. Similarly, for OA, between lat. 42° N and lat. 36° N, the trip limit for other flatfish will be 0 lbs/month inside the Non-Trawl RCA and 5,000 lbs/month seaward of the Non-Trawl RCA. For OA south of lat. 36° N, the trip limit for other flatfish will be 5,000 lbs/month with no area restriction.

These corrections are consistent with the Council's recommendation for the inseason adjustments to the 2024 fishing year harvest specifications and are minor corrections necessary to correctly implement the Council intent in their final action from November 2023.

This rule also removes amendatory instructions published in the final rule for Amendment 32 to the Groundfish FMP (December 1, 2023; 88 FR 83830). The amendatory instructions created erroneous and incorrect table headings for tables 2 north and south to part 660, subpart E, and tables 3 north and south to part 660, subpart F.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this action corrects inadvertent errors in the November 29, 2023, final rule. Immediate notice of the errors and correction is necessary to prevent confusion among participants in the fishery that could result in issues with enforcement of area management. To effectively correct the errors, the changes in this action must be effective on January 1, 2024, which is the effective date of the November 29, 2023, final rule. Thus, there is not sufficient time for notice and comment due to the imminent effective date of the November 29, 2023, final rule. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct the final rule and is consistent with the expectation of the public. These corrections will not affect the results of analyses conducted to support management decisions in the Pacific coast groundfish fishery.

For the same reasons stated above, the AA has determined that good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This document makes only minor corrections to the final rule which will be effective January 1, 2024. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

Corrections

Effective January 1, 2024, in FR Doc. 2023–26018 at 88 FR 83354 in the issue of November 29, 2023:

Table 2 (North) to Part 660, Subpart E—[Corrected]

■ 1. On page 83359, in amendatory instruction 2, ''Table 2 (North) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10′ N Lat.'' Is corrected to read as follows:

Table 2 (North) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10′ N Lat.

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:								
1	North of 46°16' N lat.		Shoreward EEZ - 100 fm line[1/]					
2	46°16' N lat. - 42°00' N lat.		30 fm line[1/] - 75 fm line[1/]					
3	42°00' N lat. - 40°10' N lat.		Shoreward EEZ - 75 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).								
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		8,000 lb/ 2 months					
4	**Pacific ocean perch**		3,600 lb/ 2 months					
5	**Sablefish**		4,500 lb/ week, not to exceed 9,000 lb /2 months					
6	**Longspine thornyhead**		10,000 lb/ 2 months					
7	**Shortspine thornyhead**		2,000 lb/ 2 months			2,500 lb/ 2 months		
8	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder**		10,000 lb/ month					
9	**Other Flatfish[3/]**							
10		North of 42°00' N lat.	10,000 lb/ month					
11		42°00' N lat. - 40°10' N lat.	10,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
12	**Whiting**		10,000 lb/ trip					
13	**Minor Shelf Rockfish[2/]**		800 lb/ month					
14	**Widow rockfish**		4,000 lb/ 2 months					
15	**Yellowtail rockfish**		3,000 lb/ month					
16	**Canary rockfish**		3,000 lb/ 2 months					
17	**Yelloweye rockfish**		CLOSED					
18	**Quillback rockfish**							
19		42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
20	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish[4/]**							
21		North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[3/]					
22		42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	0 lb/ 2 months					
23		42°00' N lat. - 40°10' N lat. Black Rockfish	0 lb/ 2 months					
24	**Lingcod[5/]**							
25		North of 42°00' N lat.	11,000 lb/ 2 months					
26		42°00' N lat. - 40°10' N lat.	2,000 lb/ 2 months seaward of the non-trawl RCA; 0 lb/ 2 months inside the non-trawl RCA					
27	**Pacific cod**		1,000 lb/ 2 months					
28	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
29	**Longnose skate**		Unlimited					
30	**Other Fish[6/]**		Unlimited					
31	**Cabezon in California**		0 lb/ 2 months					
32	**Oregon Cabezon/Kelp Greenling**		Unlimited					
33	**Big skate**		Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.* , federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) total length South of 42° N lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E—[Corrected]

■ 2. On page 83360, in amendatory instruction 3, ''Table 2 (South) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10′ N Lat.″ Is corrected to read as follows:

Table 2 (South) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10′ N Lat.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:								
1	40°10' N lat. - 36°00' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).								
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**		40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**		40,000 lb/ 2 months					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	4,500 lb/ week, not to exceed 9,000 lb /2 months					
8		South of 36°00' N lat.	2,500 lb/ week					
9	**Longspine thornyhead**		10,000 lb/ 2 months					
10	**Shortspine thornyhead**							
11		40°10' N lat. - 34°27' N lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12		South of 34°27' N lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder**		10,000 lb/ month					
14	**Other Flatfish[3/]**							
15		40°10' N lat. - 36°00' N lat.	10,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
16		South of 36°00' N lat.	10,000 lb/ month					
17	**Whiting**		10,000 lb/ trip					
18	**Minor Shelf Rockfish[2/]**							
19		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months, of which no more than 500 lb may be vermilion					
20		South of 34°27' N lat.	6,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
21	**Widow rockfish**							
22		40°10' N lat. - 34°27' N lat.	10,000 lb/ 2 months					
23		South of 34°27' N lat.	8,000 lb/ 2 months					
24	**Chilipepper rockfish**							
25		40°10' N lat. - 34°27' N lat.	10,000 lb. / 2 months					
26		South of 34°27' N lat.	8,000 lb. / 2 months					
27	**Canary rockfish**		3,500 lb/ 2 months					
28	**Yelloweye rockfish**		CLOSED					
29	**Quillback rockfish**		0 lb/ 2 months					
30	**Cowcod**		CLOSED					
31	**Bronzespotted rockfish**		CLOSED					
32	**Bocaccio**		8,000 lb/ 2 months					
33	**Minor Nearshore Rockfish**							
34	40°10' N lat. - 36° N lat. Shallow nearshore[4/]		0 lb/ 2 months					
35	South of 36° N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
36	40°10' N lat. - 36° N lat. Deeper nearshore[5/]		0 lb/ 2 months					
37	South of 36° N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
38	**California Scorpionfish**		3,500 lb/ 2 months					
39	**Lingcod[6/]**							
40		40°10' N lat. - 36° N lat.	1,600 lb / 2 months seaward of the non-trawl RCA; 0 lb / 2 months inside the non-trawl RCA					
41		South of 36° N lat.	1,600 lb / 2 months					
42	**Pacific cod**		1,000 lb/ 2 months					
43	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
44	**Longnose skate**		Unlimited					
45	**Other Fish[7/]**		0 lb / 2 months					
46	**Cabezon in California**							
47		40°10' N lat. - 36° N lat.	0 lb/ 2 months					
48		South of 36° N lat.	Unlimited					
49	**Big Skate**		Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.*, federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) total length South of 42° N lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (North) to Part 660, Subpart F—[Corrected]

■ 3. On page 83361, in amendatory instruction 4, ''Table 3 (North) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N Lat.″ Is corrected to read as follows:

Table 3 (North) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N Lat.

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N lat.		Shoreward EEZ - 100 fm line[1/]					
2	46°16' N lat. - 42°00' N lat.		30 fm line[1/] - 75 fm line[1/]					
3	42°00' N lat. - 40°10' N lat.		Shoreward EEZ - 75 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		2,000 lb/ month					
5	**Pacific ocean perch**		100 lb/ month					
6	**Sablefish**		3,000 lb/ week, not to exceed 6,000 lb/ 2 months					
7	**Shortpine thornyheads**		50 lb/ month					
8	**Longspine thornyheads**		50 lb/ month					
9	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder[7/]**		5,000 lb/ month					
10	**Other Flatfish[3/]**							
11		North of 42°00' N lat.	5,000 lb/ month					
12		42°00' N lat. - 40°10' N lat.	5,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
13	**Whiting**		300 lb/ month					
14	**Minor Shelf Rockfish[2/]**							
15		North of 42°00' N lat.	800 lb/ month					
16		42°00' N lat. - 40°10' N lat.	600 lb/month					
17	**Widow rockfish**		2,000 lb/ 2 months					
18	**Yellowtail rockfish**		1,500 lb/month					
19	**Canary rockfish**		1,000 lb/ 2 months					
20	**Yelloweye rockfish**		CLOSED					
21	**Quillback rockfish**							
22		42°00' N lat. - 40°10' N lat.	0 lb/ 2 months					
23	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish**							
24		North of 42°00' N lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
25		42°00' N lat. - 40°10' N lat. Minor Nearshore Rockfish	0 lb/ 2 months					
26		42°00' N lat. - 40°10' N lat. Black rockfish	0 lb/ 2 months					
27	**Lingcod[5/]**							
28		North of 42°00' N lat.	5,500 lb/ month					
29		42°00' N lat. - 40°10' N lat.	1,000 lb/ month seaward of the non-trawl RCA; 0 lb/ month inside the non-trawl RCA					
30	**Pacific cod**		1,000 lb/ 2 months					
31	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
32	**Longnose skate**		Unlimited					
33	**Big skate**		Unlimited					
34	**Other Fish[6/]**		Unlimited					
35	**Cabezon in California**		0 lb/ 2 months					
36	**Oregon Cabezon/Kelp Greenling**		Unlimited					
37	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*							
38	North		Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
39	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
40	North		Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.*, federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N lat.), and between Destruction Is. (47°40' N lat.) and Leadbetter Pnt. (46°38.17' N lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N lat. and 22 inches (56 cm) South of 42° N lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F—[Corrected]

■ 4. On page 83362, in amendatory instruction 5, ''Table 3 (South) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10′ N Lat.'' is corrected to read as follows:

Table 3 (South) to Part 660, Subpart F—Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10′ N Lat.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

			JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.		Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.		50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.		100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**		10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**		200 lb/ month					
6	**Sablefish**							
7		40°10' N lat. - 36°00' N lat.	3,000 lb/ week, not to exceed 6,000 lb/ 2 months					
8		South of 36°00' N lat.	2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**							
10		40°10' N lat. - 34°27' N lat.	50 lb/ month					
11	**Longspine thornyheads**							
12		40°10' N lat. - 34°27' N lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**							
14		South of 34°27' N lat.	100 lb/ day, no more than 1,000 lb/ 2 months					
15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**		5,000 lb/ month					
16	**Other Flatfish[3/]**							
17		40°10' N lat. - 36°00' N lat.	5,000 lb/ month seaward of the non-trawl RCA; 0 lb/month inside the non-trawl RCA					
18		South of 36°00' N lat.	5,000 lb/ month					
19	**Whiting**		300 lb/ month					
20	**Minor Shelf Rockfish[2/]**							
21		40°10' N lat. - 34°27' N lat.	3,000 lb/ 2 months, of which no more than 300 lb may be vermilion/sunset					
22		South of 34°27' N lat.	3,000 lb/ 2 months, of which no more than 900 lb may be vermilion/sunset					
23	**Widow rockfish**							
24		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
25		South of 34°27' N lat.	4,000 lb/ 2 months					
26	**Chilipepper rockfish**							
27		40°10' N lat. - 34°27' N lat.	6,000 lb/ 2 months					
28		South of 34°27' N lat.	4,000 lb/ 2 months					
29	**Canary rockfish**		1,500 lb/ 2 months					
30	**Yelloweye rockfish**		CLOSED					
31	**Cowcod**		CLOSED					
32	**Bronzespotted rockfish**		CLOSED					
33	**Quillback rockfish**		0 lb/ 2 months					
34	**Bocaccio**		6,000 lb/ 2 months					
35	**Minor Nearshore Rockfish**							
36	40°10' N lat. - 36°00' N lat. Shallow nearshore[4/]		0 lb/ 2 months					
37	South of 36°00' N lat. Shallow nearshore[4/]		2,000 lb/ 2 months					
38	40°10' N lat. - 36°00' N lat. Deeper nearshore[5/]		0 lb/ 2 months					
39	South of 36°00' N lat. Deeper nearshore[5/]		2,000 lb/ 2 months, of which no more than 75 lb may be copper rockfish					
40	**California Scorpionfish**		3,500 lb/ 2 months					
41	**Lingcod[6/]**							
42		40°10' N lat. - 36°00' N lat.	700 lb / month seaward of the non-trawl RCA; 0 lb/ month inside the non-trawl RCA					
43		South of 36°00' N lat.	700 lb / month					
44	**Pacific cod**		1,000 lb/ 2 months					
45	**Spiny dogfish**		200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
46	**Longnose skate**		Unlimited					
47	**Big skate**		Unlimited					
48	**Other Fish[7/]**		Unlimited					
49	**Cabezon in California**							
50		40°10' N lat. - 36°00' N lat.	0 lb/ month					
51		South of 36°00' N lat.	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2024

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N lat. - 36°00' N lat.	Shoreward EEZ[1/] - 75 fm line[1/]					
2	36°00' N lat. - 34°27' N lat.	50 fm line[1/] - 75 fm line[1/]					
3	South of 34°27' N lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands and banks)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
59	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
60	South of 40°10' N lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
61	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N lat., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
62	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
63	*40°10' N lat. - 38°00' N lat.*	*100 fm line[1/] - 200 fm line[1/]*	*100 fm line[1/] - 150 fm line[1/]*				*100 fm line[1/] - 200 fm line[1/]*
64	*38°00' N lat. - 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
65	*South of 34°27' N lat.*	*100 fm line[1/] - 150 fm line[1/]*					
66		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
67	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
69	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by the EEZ (exclusive economic zone, *i.e.*, federal waters from 3-200 nautical miles from shore) or lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting. LEFG vessels may be allowed to fish inside groundfish conservation areas using non-bottom contact hook and line only. See § 660.230 (d) of the regulations for more information.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 22 inches (56 cm) South of 42° N lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Effective January 1, 2024, in FR Doc. 2023–25905 at 88 FR 83830 in the issue of December 1, 2023:

Subpart E of Part 660—[Corrected]

■ 5. On page 83850, remove amendatory instruction 19 and the accompanying regulatory text revising table 2 (North) and table 2 (South) to part 660, subpart E, and redesignate amendatory instructions 20 through 22 as amendatory instructions 19 through 21.

Subpart F of Part 660—[Corrected]

■ 6. On page 83855, remove amendatory instruction 23 and the accompanying regulatory text revising table 3 (North) and table 3 (South) to part 660, subpart F, and redesignate amendatory instructions 24 and 25 as amendatory instructions 22 and 23.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2023.

Everett Wayne Baxter,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–27689 Filed 12–28–23; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 88, No. 249
Friday, December 29, 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

Agricultural Marketing Service

7 CFR Part 1000

[Docket No. 23–J–0067; AMS–DA–23–0031]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reconvened public hearing on proposed rulemaking.

SUMMARY: This notice announces the reconvening of the national public hearing which began on August 23, 2023, in Carmel, Indiana, to consider and take evidence on proposals to amend the pricing formulas in the 11 Federal Milk Marketing Orders (FMMOs).

DATES: The hearing will reconvene at 8:00 a.m. ET on Tuesday, January 16, 2024.

ADDRESSES: The reconvened hearing will be held at the 502 East Event Centre, 502 East Carmel Drive, Carmel, Indiana 46032. Telephone (317) 843–1234.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0225—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225, (202) 720–7311, Email: *Erin.Taylor@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact *FMMOHearing@usda.gov* a minimum of five days before the start of the hearing.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Published July 24, 2023 (88 FR 47396).

Notice of Reconvened Hearing: Published November 6, 2023 (88 FR 76143).

Notice is hereby given that the hearing, which was recessed in Zionsville, Indiana, on December 8, 2023, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene at 8:00 a.m. ET on Tuesday, January 16, 2024, at the 502 East Event Centre, 502 East Carmel Drive, Carmel, Indiana, 46032. If the hearing is not completed by 5:00 p.m. ET on Friday, January 19, 2024, the hearing will reconvene at 8:00 a.m. ET on Monday, January 29, 2024, at the 502 East Event Centre. The hearing will be held from 8:00 a.m. ET until 5:00 p.m. ET each weekday. If not completed, the hearing will recess at 5:00 p.m. ET on Friday, February 2, 2024, and reconvene at a later date.

Dairy farmer virtual testimony will not be available. Dairy farmers may continue to testify in person at any time during the reconvened hearing. Dairy farmers testifying in person are not required to pre-submit testimony or exhibits.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–28762 Filed 12–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2403; Project Identifier AD–2023–00888–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model MD–11 and MD–11F airplanes equipped with General Electric (GE) CF6–80C2D1F high-bypass turbofan engines. This proposed AD was prompted by a report of a Model MD–11F airplane experiencing an uncommanded deployment of a thrust reverser in-flight at low altitude. This proposed AD would require a one-time detailed inspection of the engine pylon thrust reverser control system wire harnesses and applicable on-condition actions. The proposed AD would also require repetitive detailed inspections and wire integrity tests of the engine thrust reverser control system wire harnesses (in the pylon), junction box and junction box cover, left side and right side thrust reverser electrical harnesses, core (engine compartment) miscellaneous wire harness assembly, and 30 degree bulkhead wire harness assembly; and applicable on-condition actions. This AD also requires reporting. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 12, 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* under Docket No. FAA–2023–2403; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety

Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–2403.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3555; email *kevin.nguyen@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–2023–2403; Project Identifier AD–2023–00888–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3555; email *kevin.nguyen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of an MD–11F airplane equipped with three GE CF6–80C2D1F high-bypass turbofan engines experiencing an in-flight deployment of the (left) engine 1 thrust reverser at approximately 500 feet above ground level. Both left and right translating cowls of the thrust reverser deployed. In the Engine 1 pylon, damaged wiring was found, which could have caused or contributed to the deployment of the two transcowls.

The FAA is issuing this AD to address uncommanded deployment of a thrust reverser in flight at low altitude, which could result in loss of control of the airplane and loss of continued safe flight and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023. This service information specifies work package 1 inspection procedures to do an initial detailed inspection of the engine 1, engine 2, and engine 3 pylon thrust reverser control system wire harnesses. The service information also specifies work package 2 procedures to do repetitive detailed inspections and wire integrity tests at the following locations: engine 1, engine 2, and engine 3 thrust reverser control system wire harnesses (in the pylon); junction box and junction box cover (only detailed inspection); left side and right side thrust reverser electrical harnesses; core (engine compartment) miscellaneous wire harness assembly; and 30 degree bulkhead wire harness assembly. The service information also specifies applicable on-condition actions (includes repairs, replacements, installations, post-replacement inspections and tests, and return to service tests). The service information also specifies that accomplishing the initial inspections and tests by doing Action 1 through Action 3 in work package 2 terminates the need to do the inspection in accordance with Part 2 as required in work package 1. However, this substitution of actions does not change the compliance time of work package 1 as specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023, already described and except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD also requires reporting findings to Boeing. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–2403.

Interim Action

The FAA considers this proposed AD to be an interim action. The reports that are required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the unsafe condition, and eventually to develop final action to address the unsafe condition. If final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 79 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections and Tests	Up to 78 work-hours × $85 per hour = Up to $6,630 per inspection/test cycle.	$0	Up to $6,630 per inspection/test cycle.	Up to $523,770 per inspection/test cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Reporting	1 work-hour × $85 per hour = $85 per inspection/test cycle.	0	85 per inspection/test cycle	6,715 per inspection/test cycle.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of the proposed inspections and tests. The agency has no way of determining the number of aircraft that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repairs/Replacements/Tests	Up to 120 work-hours × $85 per hour = up to $10,200.	*$0	Up to $10,200.

*The FAA has received no definitive data that would enable the FAA to provide a parts cost estimate for the on-condition repairs/replacements specified in this proposed 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 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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–2403; Project Identifier AD–2023–00888–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 12, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, equipped with General Electric (GE) CF6–80C2D1F high-bypass turbofan engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by a report of a Model MD–11F airplane experiencing an uncommanded deployment of a thrust reverser at approximately 500 feet above ground level. The FAA is issuing this AD to address uncommanded deployment of a thrust reverser in-flight at low altitude, which could result in loss of flight control of the airplane and loss of continued safe flight and landing.

(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: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023, do all applicable actions identified as ''RC'' (required for compliance)

in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023, use the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where step 6.c.(2)(a), ''CONDITION 14 OPTION 1 (ACTION 1)'' and step 6.c.(2)(b)4)d), ''CONDITION 14.4 OPTION 2 (ACTION 1)'' of the Accomplishment Instructions of Boeing Service Bulletin MD11–78017, dated December 4, 2023, specify to replace the junction box, that replacement must be accomplished in accordance with ''PART 12: JUNCTION BOX REPLACEMENT'' of the Accomplishment Instructions of Boeing Service Bulletin MD11–78017, dated December 4, 2023.

(i) Reporting

At the applicable time specified in paragraph (i)(1) or (2) of this AD, submit a report to The Boeing Company via the Boeing Communication System (BCS) and include the information specified in Appendix C of Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023.

(1) If the inspection or test was done on or after the effective date of this AD: Submit the report within 30 days after the inspection or test.

(2) If the inspection or test was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of AIR–520, Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as specified by paragraph (g) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Kevin Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3555; email *kevin.nguyen@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 the AD specifies otherwise.

(i) Boeing Alert Service Bulletin MD11–78A017, dated December 4, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

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

Issued on December 22, 2023.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–28721 Filed 12–28–23; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Commercial Mail Receiving Agencies Clarification

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to clarify Commercial Mail Receiving Agencies (CMRA) notary responsibilities for the addressee's signature.

DATES: Submit comments on or before January 29, 2024.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''CMRA Clarification''. Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Heidi Michel at (414) 239–2976, Clayton Gerber at (202) 449–8076, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: 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.

The Postal Service is proposing to revise DMM subsection 508.1.8.3a3 to clarify that the notary public must be commissioned in a United States state, territory, possession, or the District of Columbia and to clarify the notary public's responsibilities with respect to the addressee's signature on PS Form 1583. This clarification is needed to establish that the notary public is domestically commissioned and to address particularities of some state notary public laws that do not authorize notaries public to attest a signature. The revision allows notaries public to recognize the PS Form 1583 applicant's acknowledged signature.

The proposed revision also clarifies that the addressee must sign or

acknowledge his or her signature on the PS Form 1583 in the physical or virtual (in real-time audio and video) presence of the CMRA owner, manager, or authorized employee, or acknowledge his or her signature on the PS Form 1583 in the physical or virtual (in real-time audio and video) presence of a notary public.

These proposed clarifications are reflected in proposed corresponding revisions to the applicable provisions of PS Form 1583, including:

- Revising the notarial statement to read ''Notary Public in and for the STATE OF _____, COUNTY OF _____. On this _____ day of _____, 20____, the applicant _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this application, appeared before me, and acknowledged his or her signature.''; and
- Adding the following statement to the Note on the second page of PS Form 1583: ''The applicant must sign or acknowledge his or her signature in the physical or virtual (in real-time audio and video) presence of the agent or his or her authorized employee, or acknowledge his or her signature in the physical or virtual (in real-time audio and video) presence of a notary public commissioned in a United States state, territory, possession, or the District of Columbia.''.

After consideration of comments, and assuming that the Postal Service still intends to pursue these revisions as a final rule, the Postal Service will aim to implement any change effective February 1, 2024.

We believe this proposed revision will provide CMRA owners/managers with a more efficient process for accepting the PS Form 1583 and establishing mail delivery for a private mailbox (PMB) customer of the CMRA.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be 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, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, 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

* * * * *

508 Recipient Services

1.0 Recipient Options

* * * * *

1.8 Commercial Mail Receiving Agencies

* * * * *

1.8.3 Delivery to CMRA

Procedures for delivery to a CMRA are as follows:

* * * * *

[Revise the first sentence of item a3 to read as follows:]

The addressee must sign or acknowledge his or her signature in the physical or virtual (in real-time audio and video) presence of the CMRA owner or manager or authorized employee, or acknowledge his or her signature in the physical or virtual (in real-time audio and video) presence of a notary public commissioned in a United States state, territory, possession, or the District of Columbia. * * *

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–28296 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0449; FRL–11378–01–R9]

Air Quality Plans; California; San Luis Obispo County Air Pollution Control District; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Luis Obispo County Air Pollution Control District (SLOCAPCD or ''District'') portion of the California State Implementation Plan (SIP). In this action, we are proposing to approve a rule submitted by the SLOCAPCD governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). This action also proposes to revise regulatory text to clarify that the District is not subject to the Federal Implementation Plan related to the protection of visibility. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before January 29, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0449 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*. 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 the disclosure of which 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.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Manny Aquitania, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3977, or by email at *aquitania.manny@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates on which it was adopted by the local air agency and submitted by the California Air Resources Board (CARB or ''the State'').

TABLE 1—SUBMITTED RULE

Agency	Rule #	Rule title	Adopted	Submitted [1]
SLOCAPCD	224	Federal Requirements for New and Modified Major Sources in Non-Attainment Areas.	01/26/22	07/05/22

On January 5, 2023, the submittal for Rule 224 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 224 in the SIP.

C. What is the purpose of the submitted rule?

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). In addition, to implement CAA section 169A, 40 CFR 51.307(b) requires that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area. Because the eastern portion of San Luis Obispo County is designated as a federal ozone nonattainment area for the 2008 and 2015 ozone NAAQS, with a Marginal classification, the CAA requires the District to have a SIP-approved NNSR program for new and modified major sources located in the ozone nonattainment area that are under its jurisdiction.[2]

Rule 224 is intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors in the areas within the District that are designated nonattainment for the NAAQS, including the implementing regulations at 40 CFR 51.160–51.165, and the relevant regulatory requirements at 40 CFR 51.307.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

The EPA reviewed Rule 224 for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in a Marginal ozone nonattainment area; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); [3] and (5) SIP revisions as set forth in CAA section 110(l) [4] and 193.[5] Our review evaluated the submittal for compliance with the NNSR requirements applicable to ozone nonattainment areas classified as Marginal, and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

B. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the July 5, 2022 submittal of Rule 224, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rule to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160–51.165, we have evaluated Rule 224 in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS. We find that Rule 224 satisfies these requirements as they apply to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Marginal. We have also determined that these rules satisfy the related visibility requirements in 40 CFR 51.307. In addition, we have determined that the Rule 224 satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittal demonstrates in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under state law to carry out this proposed SIP revision.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any

[1] The submittal was transmitted to the EPA via a letter from CARB dated July 5, 2022.

[2] The relevant nonattainment designation and classification history for the ozone NAAQS for the eastern portion of San Luis Obispo County is provided in our Technical Support Document (TSD) for this action, which can be found in the docket for this rule. Information regarding the District's attainment/nonattainment status for other criteria pollutants is also included in our TSD.

[3] CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

[4] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[5] CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of this rule will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of this rule will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of our analysis of Rule 224.

C. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements.

We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160–51.165 and 40 CFR 51.307. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

We will accept comments from the public on this proposal until January 29, 2024.

III. 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 Rule 224, ''Federal Requirements for New and Modified Major Sources in Non-Attainment Areas,'' adopted on January 26, 2022. Rule 224 is intended to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors under part D of title I of the CAA. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 proposes to approve 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State 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 action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. 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

Administrative practice and procedure, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: December 21, 2023.

Cheree Peterson,

Acting Regional Administrator, Region IX.

[FR Doc. 2023–28750 Filed 12–28–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 23–234; FCC 23–92; FRS ID 190276]

Schools and Libraries Cybersecurity Pilot Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes a three-year pilot program within the Universal Service Fund (USF or Fund) to provide up to $200 million available to support cybersecurity and advanced firewall services for eligible schools and libraries.

DATES: Comments are due on or before January 29, 2024 and reply comments are due on or before February 27, 2024. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 27, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. You may submit comments, identified by WC Docket No. 23–234, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People With Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).
- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

FOR FURTHER INFORMATION CONTACT: Joseph Schlingbaum *Joseph.Schlingbaum@fcc.gov* in the Telecommunications Access Policy Division, Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. For information regarding the PRA information collection requirements contained in this PRA, contact Nicole Ongele, Office of Managing Director, at 202–418–2991 or *Nicole.Ongele@fcc.gov.* Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Schools and Libraries Cybersecurity Pilot Program, Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 23–234; FCC 23–92, adopted November 8, 2023 and released November 13, 2023. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-proposes-schools-libraries-cybersecurity-pilot-program-0.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 27, 2024. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Schools and Libraries Cybersecurity Pilot Program.

Form Numbers: FCC Forms 470, 471, 472, 474—Cybersecurity, 484 and 488—Cybersecurity.

Type of Review: New collection.

Respondents: State, local or tribal government institutions, and other not-for-profit institutions.

Number of Respondents and Responses: 23,000 respondents; 201,100 responses.

Estimated Time per Response: 4 hours for FCC Form 470—Cybersecurity, 5 hours for FCC Form 471—Cybersecurity, 1.75 hours for FCC Forms 472/474—Cybersecurity, 15 hours for FCC Form 484, and 1 hour for FCC Form 488—Cybersecurity.

Frequency of Response: On occasion and annual reporting requirements, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403.

Total Annual Burden: 743,900 hours.

Total Annual Cost: No Cost.

Needs and Uses: The information collected is designed to obtain information from applicants and service providers that will be used by the Commission and/or USAC to evaluate

the applications and select participants to receive funding under the Cybersecurity Pilot Program, make funding determinations and disburse funding in compliance with applicable federal laws for payments made through the Pilot program. The Commission will begin accepting applications to participate in the Cybersecurity Pilot Program after publication of its Report and Order and notice of OMB approval of the Cybersecurity Pilot Program information collection in the **Federal Register**.

On November 8, 2023, the Commission adopted a *NPRM* in WC Docket No. 23–234, Schools and Libraries Cybersecurity Pilot Program. The Commission proposes a three-year pilot program within the Universal Service Fund to provide up to $200 million available to support cybersecurity and advanced firewall services for eligible schools and libraries. Accordingly, the Commission proposes to add subpart T to part 54 of its rules.

Synopsis

I. Introduction

1. Broadband connectivity and internet access are increasingly important for K–12 students and adults alike. Whether for online learning, job searching, or connecting with peers and the community, high-speed broadband is critical to educational and personal success in the modern world. However, although broadband connectivity and internet access can simplify and enhance the daily lives of K–12 students, school staff, and library patrons, they can also be used by malicious actors to steal personal information, compromise online accounts, and cause online personal harm or embarrassment. Similarly, while advances in online technology benefit K–12 schools and libraries by expanding teaching and education beyond the physical confines of a school or library building, and permitting students and library patrons to complete online homework assignments, conduct online research, and learn the computer skills necessary to secure a job in the future, K–12 schools and libraries increasingly find themselves targets for attackers who would disrupt their ability to educate, illegally obtain sensitive student, school staff, and library patron data, and hold their broadband networks hostage to extract ransom payments. Given the growing importance of broadband connectivity and internet access for K–12 schools and libraries, the Commission proposes a three-year pilot program within the Universal Service Fund (USF or Fund) to provide up to $200 million available to support cybersecurity and advanced firewall services for eligible schools and libraries.

2. Specifically, in the *NPRM,* the Commission proposes the creation of a Schools and Libraries Cybersecurity Pilot Program (Pilot or Pilot program) that would allow us to obtain valuable data concerning the cybersecurity and advanced firewall services that would best help K–12 schools and libraries address the growing cyber threats and attacks against their broadband networks and data, while also helping us to better understand the most effective way USF support could be used to help schools and libraries address these significant concerns while promoting the E-Rate program's longstanding goal of promoting basic connectivity. It is clear that the E-Rate program alone cannot fully address the K–12 schools' and libraries' cyber concerns and protect their broadband networks and data from cyber threats and attacks. As proposed, the Pilot seeks to learn more about which cybersecurity and advanced firewall services will have the greatest impact in helping K–12 schools and libraries protect their broadband networks and data, while also ensuring that limited USF funds are being utilized in an effective manner. For example, the Commission expects that this Pilot will necessarily need to ensure that participating K–12 schools and libraries fully leverage the free and low-cost K–12 cybersecurity resources provided by our federal partners, the Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA), and the U.S. Department of Education (DOE), to complement the Pilot's work and make the most effective use of Pilot program funding.

3. As discussed further below, the Commission proposes that the program operate as a new Pilot within the USF, which would provide funding to eligible K–12 schools and libraries to defray the qualifying costs of receiving the cybersecurity and advanced firewall services needed to protect their E-Rate-funded broadband networks and data from the growing number of K–12 school- and library-focused cyber events. Additionally, the Commission seeks comment on the applicability of the Children's Internet Protection Act (CIPA) to the Pilot program and USF-funded cybersecurity and advanced firewall services for schools and libraries.

4. The Commission expects this Pilot program will benefit K–12 schools and libraries that are responding to a wide breadth of cyber threats and attacks that impact their ability to protect their broadband networks and data. Data gathered from the Pilot program will help us understand whether and how USF funds could be used to help address the K–12 school and library cybersecurity challenges, and the data and information collected through this Pilot program may also aid in the consideration of broader reforms across the government—including potential statutory changes—to help schools and libraries address the significant K–12 school and library cybersecurity concerns. In proposing this Pilot, the Commission is mindful of the E-Rate program's longstanding goal of promoting basic connectivity, its obligations to be a careful and prudent steward of the limited universal service funding, and the need to balance its actions in this proceeding against competing priorities, bearing in mind that this funding is obtained though assessments collected from telecommunications carriers that are typically passed on to and paid for by U.S. consumers.

II. Discussion

5. Mindful of the need to protect universal service funding and aware that basic firewall services may be insufficient alone to protect E-Rate-funded broadband networks, the Commission proposes a three-year Pilot program to ascertain whether supporting cybersecurity and advanced firewall services with universal service support could advance the key universal service principles of providing quality internet and broadband services to K–12 schools and libraries at just, reasonable, and affordable rates; and ensuring schools' and libraries' access to advanced telecommunications provided by Congress in the Telecommunications Act of 1996. To accomplish this, the Commission proposes a pilot structure similar to the one it used in the Connected Care Pilot Program. Specifically, interested K–12 schools and libraries would apply to be Pilot program participants by submitting an application containing information about how they would use the Pilot funds and providing information about their proposed cybersecurity and advanced firewall projects. If selected, the applicants would apply for funding for Pilot-eligible services and equipment. Pilot participants receiving a funding commitment would be eligible to begin receiving cybersecurity and advanced firewall services and equipment, and would submit invoices for reimbursement.

6. It is important that the Commission defines the goals of the proposed Pilot program, as well as establish criteria to measure progress towards those goals. This will help the Commission and other federal, state, and local stakeholders to determine whether, and how, to provide funding for cybersecurity and advanced firewall services after the Pilot ends. To that end, the Commission proposes three goals: (1) improving the security and protection of E-Rate-funded broadband networks and data; (2) measuring the costs associated with cybersecurity and advanced firewall services, and the amount of funding needed to adequately meet the demand for these services if extended to all E-Rate participants; and (3) evaluating how to leverage other federal K–12 cybersecurity tools and resources to help schools and libraries effectively address their cybersecurity needs.

7. *Improving the security and protection of E-Rate-funded broadband networks and data.* The Commission first proposes a goal for the proposed Pilot program of improving the security and protection of E-Rate-funded broadband networks and data. As the Council of the Great City Schools stated, ''schools and libraries desperately need assistance to acquire advanced . . . firewalls to protect the integrity of their broadband connections, networks and data.'' Funding made available by the proposed Pilot may be able to help participants acquire the cybersecurity and advanced firewall services and equipment needed to improve the security and protection of their broadband networks and data. The Commission seeks comment on how it can measure whether the Pilot is effective in protecting and securing E-Rate-funded broadband networks and data. The Commission also seeks comment on this proposed goal and related questions.

8. *Measuring the costs and effectiveness of Pilot-funded cybersecurity and advanced firewall services and equipment.* Next, the Commission proposes a goal of measuring the costs and effectiveness of cybersecurity and advanced firewall services and equipment. The Pilot can help the Commission and other federal, state, and local government agencies gather additional data on the types of new services and equipment that applicants will purchase to address network and data security concerns, and the associated cost and effectiveness of Pilot-funded services and equipment. Data provided in FCC Forms 470 and 471 (or their Pilot program equivalent) can aid the Commission in measuring the costs of cybersecurity and advanced firewall services and equipment. What data should be collected on the effectiveness of the funded equipment and services? For example, should Pilot participants be required to submit data on the number of intrusion attempts, number of successful attacks, mean time to detection and response, estimated cost of each attack, etc.? What other accepted metrics should the Commission requires Pilot participants to monitor and record? For example, should the Commission collect data on the number and percent of students and school and library staff using multi-factor identification, the frequency of school and library staff and, separately, student cyber training sessions, and participation rates? Should Pilot participants be required to assess awareness and readiness of school and library staff based on available guidance from CISA or other expert organizations? Should all or some of these potential requirements be standardized across Pilot participants to allow for comparative analysis of outcomes? The proposed intent of this Pilot is to also determine the most cost-effective use of universal service funding to help schools and libraries proactively address K–12 cybersecurity issues. The Commission seeks comment on this proposed goal and related questions.

9. *Evaluating how to leverage other federal resources to address schools' and libraries' cybersecurity threats.* Third, the Commission proposes a goal of evaluating how to best leverage other federal resources to help schools and libraries proactively address K–12 cybersecurity issues. CISA, DOE, and NIST have made a wide array of free and low-cost K–12 cybersecurity tools and resources available to schools and libraries. Also, as discussed, more resources beyond funding are needed for schools and libraries to effectively protect their broadband networks and data from cyberattacks and other cyber threats. As part of this Pilot, the Commission intends to coordinate with its federal partners in identifying the most impactful tools and resources to help schools and libraries effectively protect themselves and address these cybersecurity issues. For example, DOE plans to establish a Government Coordinating Council (Council) to coordinate the activities of federal leaders in taking actions to help protect school networks. What role can the Pilot play to complement the efforts of other agencies that will participate in the Council? In addition, the CISA K–12 Cybersecurity Report contains three key recommendations for schools and libraries that would immediately improve their cybersecurity postures, the first of which recommends implementing a ''small number of the highest priority steps'', including implementing multi-factor authentication, fixing known cybersecurity flaws, performing and testing back-ups, minimizing exposure to common attacks, developing and exercising a cyber incident response plan, and creating a training and awareness campaign. Should the Pilot target funding to allow schools and libraries to implement some or all of the items contained in the list of highest priority steps from CISA's first recommendation to help them address K–12 cybersecurity issues (*e.g.,* multi-factor authentication, correcting known security flaws, performing and testing system backups, etc.)? Should schools and libraries be required to implement a certain number of these free and low-cost tools to be eligible to receive Pilot funding for cybersecurity and advanced firewall services, and if so how should this requirement be enforced? Furthermore, DOE has made a number of recommendations in its K–12 Digital Infrastructure Briefs aimed at making K–12 networks safe, accessible, resilient, sustainable, and future-proof. How should the Pilot account for these recommendations? How can the Pilot funding incentivize schools and libraries to take full advantage of other available free and low-cost K–12 cybersecurity tools and resources? How can the Pilot leverage USAC's established relationships with and processes for distribution of training to the schools and libraries to facilitate the efforts of CISA, DOE, and NIST in order to provide technical assistance or capacity building for Pilot participants? The Commission seeks comment on this proposed goal and how best to implement and measure success.

10. How can the Commission best measure progress towards these proposed performance goals, to ensure that the limited Pilot funds are used most impactfully and effectively to help schools and libraries protect their broadband networks and data? For example, by what objective criteria can the Commission determine whether the funding provided through the Pilot actually improved the protection and security of schools' and libraries' broadband networks and data? What information would the Commission need to collect to compare Pilot results against those criteria? Are there best practices and recommendations that the Commission can rely on from expert

agencies or organizations that have undertaken similar or related cybersecurity pilots? What outcomes should the Commission measure? For example, in this Pilot should the Commission measure the reductions in the number of cyberattacks; average cost of an attack; time to detect and respond to a cyber threat; staff and user awareness/readiness; or some other measure(s)?

11. How should the Commission evaluate the Pilot? The Commission proposes that Pilot participants submit certain information to apply for the Pilot, a progress report for each year of the pilot, and a final report at the conclusion of the Pilot program. The Commission further proposes that these reports contain information on how the Pilot funding was used, any changes or advancements that were made to the school's or library's cybersecurity efforts outside of the Pilot-funded services and equipment, and the number of cyber incidents that occurred each year of the Pilot program and whether the school or library was successful in defending its broadband network and data for each incident. The Commission seeks comment on these proposals. Are there any other cybersecurity assessments or evaluations that participants should conduct to determine whether the Pilot-funded cybersecurity and advanced firewall services and equipment bolstered the school's or library's cybersecurity posture, even absent a breach or other cyber incident? What is the data or information that the Commission should be collecting in the proposed progress and final reports? What could the Commission do to allow comparability across pilots? Are there any public sources of information that the Commission can also use to determine the impact of the Pilot program in addressing K–12 cybersecurity issues, and if so, does this data impact what the Commission require participants to submit in their reports to the Commission?

12. Next, the Commission discusses the overall structure for the proposed Pilot program. Building on its experience administering the Connected Care Pilot Program, the Commission proposes a similar structure for the proposed Pilot program, and discuss in more detail below.

13. *Overall Structure.* The Commission proposes to structure the proposed Pilot program in a manner similar to the Connected Care Pilot Program. Under this proposal, interested schools and libraries would apply to be a Pilot participant. Those schools and libraries that are selected to participate will be provided an opportunity to apply for Pilot funding for eligible services and equipment. Participants will then receive a funding commitment, and can begin to receive equipment/services and submit invoices for reimbursement. Further, the Commission proposes that the Universal Service Administrative Company (USAC), the FCC's administrator for universal service programs, be appointed as the permanent administrator of the Pilot program. The Commission seeks comment on this general structure for the proposed Pilot program.

14. The Commission further proposes that interested participants will be required to submit an application describing their proposed use of Pilot funds, and provide information that will facilitate the selection of high-quality projects that will best further the goals of the proposed Pilot program. At a minimum, the Commission proposes that Pilot applications require the following information:

i. Name, address, and contact information for the interested school or library. For school district or library system applicants, the name and address of all schools/libraries within the district/system, and contact information for the district or library system.

ii. Description of the Pilot participant's current cybersecurity posture, including how the school or library is currently managing and addressing its current cybersecurity risks through prevention and mitigation tactics, and a description of its proposed advanced cybersecurity action plan should it be selected to participate in the Pilot program and receive funding.

iii. Description of any incident of unauthorized operational access to the Pilot participant's systems or equipment within a year of the date of its application; the date range of the incident; a description of the unauthorized access; the impact to the K–12 school or library; a description of the vulnerabilities exploited and the techniques used to access the system; and identifying information for each actor responsible for the incident, if known.

iv. Description of the Pilot participant's proposed use of the funding to protect its broadband network and data and improve its ability to address K–12 cyber concerns. This description should include the types of services and equipment the participant plans to purchase and the plan for implementing and using the Pilot-funded equipment and services to protect its broadband network and data, and improve its ability to manage and address its cybersecurity risks.

v. Description of how the Pilot participant plans to collect and track its progress in implementing the Pilot-funded equipment and services into its cybersecurity action plan, and for providing the required Pilot data, including the impact the funding had on its initial cybersecurity action plan that pre-dated implementation of Pilot efforts.

The Commission seeks comment on these proposed requirements, and whether additional information should also be required. The Commission proposes that Pilot participants will submit these applications via an online platform, designed and operated by USAC, and seek comment on this proposal. Are there any confidentiality or security concerns with providing the above information, and if so, what protections should be implemented to protect potentially sensitive data regarding a prospective applicant's current cybersecurity posture? How can the Commission best leverage its experience receiving applications in USF programs, for example, E-Rate, Rural Health Care, and the Connected Care Pilot Program, as well as in the appropriated programs, like COVID–19 Telehealth, Emergency Connectivity Fund (ECF), and the Affordable Connectivity Program (ACP) Outreach grants? Are there any lessons learned from the Connected Care Pilot Program and other FCC pilot programs that the Commission can benefit from when establishing the proposed Pilot program? The Commission further proposes that the Bureau review applications and select participants, in consultation with the Office of Economics and Analytics (OEA), the Public Safety and Homeland Security Bureau (PSHSB), and the Office of the Managing Director (OMD), as needed, and seek comment on this proposal. Lastly, to assist with program administration and ensure that the proposed Pilot program runs efficiently, the Commission proposes to delegate to the Bureau the authority to implement the proposed Pilot program and to direct USAC's administration of the Pilot program, consistent with the Commission's rules and orders, and seek comment on this proposal.

15. *Pilot Program Duration.* The Commission proposes that the Pilot program will make funding available to participants for a three-year term, and seek comment on this proposal. Does a three-year term provide sufficient data to the Commission to evaluate how effective the Pilot funding is in protecting K–12 schools and libraries,

and their broadband networks and data, from cyberattacks and other cyber threats? The Commission acknowledges that there may be a tradeoff between learning more from the Pilot program and moving quickly to potentially expand support to protect all K–12 schools' and libraries' broadband networks and data from cyber threats. Are there ways to shorten the length of the Pilot, for example, by using a single application window that remains open until funds are exhausted, without compromising the amount or quality of the data the Pilot will generate? Should the Pilot program period include additional ramp-up time, to allow participants an opportunity to prepare for the Pilot? Should the Pilot program include additional time at the end of the three-year term for the Commission to evaluate results? The Commission seeks comment on the three-year term proposal and these related questions.

16. *Pilot Budget.* The Commission proposes a budget of $200 million over the three-year duration of the proposed Pilot program, and seek comment on this proposal. Will a budget of $200 million be sufficient to obtain and receive meaningful data on how this funding helped to protect schools' and libraries' broadband networks and data and improved their ability to address K–12 cyber issues? Conversely, would a lower budget be sufficient for these purposes (*e.g.,* $100 million) while also putting less pressure on the contribution factor? How should the total Pilot program budget be distributed over the three-year funding period? Should each selected project's funding commitment be divided evenly across the Pilot program duration? For example, if a selected project requests and receives a $9 million funding commitment and the funding period is three years, should the project receive $3 million for each year? Alternatively, are there reasons why a Pilot participant may need access to a greater amount of funding up front? If the Commission allows Pilot participants to access a greater amount earlier in the term, how can the Commission forecast a predictable budget over the three-year term? The Commission seeks comment on these questions.

17. As this proposed Pilot should not divert resources from the existing universal service support programs, the Commission proposes requiring USAC to separately collect on a quarterly basis the funds needed for the duration of the Pilot program. The Commission expects that funding the Pilot program in this manner would not significantly increase the contributions burden on consumers. This approach also would not impact the budgets or disbursements for the other universal service programs. The Commission seeks comment on this approach. Should the collection be based on the quarterly demand for the Pilot program? The Commission also proposes to have excess collected contributions for a particular quarter carried forward to the following quarter to reduce collections. Under this approach, the Commission also proposes to return to the Fund any funds that remain at the end of the Pilot program. Are there other approaches the Commission should consider for funding the Pilot program? Are there any tradeoffs between allocating funding to the proposed Pilot program as it relates to the size of the E-Rate program and the USF more generally? The Commission also seeks comment on whether the costs associated with the proposed Pilot program will impact other stakeholders' requests related to the use of universal service and E-Rate funding, such as allowing ECF-funded services to continue to be funded through the E-Rate program after the ECF program sunsets. Will the proposed $200 million budget help alleviate any concerns about the impact that this Pilot may have on the USF? How can the Commission best balance the need to provide funding for cybersecurity and advanced firewall services with its responsibility as a careful and prudent steward of limited federal resources?

18. Should the Commission establish a maximum funding cap per Pilot participant? Should the Commission establish a per-student cap (and a corresponding cap on libraries based on their square footage), based on commercially available costs? Are there data sources for cost information that would be appropriate to use in setting such a cap? Or should the Commission allow selected Pilot participants to receive a different amount of funding that aligns with their application? Should the Commission adjust awards based on the Pilot participant's category two discount rate level? Should Pilot participants be required to contribute and be responsible for a portion of the costs in order to receive Pilot program funding? For example, the Commission proposes that Pilot participants will be subject to their current category two discount rate as the non-discounted share of costs for the Pilot program; should the Commission instead require participants to contribute a fixed percentage of the costs of the services and equipment purchased? How can the Commission ensure Pilot participants are making cost-effective purchases through this Pilot program?

19. Should the Commission disburse a smaller amount of funding to a larger number of Pilot participants to increase the total volume of cybersecurity data available? Or should the Commission disburse a larger amount of funding to fewer Pilot participants to obtain a more holistic look at how the support could best be used to protect E-Rate-funded broadband networks and data, as well as help K–12 schools and libraries address cybersecurity issues? Which approach would generate the best data to determine whether and how universal service support could most effectively be leveraged to help K–12 schools and libraries protect their E-Rate-funded broadband networks and data from targeted cyberattacks and other cyber threats?

20. Under its proposals, once selected, Pilot participants will be required to submit funding applications for the requested services and equipment. To ease administration of the Pilot, the Commission proposes that participants be permitted to seek funding for services and equipment to be provided over the proposed three-year term in a single application and be supported by multi-year contract/agreement(s) for this term. The Commission seeks comment on these proposals and questions.

21. The Commission next discuss what types of entities should be eligible to participate in the proposed Pilot program. In doing so, the Commission notes that the number and type of schools and libraries that participate in the E-Rate program vary significantly. Who should be eligible to participate in the Pilot program and how should the Commission select Pilot participants? How can the Commission ensure that it identifies a wide cross-section of Pilot participants to allow it to evaluate the effectiveness of providing universal service support for K–12 schools' and libraries' cybersecurity needs, and do so in a fair and transparent manner? Should the Commission limit eligibility to schools and libraries currently participating in the E-Rate program or should it expand eligibility to include schools and libraries that do not currently participate in the E-Rate program? Should the Commission select Pilot participants based on specific objective factors like: E-Rate category two discount rate levels; location (*e.g.,* urban vs. rural); and/or participant size (*i.e.,* small schools, school districts, and libraries vs. large schools, school districts, and libraries)? How should the Commission define, or what sources should the Commission use to define, these factors to ensure they are applied objectively? Are any of these factors (*i.e.,* discount rate level, urban vs. rural,

large vs. small) more or less important than others from an eligibility perspective? If yes, why are particular factors more or less important than others? Are there other factors the Commission should consider when determining who should be eligible to participate in the Pilot and how participants should be selected? For example, would the Pilot benefit from including schools and libraries that have advanced expertise in cybersecurity as participants because they presumably would know how to best spend the Pilot funding? Or, should cybersecurity expertise not be a factor at all in the selection of Pilot participants? How can the Commission ensure that schools and libraries that lack funding, expertise, or are otherwise under-resourced can meaningfully participate in the Pilot? Is there a way to compare the cybersecurity performance of Pilot participants against non-participants (*e.g.,* through the use of a survey or other data collection process) in a way that contrasts the current cybersecurity posture of Pilot participants with that of non-participants? To be eligible for the Pilot program, should Pilot participants be required to demonstrate that they have started taking actions to improve their cybersecurity posture by, for example, starting to implement some of the DOE and CISA K–12 cybersecurity recommendations or potential forthcoming Council guidance or other similar actions? Or conversely, should a school or library be required to provide a certification or other confirmation that, absent participation in the Pilot, it does not have the resources to start implementing CISA's K–12 cybersecurity recommendations? The Commission seeks comment on these preliminary participant eligibility questions.

22. In today's broadband-reliant environment, there are a plethora of evolving cyber threats and attacks. Should the Commission limit schools' and libraries' eligibility to participate in the Pilot program to those schools and libraries that have faced or are facing certain types of cyber threats or attacks? If so, which cyber threats or attacks should qualify a school or library for participation in the Pilot program? Are there certain types of cyber threats or attacks that schools and libraries most commonly face and are there any emerging cyber threats or attacks that have only recently arisen? What types of cyber threats or attacks are the most harmful or costly for schools or libraries to combat and/or recover from? What difficulties have schools and libraries faced when attempting to address cyber threats and attacks on their own? The Commission seeks comment on the types of cyber threats and attacks encountered by schools and libraries and how they should be evaluated, if at all, when selecting Pilot participants.

23. Past experience also indicates that there may be common cyber threats and attacks faced by K–12 schools, school districts, and libraries regardless of their particular characteristics (*e.g.,* urban vs. rural, and large vs. small). However, the history of attacks also indicates that certain K–12 schools and libraries may be more likely than others to be targeted by malicious actors due to lack of information technology (IT) funding or constrained staff resources. When selecting Pilot participants, should the Commission consider an applicant's previous history regarding cyber threats or attacks? If yes, should the Commission select as Pilot participants schools and libraries with greater or fewer cyber incidents? How should the Commission define, or what sources should it use to define, a ''greater'' versus ''fewer'' number of cyber incidents? Should the Commission assess ''greater'' or ''fewer'' in absolute terms or relative terms? For instance, should a school district with 100,000 students and school staff that faces 1,000 cyber incidents per year be viewed as having more incidents than a school district with 10,000 students and school staff that faces 900 incidents per year? Or, should the latter school district be seen as having more cyber incidents on a per-student and school staff member basis? Would the Pilot benefit from including both schools and libraries that have never experienced a cyber threat or attack, as well as those that have experienced at least one cyber threat or attack? In commenters' experience, are there certain types of schools or libraries that are more likely to face cyber threats or attacks? Are schools or libraries in certain geographic or socioeconomic settings more vulnerable than others to cyber threats or attacks? What role does lack of IT funding or constrained staffing resources play in the likelihood or frequency of cyber threats or attacks? When selecting Pilot participants, should cybersecurity risk, geographic or socioeconomic factors, staffing constraints or financial need, or technical challenges play a role in participant selection? The Commission seeks comment on the characteristics and circumstances that may result in a school or library being more or less likely to be targeted for a cyber threat or attack, and the role those characteristics should play in Pilot participant selection. Are there ways to ensure that under-resourced schools and libraries can meaningfully participate in the Pilot? For example, should the Commission direct USAC to provide assistance to schools and libraries that are under-resourced and may lack experience to assist them throughout the Pilot? The Commission also encourages commenters to share any first-hand knowledge they may have regarding factors that may increase or decrease the likelihood of a school or library being targeted for a cyber threat or attack, and discuss if or how that information should be considered in the Pilot participant selection process.

24. *Prerequisites.* There are a number of free and low-cost cybersecurity tools and resources available to K–12 schools and libraries. Should the Commission adopt any prerequisites for Pilot program participation? For example, should Pilot participants be required to take a more active role in improving/enhancing their cybersecurity posture? If so, how should this be monitored and enforced? For example, should Pilot participants be required to correct known security flaws and conduct routine backups as part of this Pilot program? Should Pilot participants be required to participate in other federal efforts to share cybersecurity information and resources, such as the MS–ISAC or the K12 SIX? Should Pilot participants be required to implement, or demonstrate how they plan to implement, recommended best practices from organizations like the DOE, CISA, and NIST, as they are able? Should Pilot participants be required to take steps on their own to improve their cybersecurity posture by, for example, designating an officer or other senior-level staff member responsible for cybersecurity implementation, updates, and oversight, or implementing a cybersecurity training program for their staff and network users? The Commission seeks comment on these questions.

25. Should the Commission only include as Pilot participants those schools and libraries that have already implemented or are in the process of implementing CISA's K–12 cybersecurity recommendations, or have otherwise begun the process of implementing a cybersecurity framework or program? Are there any schools or libraries that have implemented or are in the process of implementing the DOE's or CISA's K–12 cybersecurity recommendations or another cybersecurity framework or program, to protect their E-Rate-funded networks and data? If so, what actions have been the most successful in establishing and implementing

cybersecurity recommendations, or a cybersecurity framework or program? The Commission also asks schools and libraries that are already implementing or experimenting with CISA's K–12 cybersecurity recommendations, or another cybersecurity framework or program, to provide us with information about their cybersecurity projects and discuss how these actions should influence, if at all, the Pilot participant selection process. For schools and libraries that have not taken any preventative or mitigating actions, what are the key impediments to implementing a more robust cybersecurity posture? If cost is the reason that schools or libraries have been unable to implement and strengthen their cybersecurity posture, is there other federal, state, or local funding available that could be used in place of or in addition to universal service funding to help address cyber threats and attacks? If other sources of funding are available, should schools and libraries be required to seek or already have obtained cybersecurity funding commitments from other federal, state, or local sources to be eligible to participate in this proposed Pilot program? The Commission seek comment on what prerequisites, if any, should be adopted to be a Pilot participant.

26. In the *December 2022 Public Notice,* the Commission sought comment on ''the specific equipment and services that E-Rate should . . . fund as advanced or next-generation firewalls and services.'' Nearly all commenters who opined on this topic advocated for the eligibility of at least next-generation firewalls. Many of these commenters further advocated for the eligibility of a range of additional security measures, including some or all of: MFA, domain name system (DNS) security, distributed denial-of-service (DDoS) protection, and/or VPN. On the other hand, a small number of commenters urged the Commission to adopt general criteria for eligibility, rather than enumerate specific technologies (*e.g.,* firewalls) as eligible, believing that this approach would provide E-Rate participants with appropriate flexibility in addressing their individualized security needs and ultimately better ensure the security of E-Rate-supported networks.

27. Commenters, however, were opining on security measures that would be appropriate for inclusion in the E-Rate program rather than on security measures that would be appropriate for inclusion in today's proposed Pilot. Therefore, to resolve any ambiguity and further develop the record specifically as to the proposed Pilot, the Commission seeks further comment on the security measures, including equipment and services, that should be made eligible to participants in the Pilot. The Commission also seeks comment on whether it should place restrictions on the manner or timing of a Pilot participant's purchase of security measures. For example, should Pilot funding be limited to a participant's one-time purchase of security measures or should the support cover the on-going, recurring costs that a Pilot participant may incur, for example, in the form of continual service contracts or recurring updates to the procured security measures? The Commission notes that an appropriate set of eligible measures and the timing for the security measures would balance its goal of using the Pilot to meaningfully assess the effectiveness of a wide range of different security approaches with the need to conserve and efficiently use the limited funding available for the Pilot to gain sufficient insight into each of those approaches. As a preliminary point, the Commission seeks comment on whether it should specify eligibility in terms of general criteria rather than as a list of specific technologies. If so, what should the eligibility criteria be? For example, should the Commission adopts the Schools, Health & Libraries Broadband Coalition's (SHLB Coalition) proposed general criteria that would deem any security measure eligible as long as it ''keep[s] the network from being shut down and . . . protect[s] the privacy of user data'' or would some other general criteria be more appropriate? SHLB Coalition's views notwithstanding, the Commission believes that specifying an enumerated list of eligible security technologies/measures would provide more specific, and thus clearer, eligibility guidance to Pilot participants than would general eligibility criteria, ultimately leading to a more efficient use of the Pilot program's funds. A finite list of allowable cybersecurity options would also make comparisons of outcomes more tractable across Pilot participants. On the other hand, are there concerns that potential evolutions in security measures/technologies during the duration of the Pilot would render an enumerated Commission list of eligible technologies/measures outdated before the end of the Pilot? Are there concerns that limited Pilot funds could be used inefficiently, or misused, if the Commission adopts an approach based on generalized criteria? Should eligibility be limited to cybersecurity measures that are primarily or significantly used to facilitate connectivity? How does section 254 limit the kinds of cybersecurity solutions that can be purchased, and how they may be deployed, using pilot funds? The Commission seeks comment on these issues and more generally on the relative advantages and disadvantages of specifying eligibility in terms of an enumerated list of security measures/technologies as compared to general criteria.

28. If the Commission adopts a list of eligible measures/technologies, at what granularity should that list be specified? For example, should the Commission publish a specific list of security measures (similar to the Eligible Services List for the E-Rate program), to help participants understand which services and equipment are eligible for support through the proposed Pilot program? Should a list of resources from MS–ISAC be included in the application, so that applicants can easily select desired services from the list, thereby simplifying the application process? Moreover, what are the specific measures that should be included on that list? The Commission notes that a number of commenters opined that new security measures should be limited to advanced and next-generation firewalls, in the context of discussing the E-Rate program. Are these the most important tools schools and libraries could adopt and how does the import of these cybersecurity tools compare to other tools identified in the record? For example, CISA and the DOE have identified things like MFA, regular software and hardware updates, and regular backups as important tools for combatting network threats. Do commenters continue to believe that focusing funding efforts primarily or exclusively on advanced and next-generation firewalls is appropriate in the context of today's proposed Pilot, which would utilize separate USF funding and aims to evaluate the effectiveness of a wide range of security approaches? If the list of eligible security measures should be more expansive than advanced firewalls in the context of today's Pilot, which other measures should be included? For example, should the Commission determine eligible measures based on the recommendations from the CISA K–12 Cybersecurity Report, the DOE K–12 Digital Infrastructure Briefs, and/or other federal partner resources and guides. If so, how?

29. Moreover, the Commission notes that while nearly all commenters advocated for the eligibility of at least advanced or next-generation firewalls and services, commenters generally disagree on which features an

''advanced firewall'' service includes. For example, commenters variously opined that advanced firewalls should include some or all of: intrusion detection and prevention, application-level inspection, anti-malware and anti-virus protection, VPN, DNS security, DDoS protection, and content filtering. If the Commission were to make advanced firewall services eligible, how should ''advanced firewall'' be defined for the purposes of the proposed Pilot program? Alternatively, given the lack of consensus around the scope of these terms, and the import of this technology, should the Commission simply make ''firewalls'' eligible for the Pilot without regard to whether they are ''basic'' or ''advanced/next-generation'' as has been suggested to the Commission? If the Commission were to adopt a single, updated ''firewalls'' definition for purposes of the Pilot that includes advanced or next-generation firewalls, should the definition encompass intrusion detection and prevention, application-level inspection, anti-malware and anti-virus protection, VPN, DNS security, DDoS protection, and content filtering and/or other measures/technologies? Given the limited amount of funding available, which of these measures/technologies should the Commission prioritize for inclusion within a broader definition of ''firewall'' and for what reasons?

30. The Commission further proposes to limit Pilot eligibility to equipment that is network-based (*i.e.,* that excludes end-user devices, including, for example, tablets, smartphones, and laptops) and services that are network-based and/or locally installed on end-user devices, where the devices are owned or leased by the school or library. To be eligible for the Pilot, the Commission further proposes that the equipment or services be designed to identify and/or remediate threats that could otherwise directly impair or disrupt a school's or library's network, including to threats from users accessing the network remotely. The Commission notes that this proposed eligibility criteria would apply regardless of whether the equipment or services are located within a school's or library's classroom or other physical premises. The Commission believes that this eligibility criteria, which is not restricted to physical premises, would provide schools and libraries with the flexibility to cost-effectively procure remotely-located equipment and services obviating a potentially costly need to install, maintain, and troubleshoot solutions on-site. The Commission also believes that this approach is consistent with the way that many modern security services are increasingly offered, *i.e.,* as a remotely-located or cloud-based, centralized resource accessible via the internet. The Commission further believes that limiting eligible services to end-user devices owned or leased by a school or library strikes a reasonable balance between protecting those entities' networks with the need to limit the scope of protections given the limited Pilot funding available. The Commission believes that its approach also reflects the reality that schools and libraries often already restrict the permissions available to third-party-owned devices that connect to their networks. The Commission seeks comment on this proposed scope of eligibility or any further restrictions, or relaxation of this proposal, that would best protect school and library broadband networks at a reasonable cost.

31. As noted, the DOE and CISA K–12 cybersecurity recommendations describe a broad range of steps that K–12 entities may utilize to address cybersecurity risks, and many of these steps go beyond the types of specific firewall and technical technologies/measures that the Commission has traditionally deemed eligible for reimbursement within the context of the E-Rate program. For example, the DOE and CISA recommend that entities develop a mature cybersecurity plan, leverage existing free or low-cost cybersecurity services, negotiate for the inclusion of certain services with their technology providers, and engage in strategic collaboration, information-sharing, and relationship-building with other entities. CISA's CPGs similarly recommend a broad range of cybersecurity practices, including practices related to asset management, organizational cybersecurity leadership structure, and reporting processes, that entities may use to reduce their cyber risk and help them develop the cybersecurity plan needed to implement the NIST Cybersecurity Framework (CSF). These recommendations again involve actions that go beyond the traditional measures that the Commission has found to be eligible for reimbursement in the E-Rate program.

32. The Commission thus seeks comment on whether it should allow participants to use Pilot funds to meet any of the DOE or CISA K–12 cybersecurity recommendations or CISA CPGs, or otherwise improve/enhance their cybersecurity posture and, if so, what the appropriate restrictions or limitations on the eligibility of such measures should be. Does the Commission have legal authority to allow spending on these broader DOE and CISA recommendations and CISA CPGs? If so, based on which statutory provisions and other sources of authority? Alternatively, should Pilot funding be limited to equipment and services that can directly protect the E-Rate-funded broadband networks and data, as has traditionally been the case within the E-Rate program?

33. Similarly, does the Commission have legal authority to fund broader steps that entities may take to address cybersecurity risks, such as through staff or user cybersecurity training, that are necessary parts of a K–12 school's or library's cybersecurity plan/framework as part of this proposed Pilot program? Or should staff and user cybersecurity training be treated similarly as the necessary resources needed to be able to participate in the Pilot program, similar to the necessary resources rule for the E-Rate program? As discussed earlier, CISA has provided a number of free and low-cost K–12 cybersecurity tools and resources, including staff and user cybersecurity training in Appendix 1 to its K–12 Cybersecurity Report. The Commission seeks comment on these questions and what services and equipment should be eligible for support in the Pilot program.

34. The Commission proposes that Pilot participants comply with the new proposed rules, that largely reflect and mirror its existing E-Rate rules, including by requiring competitive bidding, prohibiting gifts, and requiring that a participant pay its non-discounted portion of the costs of the supported services. The Commission believes that this approach is appropriate given the structural similarities of E-Rate and the Pilot, which is designed to study the expansion of equipment and services supported by E-Rate program. The Commission believes that the Pilot rules are likely to be effective for the same reason that the E-Rate rules, which have been developed and refined by it over many years, have proven to be effective. The Commission further believes that by modeling today's proposed rules on the existing E-Rate rules, it would ease compliance burdens for Pilot participants who are likely already familiar with, and have appropriate compliance measures in place to address, existing E-Rate program requirements. The Commission seeks comment on today's proposed rules and these preliminary conclusions.

35. While today's proposed rules would mirror in most respects the Commission's E-Rate rules, it proposes some deviations from those rules. For

example, the Commission proposes to adopt several rules from the ECF program that are not included in the E-Rate rules. First, the Commission proposes to use the shorter timeframe for appealing a decision by USAC or requesting a waiver of the Commission's rules. Second, the Commission proposes that invoices must also be submitted along with the request for reimbursement, as required in the ECF program. The Commission believes that these two deviations from the E-Rate rules will work better for the Pilot program as it is a short-term program, similar to the ECF program. The Commission seeks comment on these proposals. The Commission also seeks comment on whether any of today's proposed rules should not be adopted, or adopted in a different form than proposed for logical, policy, administrative, or other reasons. For example, should the Commission allow Pilot participants to select the invoicing mode, as is required in the E-Rate rules? Or should the service provider be required to affirmatively agree to invoice on behalf of the Pilot participant as required in the ECF rules? The Commission tentatively concludes that it should allow Pilot participants to determine which invoicing mode will be used and the Commission seeks comment on these questions and tentative conclusion. In providing comments, the Commission requests that commenters provide specific cites to relevant provisions of the proposed rules and, if instructive, the E-Rate rules. The Commission also requests that commenters describe any proposed rule modifications in detail. The Commission also seeks comment on whether it should promulgate any additional new rules, specific to the Pilot program. For example, what rules might the Commission adopt to ensure the collection of data that will aid it in evaluating the effectiveness of various cybersecurity approaches via the Pilot and an application filing window for the selection of Pilot participants?

36. The Commission also proposes to create a standardized set of forms for the Pilot as it believes this will both increase administrative efficiency and reduce burdens for the Pilot participants. The Commission's proposals is informed by its significant experience creating and employing standardized forms in a number of USF programs, including E-Rate, ECF, and the Connected Care Pilot Program. The Commission seeks comment on whether its objectives of administrative efficiency and minimizing Pilot participant burdens would best be met if the Commission leverages the forms used in its other USF programs as a starting point for creating forms for the Pilot. Based on its experience with E-Rate and ECF, in particular, the Commission proposes to create new forms for the Pilot participants that mirror the E-Rate FCC Form 470: Description of Services Requested and Certification Form; E-Rate/ECF FCC Form 471: Description of Services Ordered and Certification Form; E-Rate/ECF FCC Form 472: Billed Entity Applicant Reimbursement (BEAR) Form; and the E-Rate/ECF FCC Form 474: Service Provider Invoice (SPI) Form. The new Pilot forms would thus allow participants to: (i) request Pilot-eligible services and equipment and open the competitive bidding process among vendors of these services and equipment; (ii) describe services and equipment the participant ordered after competitive bidding and request applicable discounts on the services and equipment; (iii) request reimbursement from USAC for the discounted costs of eligible services and equipment that have been approved by USAC and for which the applicant has received and paid for in full (*i.e.,* BEAR invoicing); and (iv) request reimbursement from USAC for the discounted costs of eligible services and equipment that have been approved by USAC for which the applicant has received and paid the non-discounted portion to the service provider (*i.e.,* SPI invoicing), respectively. The Commission seeks comment on its proposals to use these forms for the Pilot. The Commission further proposes to create a new Pilot participant application form (Form 484) that will collect the data proposed in paragraph 27 of the *NPRM.* The Commission will still leverage the data available in the E-Rate Productivity Center (EPC) and the ECF Portal to streamline the application process by auto-populating with Pilot applicant data that is already available through the E-Rate and ECF online systems. The Commission seeks comment on this proposal.

37. The Commission also seeks comment on whether any other new forms, processes, and software systems are needed or would be beneficial for the Pilot and on how these should be structured. For example, can the Commission leverage existing E-Rate or ECF forms, processes, and software systems for the disbursement of funding in the Pilot program? Additionally, can the Pilot incorporate the existing E-Rate or ECF processes and software systems for seeking bids, requesting funding, and requesting disbursements/invoicing? What challenges or obstacles to using existing E-Rate or ECF forms, processes, and software systems exist, if any, and how can the Commission address them in the Pilot? Can the Pilot leverage existing E-Rate or ECF invoicing procedures, including the program's associated deadlines for submitting invoices, and what modifications, if any, should be made to these deadlines to better reflect the structure of today's Pilot program as compared to the E-Rate or ECF programs? For example, how should the Commission define and implement a service delivery date for the Pilot program given its limited three-year duration? The Commission seeks detailed comment on these questions.

38. The Commission also seeks comment on steps the Commission can take to protect the program integrity of the Pilot and its limited USF funds. Should the Commission apply the E-Rate and/or ECF program integrity rules to the Pilot and, if so, what modifications, if any, should the Commission make to those rules? The Commission proposes similar program integrity protections, for example, document retention requirements, audits, site visits, and other methods of review in the Pilot program. The Commission seeks comment on these proposals and questions. To further protect program integrity, the Commission also proposes that that it apply its existing USF suspension and debarment rules to the Pilot. The Commission additionally notes that it is considering whether to update its suspension and debarment rules to provide it with broader and more flexible authority to promptly remove bad actors from participating in USF and other programs in a separate, pending proceeding. To the extent that this proceeding is resolved and results in final rules prior to or during the duration of the Pilot program, the Commission proposes to apply the updated rules to the Pilot program. The Commission believes that the steps outlined here would strike an appropriate balance between encouraging active participation in the Pilot by various schools and libraries and protecting the program integrity of the Pilot and its limited funds. The Commission seeks comment on its proposals, including the sufficiency of its legal authority to take its proposed actions, and any additional or alternative steps the Commission should take to safeguard the integrity of the proposed Pilot.

39. These proposals would create a Pilot that allows participants to receive universal service support for

cybersecurity and advanced firewall services, an expansion of the basic firewall services currently allowed in the E-Rate program. In the *December 2022 Public Notice,* the Commission sought comment on whether it had sufficient legal authority for funding advanced firewall services, including pursuant to sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Communications Act, and any other legal issues or concerns it should consider based on the proposals. All commenters who opined agreed that the Commission had sufficient legal authority to fund advanced firewall equipment and services. The record thus indicates that it has sufficient legal authority for today's proposed Pilot. The Commission seeks comment on this view and on the other aspects of legal authority raised below.

40. As a preliminary matter, the record to date supports commenters' views that today's Pilot, which would use USF funding to support the provision of cybersecurity and advanced firewall services to participating schools and libraries, is consistent with Congress's view that the USF represents an evolving level of service. The Commission finds it likely that the results of the Pilot would inform potential future actions that it takes to further its obligation to ''establish periodically'' universal service rules that ''tak[e] into account advances in telecommunications and information technologies and services.'' The utility and necessity of the proposed new services, including cybersecurity and advanced firewall services, reflects ongoing advances in networks and the associated threats that schools' and libraries' broadband networks face today compared to in years past. The Commission seeks comments on these views.

41. The record supports commenters' view that the Commission has legal basis for today's proposed Pilot pursuant to section 254(h)(2)(A) of the Communications Act ''to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries . . .'' based on two distinct views. First, the proposed Pilot could make a number of new services, including, for example, advanced and next-generation firewalls, VPNs, intrusion detection and prevention protection, DNS security, and/or DDoS protection, directly available to participants. Each of these services is itself an ''advanced telecommunications'' and/or ''information service'' as each filters the information permitted to influence and affect participants' telecommunications networks. Second, the proposed new services would remediate many common types of cyber threats that would otherwise dimmish the ability of schools and libraries to use their existing ''advanced telecommunications and information services'' (*e.g.,* the internet), thereby meaningfully ''enhanc[ing]'' their access to the existing services. The Commission seeks comment on these two views. For example, according to the first view, to what extent are the services included in today's pilot proposal themselves ''advanced telecommunications and information services'' within the meaning of section 254(h)(2) of the Communications Act?

42. In addition, the Commission believes that by taking steps to deter harm to a school or library network when it is accessed remotely on end-user devices that are owned or leased by the school or library, it is necessarily also ensuring that the same network would remain functional when accessed from within a traditional school classroom or a library's physical premises. This reflects the fact that students can access school networks before or after school hours to complete homework and other assignments, which often occurs from the home or another location outside of the school premises. The Commission seeks comment on these views, generally on its legal authority for today's proposals and on the physical spaces that qualify for eligible equipment and services, whether based on legal authority considerations or other practical concerns.

43. The Commission further believes that today's Pilot is ''technically feasible and economically reasonable'' as required by section 254(h)(2)(A) of the Communications Act. While the Commission has previously expressed a view, as recently as 2019, that any expansion of cybersecurity services beyond basic firewall services may be cost-prohibitive to the E-Rate program, the Commission seeks comment on whether changed circumstances in the years since that determination (and earlier Commission determinations) warrant today's proposed Pilot. As discussed, the COVID–19 pandemic changed the extent to which K–12 schools and libraries utilize their networks to deliver quality education and learning materials off-premises to students and patrons. Moreover, since 2021, Congress, CISA, GAO, and other federal agencies have effectuated legislation or taken other actions to study how the number and variety of cyberthreats facing K–12 schools and libraries continues to evolve. The Commission believes that today's Pilot reflects these actions by seeking to better understand the nature of current cyber threats faced by K–12 schools and libraries participating in the E-Rate program. Moreover, the Commission has designed the Pilot to limit USF expenditures until the nature of any significant threats are understood based on the Pilot's results in several ways. One, the costs of today's proposals would fall entirely within a time-limited, three-year USF-supported Pilot program, and not would not draw from the budget for the E-Rate program. Two, the costs would be mitigated because the Commission proposes that the participants be required to leverage other free and low-cost K–12 cybersecurity tools and services as part of their cybersecurity action plans. The Commission expects to obtain results from the Pilot that will enable us to make informed long-term decisions on whether any of the equipment and services studied in the program would be cost-effective to include in E-Rate, should it address that matter through subsequent Commission action. The Commission expects these steps will lead to lower USF costs as the burden for K–12 cybersecurity protection will not be borne solely by the E-Rate program or other universal service program funding. The Commission seeks comment on these views.

44. The record also supports commenters' view that the Commission has an additional legal basis for structuring the Pilot program as proposed today pursuant to section 254(c)(3) of the Communications Act. This section grants the Commission authority to ''designate additional services for [USF] support . . . for schools [and] libraries.'' The Commission's proposed Pilot is consistent with this authority, the record indicates, as the Pilot would allow for the designation of additional services that may be used by participating schools and libraries based on USF funding. Moreover, the results of the proposed Pilot program could be used by the Commission to inform potential further actions to facilitate the availability of these services to schools and libraries based on the USF. The Commission seeks comment on these preliminary conclusions.

45. *Other Legal Bases and Considerations.* The Commission seeks comment on the extent to which the cybersecurity and advanced firewall services made available through its proposed Pilot fulfill its mandate to

make ''[q]uality services'' available at just, reasonable, and affordable rates. Does ensuring that E-Rate-funded networks are able to implement strong and up-to-date cybersecurity measures, through the services funded through this Pilot program, further this statutory goal and, if so, how does ensuring the protection and privacy of school and library networks contribute to the provision of ''[q]uality services''?

46. The record to date indicates that the statutory bases identified, taken collectively or individually, provide sufficient authority for the Commission's proposals. The Commission seeks comment on this view. The Commission also seeks comment on any other sources of legal authority, or constraints on such authority, that could bear on or otherwise impact today's proposals. For example, does the Commission have bases for its proposals based on its authority to set discounted rates for certain services provided to schools and libraries pursuant to section 254(h)(1)(B) of the Communications Act? Relatedly, do the services made eligible in today's Pilot fall within the scope of services that telecommunications carriers can be required to provide pursuant to this statute?

47. *Limits and Restrictions.* The Commission further seeks comment on any other limits and restrictions that it should place on recipients of Pilot funds to remain within the statutory authority identified and on any other legal requirements that apply to its implementation of the proposed Pilot program. For example, should recipients of Pilot funds be barred from selling, reselling, or otherwise transferring the services that they receive using funds provided for by the Pilot program? The Commission proposes to apply the Secure and Trusted Communications Networks Act of 2021 to Pilot participants by prohibiting these participants from using any funding obtained through the program to purchase, rent, lease, or otherwise obtain any of the equipment or services on the Commission's Covered List or to maintain any of the equipment or services on the Covered List that was previously purchased, rented, leased, or otherwise obtained. The Commission seeks comment on this proposal and on whether there are any other restrictions or requirements that it should place on recipients of Pilot funds based on the Secure Networks Act and/or other related concerns related to supply chain security. Should Pilot participants be required to refund the USF any unused money, including if they withdraw from the Pilot program?

48. *The Children's Internet Protection Act.* The Commission also seeks comment on the applicability of the Children's Internet Protection Act (CIPA) to the Pilot program and USF-funded cybersecurity and advanced firewall services for schools and libraries. Congress enacted CIPA to protect children from exposure to harmful material while accessing the Internet from a school or library. In enacting CIPA, Congress was particularly concerned with protecting children from exposure to material that was obscene, child pornography, or otherwise inappropriate for minors (*i.e.,* harmful content). CIPA prohibits certain schools and libraries from receiving funding under section 254(h)(1)(B) of the Communications Act for internet access, internet service, or internal connections, unless they comply with specific internet safety requirements. Specifically, CIPA applies to schools and libraries ''having computers with internet access,'' and requires each such school or library to certify that it is enforcing a policy of internet safety that includes the operation of a technology protection measure ''with respect to any of its computers with internet access.'' Schools, but not libraries, must also monitor the online activities of minors and provide education about appropriate online behavior, including warnings against cyberbullying.

49. In the *Emergency Connectivity Fund Report and Order,* 86 FR 29136, May 28, 2021, the Commission found that receipt of ECF- or E-Rate-funds for recurring internet access, internet services, or internal connections (if any) triggers CIPA compliance when used with any school- or library-owned computer, even if used off-premises. On the other hand, the Commission determined that CIPA does not apply to the use of any third-party-owned device, even if that device is connecting to a school's or library's E-Rate- or ECF-funded internet access or internet service. The Commission seeks comment on what impact its interpretation of CIPA in the *Emergency Connectivity Fund Report and Order* has on the Pilot or USF-funded cybersecurity and advanced firewall services.

50. At the time of CIPA's enactment, schools and libraries primarily owned one or two stationary computer terminals that were used solely on-premises. Today, it is commonplace for students, school staff, and library patrons to carry internet-enabled devices onto school or library premises and for schools and libraries to allow third-party-owned devices access to their internet and broadband networks. The Commission invites comment on the scope of its authority to impose CIPA requirements on third-party devices that may connect with school- or library-owned broadband networks as part of this Pilot program or school- and library-owned broadband networks funded with USF support, and whether the imposition of such requirements would be appropriate. Similarly, the Commission invites comment on whether the requirements of CIPA should apply to USF-funded cybersecurity and advanced firewall services (*e.g.,* cybersecurity software) if placed on third-party owned devices that connect to a school- or library-owned broadband network.

51. Finally, the Commission acknowledges there are privacy concerns related to certain CIPA requirements, particularly as it relates to students' and library patrons' data that is often subject to various federal and/or state privacy laws. The Commission seeks comment on these privacy issues and any privacy concerns commenters may have about the application of CIPA to this Pilot program or USF-funded cybersecurity and advanced firewall services for schools and libraries.

52. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of its relevant legal authority.

III. Procedural Matters

53. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Schools and Libraries Cybersecurity Pilot Program, Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA,

to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

54. In the *NPRM,* the Commission proposes a Schools and Libraries Cybersecurity Pilot Program (Pilot) that will assist us in obtaining valuable data to satisfy the requirements to support cybersecurity and advanced firewall services for eligible schools and libraries. The Commission seeks comment on what role the federal Universal Service Fund (USF) could play in helping K–12 schools and libraries protect their E-Rate-funded broadband networks and data, and improve their ability to defend against the cyber threats and attacks that have increasingly been targeting K–12 schools and libraries, and their students' and patrons' data. The Commission expects that the data gathered from the Pilot will help us understand whether and how USF funds could best be leveraged to help address the K–12 cybersecurity challenges, and the data and information collected through this Pilot may also aid in the consideration of broader reforms—whether statutory changes or updates to rules—that could support helping schools and libraries address the significant K–12 cybersecurity concerns that impact them.

55. First, the Commission proposes three goals for the proposed Pilot and that the Pilot be for a three-year term with a budget of $200 million. These include: (1) improving the security and protection of E-Rate-funded broadband networks and user data; (2) measuring the costs associated with cybersecurity and advanced firewall services, and the amount of funding needed to adequately meet the demand for these services if extended to all E-Rate participants; and (3) evaluating how to leverage other federal K–12 cybersecurity tools and resources to help schools and libraries effectively address their cybersecurity-related needs. Second, the Commission proposes that interested K–12 schools and libraries apply to be Pilot participants by submitting an application containing information about how they would use the Pilot funds and providing information about their proposed cybersecurity and advanced firewall projects. The Commission also seeks comment on the application process and the objective criteria for selecting participants among the applications it receives for the Pilot. In addition, the Commission proposes that Pilot participants be permitted to seek funding for services and equipment to be provided over the proposed three-year term. The Commission further proposes that Pilot participants submit a single application with their funding requests that will be relied on for the proposed three-year term of the Pilot and be supported by multi-year contract(s)/agreement(s) for this term. The Commission also seeks comment on the extent to which E-Rate or ECF program processes, rules, and forms could be leveraged and adopted to apply to the proposed Pilot, including, for example, competitive bidding, funding disbursement, invoicing, document retention, and auditing processes, rules, and forms. Finally, the Commission seeks comment on its legal authority to establish the proposed Pilot and the applicability of the Children's Internet Protection Act (CIPA) to the proposed Pilot. The Commissions believe that, through the Pilot, it will be able to fund a range of diverse cybersecurity projects for K–12 schools and libraries throughout the country.

56. The proposed actions are authorized pursuant to sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403.

57. 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 proposed rules, if adopted. 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 that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

58. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, 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 Small Business Administration's (SBA) 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 33.2 million businesses.

59. 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.

60. 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 districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

61. Small entities potentially affected by the rules herein include Schools, Libraries, Telecommunications Resellers, Local Resellers, Wired Telecommunications Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Carriers and Service Providers, Wired Broadband Internet Access Service Providers (Wired ISPs), Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs), Internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, Custom Computer Programming Services, Other Computer Related Services (Except Information Technology Value Added Resellers), Information Technology Value Added Resellers, Software Publishers.

62. In the *NPRM,* the Commission seeks comment on a proposed Pilot with a $200 million budget and three-year duration, that would provide support for cybersecurity and advanced firewall

services for eligible K–12 schools and libraries.

63. To participate in the Pilot, the *NPRM* proposes that interested K–12 schools and libraries apply by submitting an application containing information about how they would use the Pilot funds and providing information about their proposed cybersecurity and advanced firewall projects. All eligible schools and libraries that choose to participate may be required to collect and submit data as part of the application process, at regular intervals during the Pilot program and at the end of the Pilot, to the Universal Service Administrative Company (USAC) and the Commission. The collection of this information, which may go beyond that provided in FCC Forms 470 and 471, is necessary to evaluate the impact of the Pilot, including whether the Pilot achieves its goals. This includes the proposed evaluation process, with annual and final progress reports detailing use of funds and effectiveness of the program. It is expected that the benefits of collecting this information will outweigh any potential costs.

64. Application requirements will necessitate that small entities make an assessment of their cybersecurity posture and services needed to address risks, which may require additional staff and/or staff with related expertise. The proposal to incorporate the existing E-Rate forms, processes, and software systems for seeking bids, requesting funding, and requesting disbursement/invoicing into the proposed Pilot may decrease the burden on small entities that are already familiar with these requirements. This may result in proposals from small entities that lessen the economic impact of the Pilot and increase their participation. In contrast, additional protections proposed in the *NPRM,* such as, document retention requirements, audits, site visits, and other methods of review in the Pilot, may require small entities to incur additional operational costs.

65. The *NPRM* also proposes that participants be permitted to seek funding for services and equipment to be provided over the proposed three-year term and be supported by multi-year contract(s)/agreement(s) for this term. The *NPRM* also considers whether to adopt prerequisites for Pilot participants, some of which may require small entities to acquire additional software, equipment, or staffing. For example, the *NPRM* seeks comment on whether Pilot participants should be limited to those schools and libraries that have already implemented or are in the process of implementing CISA's K–12 cybersecurity or other cybersecurity recommendations.

66. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the proposals that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the *NPRM* seeks comment will require small entities to hire professionals to comply. However, consistent with its objectives to leverage and adopt existing E-Rate processes and procedures, the Commission does not anticipate that small entities will be required to hire professionals to comply with any proposals the Commission adopt. The Commission expects the information it receives in comments, including, where requested, cost information, will help it and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *NPRM.*

67. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

68. The *NPRM* considers a number of alternatives which the Commission expects may have a beneficial impact on small entities. For example, allowing additional ramp-up time so that participants may prepare for the Pilot could benefit small entities that would need more time to implement cybersecurity measures. The funding proposals, including whether to distribute evenly over the three-year period and establishing funding caps, may impact the resources of small entities that would require flexibility to implement the Pilot program. Small entities may benefit from the *NPRM's* proposal to certify they do not have the resources to implement CISA's K–12 cybersecurity recommendations, as opposed to demonstrating that they have implemented those or similar actions. The *NPRM* proposes an application process that would encourage a wide variety of eligible schools and libraries to participate, including small entities. The Commission seeks to strike a balance between requiring applicants to submit enough information that would allow us to select high-quality, cost-effective projects that would best further the goals of the Pilot program, but also minimize the administrative burdens on small entities that seek to apply and participate in the Pilot.

69. The Commission does not expect the requirements for the proposed Pilot to have a significant economic impact on eligible K–12 schools and libraries for several reasons. The Commission expects to leverage and adopt existing E-Rate processes and procedures and also note that schools and libraries have the choice of whether to participate in the Pilot. The Bureau will also consider whether the proposed projects will promote entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, consistent with section 257 of the Communications Act, including those that may be socially and economically disadvantaged businesses.

70. The Commission expects the information received in the comments to allow it to more fully consider ways to minimize the economic impact on small entities and explore additional alternatives to improve and simplify opportunities for small entities to participate in the Pilot.

71. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules. None.

72. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

73. *Ex Parte Rules—Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules, the *NPRM* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum

summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

74. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

IV. Ordering Clauses

75. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

76. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Cybersecurity, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 54 of title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Add subpart T to part 54 to read as follows:

Subpart T—Schools and Libraries Cybersecurity Pilot Program

Secs.

§ 54.2000 Terms and Definitions.

Administrator. The term ''Administrator'' means the Universal Service Administrative Company.

Billed Entity. A ''billed entity'' is the entity that remits payment to service providers for services rendered to eligible schools, libraries, or consortia of eligible schools and libraries.

Commission. The term ''Commission'' means the Federal Communications Commission.

Connected device. The term ''connected device'' means a laptop or desktop computer, or a tablet.

Consortium. A ''consortium'' is any local, Tribal, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Schools and Libraries Cybersecurity Pilot Program support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

Cyber incident. An occurrence that actually or potentially results in adverse consequences to (adverse effects on) (poses a threat to) an information system or the information that the system processes, stores, or transmits and that may require a response action to mitigate the consequences.

Cyber threat. A circumstance or event that has or indicates the potential to exploit vulnerabilities and to adversely impact (create adverse consequences for) organizational operations, organizational assets (including information and information systems), individuals, other organizations, or society.

Cyberattack. An attempt to gain unauthorized access to system services, resources, or information, or an attempt to compromise system integrity.

Doxing. The act of compiling or publishing personal information about an individual on the internet, typically with malicious intent.

Educational Purposes. For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as ''educational purposes.''

Elementary School. An ''elementary school'' means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

Library. A ''library includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

Library consortium. A ''library consortium'' is any local, statewide, Tribal, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, and public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

National School Lunch Program. The ''National School Lunch Program'' is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

Pre-discount price. The ''pre-discount price'' means, in this subpart, the price the service provider agrees to accept as total payment for its eligible services and equipment. This amount is the sum of the amount the service provider expects to receive from the eligible school, library, or consortium, and the amount it expects to receive as reimbursement from the Schools and Libraries Cybersecurity Pilot Program for the discounts provided under this subpart.

Secondary school. A ''secondary school'' means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

Tribal. An entity is ''Tribal'' if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 54.2001 Budget and Duration.

(a) *Budget.* The Schools and Libraries Cybersecurity Pilot Program shall have a cap of $200 million.

(b) *Duration.* The Schools and Libraries Cybersecurity Pilot Program shall make funding available to applicants selected to participate (in accordance with § 54.2004 of this subpart) for three years, to begin when selected applicants are first eligible to receive eligible services and equipment.

§ 54.2002 Eligible Recipients.

(a) *Schools.*

(1) Only schools meeting the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.2000, and not excluded under paragraphs (a)(2) or (3) of this section shall be eligible for discounts on supported services under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for discounts under this subpart.

(3) Schools with endowments exceeding $50,000,000 shall not be eligible for discounts under this subpart.

(b) *Libraries.*

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. 9122) and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

(2) Except as provided in paragraph (b)(4) of this section, a library's eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for discounts under this subpart.

(4) A Tribal college or university library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

(c) *Consortia.*

(1) For consortia, discounts under this subpart shall apply only to the portion of eligible services and equipment used by eligible schools and libraries.

(2) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries on their own or as part of a consortium. Such records shall be available for public inspection.

§ 54.2003 Eligible Services and Equipment.

(a) *Supported services and equipment.* All supported services and equipment are listed in the Schools and Libraries Cybersecurity Pilot Program Eligible Services List, as updated in accordance with paragraph (b) of this section. The services and equipment in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

(b) *Schools and Libraries Cybersecurity Pilot Program Eligible Services List Process.* The Wireline Competition Bureau will release a list of services and equipment eligible for support prior to the opening of the Pilot Participant Selection Application Window, in accordance with § 54.2004. The Wireline Competition Bureau may, as needed, amend the list of services and equipment eligible for support prior to the termination of the Schools and Libraries Cybersecurity Pilot Program, in accordance with § 54.2001.

(c) *Prohibition on resale.* Eligible supported services and equipment shall not be sold, resold, or transferred in consideration of money or any other thing of value, until the conclusion of the Schools and Libraries Cybersecurity Pilot Program, as provided in § 54.2001.

§ 54.2004 Application for Selection in the Pilot Program.

(a) The Wireline Competition Bureau will announce the opening of the Pilot Participant Selection Application Window. Eligible recipients shall have no less than sixty (60) days to submit a Pilot Participant Selection Application, following the opening of the window.

(b) The Wireline Competition Bureau shall announce those eligible applicants that have been selected to participate in the Schools and Libraries Cybersecurity Pilot Program no more than ninety (90) days following the close of the Pilot Participant Selection Application Window.

(c) *Filing the FCC Form 484.*

(1) Schools, libraries, or consortia of eligible schools and libraries to participate in the Schools and Libraries Cybersecurity Pilot Program shall

submit a completed FCC Form 484 to the Administrator. The FCC Form 484 shall include, at a minimum, the following information:

(i) Name, address, and contact information for the interested school or library. For school district or library system applicants, the name and address of all schools/libraries within the district/system, and contact information for the district or library system.

(ii) Description of the Pilot participant's current cybersecurity posture, including how the school or library is currently managing and addressing its current cybersecurity risks through prevention and mitigation tactics, and a description of its proposed advanced cybersecurity action plan should it be selected to participate in the Pilot program and receive funding.

(iii) Description of any incident of unauthorized operational access to the Pilot participant's systems or equipment within a year of the date of its application; the date range of the incident; a description of the unauthorized access; the impact to the K–12 school or library; a description of the vulnerabilities exploited and the techniques used to access the system; and identifying information for each actor responsible for the incident, if known.

(iv) Description of the Pilot participant's proposed use of the funding to protect its broadband network and data and improve its ability to address K–12 cyber concerns. This description should include the types of services and equipment the participant plans to purchase and the plan for implementing and using the Pilot-funded equipment and services to protect its broadband network and data, and improve its ability to manage and address its cybersecurity risks.

(v) Description of how the Pilot participant plans to collect and track its progress in implementing the Pilot-funded equipment and services into its cybersecurity action plan, and for providing the required Pilot data, including the impact the funding had on its initial cybersecurity action plan that pre-dated implementation of Pilot efforts.

(2) The FCC Form 484 shall be signed by a person authorized to submit the application to participate in the Pilot Program on behalf of the eligible school, library, or consortium, including such entities.

(i) A person authorized to submit the application on behalf of the entities listed on an FCC Form 484 shall certify under oath that:

(A) ''I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this form has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(B) ''In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.''

(C) ''By signing this application, I certify that the information contained in this form is true, complete, and accurate, and the projected expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(D) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

(E) I certify and acknowledge, under penalty of perjury, that if selected, the schools, libraries, and consortia in the application will comply with all applicable Schools and Libraries Cybersecurity Pilot Program rules, requirements, and procedures, including the competitive bidding rules and the requirement to pay the required share of the costs for the supported items from eligible sources.

(F) I certify under penalty of perjury, to the best of my knowledge, that the schools, libraries, and consortia listed in the application are not already receiving or expecting to receive other funding (from any source, federal, state, Tribal, local, private, or other) that will pay for the same equipment and/or services for which I am seeking funding under the Schools and Libraries Cybersecurity Pilot Program.

(G) I certify under penalty of perjury, to the best of my knowledge, that all requested equipment and services funded by the Schools and Libraries Cybersecurity Pilot Program will be used for their intended purposes.

§ 54.2005 Competitive Bidding Requirements.

(a) All applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

(b) *Competitive bid requirements.* All applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall seek competitive bids, pursuant to the requirements established in this subpart, for all services and equipment eligible for support under § 54.2003. These competitive bid requirements apply in addition to any applicable state, Tribal, and local competitive bid requirements and are not intended to preempt such state, Tribal, or local requirements.

(c) *Posting of FCC Form 470.*

(1) An applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 shall include, at a minimum, the following information:

(i) A list of specified services and/or equipment for which the school, library, or consortium requests bids;

(ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant;

(2) The FCC Form 470 shall be signed by a person authorized to request bids for eligible services and equipment for the eligible school, library, or consortium, including such entities, and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this application on behalf of the above-

named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this form has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this application, I certify that the information contained in this form is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The schools meet the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.2000, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

(v) Libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or university libraries, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(vi) The services and/or equipment that the school, library, or consortium purchases at discounts will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(c).

(vii) The school(s) and/or library(ies) listed on this FCC Form 470 will not accept anything of value, other than services and equipment sought by means of this form, from the service provider, or any representatives or agent thereof or any consultant in connection with this request for services.

(viii) All bids submitted for eligible equipment and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with paragraph (e) of this section.

(ix) The school, library, or consortium acknowledges that support under this Pilot Program is conditional upon the school(s) and/or library(ies) securing access, separately or through this program, to all of the resources necessary to effectively use the requested equipment and services. The school, library, or consortium recognizes that some of the aforementioned resources are not eligible for support and certifies that it has considered what financial resources should be available to cover these costs.

(x) I will retain required documents for a period of at least 10 years (or whatever retention period is required by the rules in effect at the time of this certification) after the later of the last day of the applicable funding year or the service delivery deadline for the associated funding request. I also certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the form for, receipt of, and delivery of equipment and services receiving Schools and Libraries Cybersecurity Pilot Program discounts. I acknowledge that I may be audited pursuant to participation in the Pilot program.

(xi) I certify that the equipment and services that the applicant purchases at discounts will be used primarily for educational purposes and will not be sold, resold or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 CFR 54.2003(c). Additionally, I certify that the entity or entities listed on this form will not accept anything of value or a promise of anything of value, other than services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

(xii) I acknowledge that support under this Pilot program is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources necessary to effectively use the requested equipment and services. I recognize that some of the aforementioned resources are not eligible for support. I certify that I have considered what financial resources should be available to cover these costs.

(xiii) I certify that I have reviewed all applicable Commission, state, Tribal, and local procurement/competitive bidding requirements and that the applicant will comply with all applicable requirements.

(3) The Administrator shall post each FCC Form 470 that it receives from an applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program on its website designated for this purpose.

(4) After posting on the Administrator's website an FCC Form 470, the Administrator shall send confirmation of the posting to the applicant requesting services and/or equipment. The applicant shall then wait at least four weeks from the date on which its description of services and/or equipment is posted on the Administrator's website before making commitments with the selected providers of services and/or equipment. The confirmation from the Administrator shall include the date after which the applicant may sign a contract with its chosen provider(s).

(d) *Gift Restrictions.*

(1) Subject to paragraphs (d)(3) and (4) of this section, an applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Schools and Libraries Cybersecurity Pilot Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a year by the individuals specified in paragraph (d)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The term ''applicant selected to participate in the Schools and Libraries

Cybersecurity Pilot Program'' includes all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Cybersecurity Pilot Program, including individuals who prepare, approve, sign, or submit applications, or other forms related to the Schools and Libraries Cybersecurity Pilot Program, or who prepare bids, communicate, or work with Schools and Libraries Cybersecurity Pilot Program service providers, Schools and Libraries Cybersecurity Pilot Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Schools and Libraries Cybersecurity Pilot Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship,

(ii) Are not rooted in any service provider business activities or any other business relationship with any such applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program, and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program in the support of its programs as long as such contributions are not directly or indirectly related to Schools and Libraries Cybersecurity Pilot Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other Schools and Libraries Cybersecurity Pilot Program rules.

(e) *Selecting a provider of eligible services.* In selecting a provider of eligible services and equipment, applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.

§ 54.2006 Requests for Funding.

(a) *Filing of the FCC Form 471.*

(1) An applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall, upon entering into a signed contract or other legally binding agreement for eligible services and equipment, submit a completed FCC Form 471 to the Administrator.

(2) The FCC Form 471 shall be signed by the person authorized to order eligible services or equipment for the applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The school meets the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.2000, does not operate as for-profit businesses, and does not have endowments exceeding $50 million.

(v) The library or library consortia is eligible for assistance from a State library administrative agency under the Library Services and Technology Act, does not operate as for-profit businesses and, except for the limited case of Tribal college and university libraries, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(vi) The school, library, or consortium listed on the FCC Form 471 application will pay the non-discount portion of the costs of the eligible services and/or equipment to the Service Provider(s).

(vii) The school, library, or consortium listed on the FCC Form 471 application has conducted a fair and open competitive bidding process and has complied with all applicable state, Tribal, or local laws regarding procurement of the equipment and services for which support is being sought.

(viii) An FCC Form 470 was posted and that any related request for proposals (RFP) was made available for at least 28 days before considering all bids received and selecting a service provider. The school, library, or consortium listed on the FCC Form 471 application carefully considered all bids submitted and selected the most-cost-effective bid in accordance with § 54.2005(e), with price being the primary factor considered.

(ix) The school, library, or consortium listed on the FCC Form 471 application is only seeking support for eligible services and/or equipment.

(x) The school, library, or consortia is not seeking Schools and Libraries Cybersecurity Pilot Program support or reimbursement for eligible services and/or equipment that have been purchased and reimbursed in full with other federal funding, targeted state funding, other external sources of targeted funding or targeted gifts, or are eligible

for discounts from the schools and libraries universal service support mechanism or another universal service support mechanism.

(xi) The services and equipment the school, library, or consortium purchases using Schools and Libraries Cybersecurity Pilot Program support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(c).

(xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.2010(a).

(xiii) The school, library, or consortium has complied with all program rules and acknowledges that failure to do so may result in denial of funding and/or recovery of funding.

(xiv) The school, library, or consortium acknowledges that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

(xv) No kickbacks, as defined in 41 U.S.C. 8701, were paid to or received by the applicant from anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.

(xvi) The school, library, or consortium acknowledges that Commission rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the universal service support mechanisms are subject to suspension and debarment from the program. The school, library, or consortium will institute reasonable measures to be informed, and will notify the Administrator should it be informed or become aware that any of the entities listed on this application, or any person associated in any way with this entity and/or the entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the universal service support mechanisms.

(b) *Service or Equipment Substitution.*

(1) A request by a Schools and Libraries Cybersecurity Pilot Program applicant to substitute service or equipment for one identified in its FCC Form 471 must be in writing and certified under perjury by an authorized person.

(2) The Administrator shall approve such written request where:

(i) The service or equipment has the same functionality;

(ii) The substitution does not violate any contract provisions or state, Tribal, or local procurement laws; and

(iii) The Schools and Libraries Cybersecurity Pilot Program participant certifies that the requested change is within the scope of the controlling FCC Form 470.

(3) In the event that a service or equipment substitution results in a change in the pre-discount price for the supported service or equipment, support shall be based on the lower of either the pre-discount price of the service or equipment for which support was originally requested or the pre-discount price of the new, substituted service or equipment after the Administrator has approved a written request for the substitution.

(c) *Mixed eligibility services and equipment.* If the service or equipment includes both ineligible and eligible components, the applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program must remove the cost of the ineligible components of the service or equipment from the request for funding submitted to the Administrator.

§ 54.2007 Discounts.

(a) *Discount mechanism.* Discounts for applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall be set as a percentage discount from the pre-discount price.

(b) *Discount percentages.* The discounts available to applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers. The discounts available shall be determined by indicators of poverty and urban/rurality designation.

(1) For schools and school districts, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program or a federally-approved alternative mechanism. School districts shall divide the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district to arrive at a percentage of students eligible. This percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district. Independent charter schools, private schools, and other eligible educational facilities should calculate a single discount percentage rate based on the total number of students under the control of the central administrative agency.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program or a federally-approved alternative mechanism in the public school district in which they are located and should use that school district's level of poverty to determine their discount rate when applying as a library system or as an individual library outlet within that system. When a library system has branches or outlets in more than one public school district, that library system and all library outlets within that system should use the address of the central outlet or main administrative office to determine which school district the library system is in, and should use that school district's level of poverty to determine its discount rate when applying as a library system or as one or more library outlets. If the library is not in a school district, then its level of poverty shall be based on an average of the percentage of students eligible for the National School Lunch Program in each of the school districts that children living in the library's location attend.

(3) The Administrator shall classify schools and libraries as ''urban'' or ''rural'' according to the following designations. The Administrator shall designate a school or library as ''urban'' if the school or library is located in an urbanized area or urban cluster area with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the Bureau of the Census. The Administrator shall designate all other schools and libraries as ''rural.''

(4) Applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program shall calculate discounts on supported services described in § 54.2003 that are shared by two or more of their schools, libraries, or consortia members by calculating an average discount based on the applicable district-wide discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or

library shall receive a proportionate share of the shared services for which support is sought. For schools, the discount shall be a simple average of the applicable district-wide percentage for all schools sharing a portion of the shared services. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

(c) *Discount matrix.* Except as provided in paragraph (d) of this section, the Administrator shall use the following matrix to set the discount rate to be applied to eligible services purchased by applicants selected to participate in the Schools and Libraries Cybersecurity Pilot Program based on the applicant's level of poverty and location in an ''urban'' or ''rural'' area.

% of students eligible for national school lunch program	Discount level	
	Urban discount	Rural discount
<1	20	25
1–19	40	50
20–34	50	60
35–49	60	70
50–74	80	80
75–100	85	85

(d) Tribal Library Discount Level. For the costs of eligible cybersecurity equipment and services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

(e) *Payment for the non-discount portion of supported services and equipment.* An applicant selected to participate in the Schools and Libraries Cybersecurity Pilot Program must pay the non-discount portion of costs for the services or equipment purchased with universal service discounts, and may not receive rebates for services or equipment purchased with universal service discounts. For the purpose of this rule, the provision, by the provider of a supported service or equipment, of free services or equipment unrelated to the supported service or equipment constitutes a rebate of the non-discount portion of the costs for the supported services and equipment.

§ 54.2008 Requests for reimbursement.

(a) *Submission of request for reimbursement (FCC Form 472 or FCC Form 474).* Reimbursement for the costs associated with eligible services and equipment shall be provided directly to an applicant selected to participate, or service provider, seeking reimbursement from the Schools and Libraries Cybersecurity Pilot Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.

(1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named school, library or consortium and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate, and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library, or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the school, library or consortium is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible services and/or equipment that were purchased in accordance with the Schools and Libraries Cybersecurity Pilot Program rules and requirements in this subpart and received by the school, library, or consortium. The equipment and/or services being requested for reimbursement were determined to be eligible and approved by the Administrator.

(v) The non-discounted share of costs amount(s) were billed by the Service Provider and paid for by the Billed Entity Applicant on behalf of the eligible schools, libraries, and consortia of those entities.

(vi) The school, library, or consortium is not seeking Schools and Libraries Cybersecurity Pilot Program reimbursement for eligible services and/or equipment that have been purchased and reimbursed in full with other federal, targeted state funding, other external sources of targeted funding, or targeted gifts or are eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

(vii) The school, library, or consortium acknowledges that it must submit invoices detailing the items purchased along with the submission of its request for reimbursement as required by § 54.2008(b).

(viii) The equipment and/or services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(c).

(ix) The school, library, or consortium acknowledges that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten

years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Schools and Libraries Cybersecurity Pilot Program reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

(x) No kickbacks, as defined in 41 U.S.C. 8701, were paid to or received by the applicant from anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.

(xi) The school, library, or consortium acknowledges that Commission rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the universal service support mechanisms are subject to suspension and debarment from the program. The school, library, or consortium will institute reasonable measures to be informed, and will notify the Administrator should it be informed or become aware that any of the entities listed on this application, or any person associated in any way with this entity and/or the entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the universal service support mechanisms.

(xii) No universal service support has been or will be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company designated by the Federal Communications Commission as posing a national security threat to the integrity of communications networks or the communications supply chain since the effective date of the designations.

(xiii) No federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named Service Provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this Service Provider can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the Service Provider is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible services and/or equipment that were purchased or ordered in accordance with the Schools and Libraries Cybersecurity Pilot Program rules and requirements in this subpart and received by the school, library, or consortium.

(v) The Service Provider is not seeking Schools and Libraries Cybersecurity Pilot Program reimbursement for eligible equipment and/or services for which it has already been paid.

(vi) The Service Provider certifies that the school's, library's, or consortium's non-discount portion of costs for the eligible equipment and services has not been waived, paid, or promised to be paid by this Service Provider. The Service Provider acknowledges that the provision of a supported service or free services or equipment unrelated to the supported equipment or services constitutes a rebate of the non-discount portion of the costs as stated in § 54.2007(e).

(vii) The Service Provider acknowledges that it must submit invoices detailing the items purchased along with the submission of its request for reimbursement as required by § 54.2008(b).

(viii) The Service Provider certifies that it is compliant with the Commission's rules and orders regarding gifts and this Service Provider has not directly or indirectly offered or provided any gifts, gratuities, favors, entertainment, loans, or any other thing of value to any eligible school, library, or consortium, except as provided for at § 54.2005(d).

(ix) The service provider acknowledges that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Schools and Libraries Cybersecurity Pilot Program reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

(x) No kickbacks, as defined in 41 U.S.C. 8701, were paid by the Service Provider to anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.

(xi) The Service Provider is not debarred or suspended from any Federal programs, including the universal service support mechanisms.

(xii) No universal service support has been or will be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company designated by the Federal Communications Commission as posing a national security threat to the integrity

of communications networks or the communications supply chain since the effective date of the designations.

(xiii) No federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(b) *Required documentation.* Along with the submission of a completed FCC Form 472 or a completed FCC Form 474, an applicant selected to participate, or service provider, seeking reimbursement from the Schools and Libraries Cybersecurity Pilot Program must submit invoices detailing the items purchased to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted.

(c) *Reimbursement and invoice processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.

(d) *Invoice filing deadline.* Invoices must be submitted to the Administrator within ninety (90) days after the last date to receive service, in accordance with § 54.2001.

(e) *Invoice deadline extensions.* In advance of the deadline calculated pursuant to paragraph (c) of this section, billed entities or service providers may request a one-time extension of the invoice filing deadline. The Administrator shall grant a ninety (90) day extension of the invoice filing deadline, if the request is timely filed.

§ 54.2009 Audits, Inspections, and Investigations.

(a) *Audits.* Schools and Libraries Cybersecurity Pilot Program participants shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Schools and Libraries Cybersecurity Pilot Program, including those requirements pertaining to what services and equipment are purchased, what services and equipment are delivered, and how services and equipment are being used.

(b) *Inspections and investigations.* Schools and Libraries Cybersecurity Pilot Program participants shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Office of Inspector General, or any local, state or federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements in this subpart of the Schools and Libraries Cybersecurity Pilot Program.

§ 54.2010 Records Retention and Production.

(a) *Recordkeeping requirements.* All Schools and Libraries Cybersecurity Pilot Program participants shall retain all documents related to their participation in the program sufficient to demonstrate compliance with all program rules for at least 10 years from the last date of service or delivery of equipment. All Schools and Libraries Cybersecurity Pilot Program applicants shall maintain asset and inventory records of services and equipment purchased sufficient to verify the actual location of such services and equipment for a period of 10 years after purchase.

(b) *Production of records.* All Schools and Libraries Cybersecurity Pilot Program participants shall present such records upon request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Office of the Inspector General, or any local, state or federal agency with jurisdiction over the entity.

§ 54.2011 Administrator of the Schools and Libraries Cybersecurity Pilot Program.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the Schools and Libraries Cybersecurity Pilot Program and shall be responsible for administering the Schools and Libraries Cybersecurity Pilot Program.

(b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration related duties.

(c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules in this subpart are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Schools and Libraries Cybersecurity Pilot Program.

(e) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools and libraries.

(f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Schools and Libraries Cybersecurity Pilot Program.

(g) The administrator shall provide performance measurements pertaining to the Schools and Libraries Cybersecurity Pilot Program as requested by the Commission by order or otherwise.

(h) The Administrator shall have the authority to audit all entities reporting data to the Administrator regarding the Schools and Libraries Cybersecurity Pilot Program. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator, conducts audits of the participants of the Schools and Libraries Cybersecurity Pilot Program, such audits shall be conducted in accordance with generally accepted government auditing standards.

(i) The Administrator shall establish procedures to verify support amounts provided by the Schools and Libraries Cybersecurity Pilot Program and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator or the Commission.

(j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Schools and Libraries Cybersecurity Pilot Program ends. If its participation in administering the Schools and Libraries Cybersecurity Pilot Program ends, the Administrator shall be subject to close-out audits at the end of its term.

§ 54.2012 Appeal and waiver requests.

(a) *Parties permitted to seek review of Administrator decision.*

(1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.

(2) Any party aggrieved by an action taken by the Administrator under paragraph (a)(1) of this section may seek review from the Federal Communications Commission as set forth in paragraph (b) of this section.

(3) Parties seeking waivers of the Commission's rules in this subpart shall seek relief directly from the Commission and need not first file an action for

review from the Administrator under paragraph (a)(1) of this section.

(b) *Filing deadlines.*

(1) An affected party requesting review of a decision by the Administrator pursuant to paragraph (a)(1) of this section shall file such a request within thirty (30) days from the date the Administrator issues a decision.

(2) An affected party requesting review by the Commission pursuant to paragraph (a)(2) of this section of a decision by the Administrator under paragraph (a)(1) of this section shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under paragraph (a)(3) of this section shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under paragraph (a)(1) of this section, within thirty days from the date of the Administrator's decision resolving such an appeal.

(3) Parties shall adhere to the time periods for filing oppositions and replies set forth in § 1.45 of this chapter.

(c) *General filing requirements.*

(1) Except as otherwise provided in this section, a request for review of an Administrator decision by the Commission shall be filed with the Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned ''In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator'' and shall reference the applicable docket numbers.

(2) A request for review pursuant to paragraphs (a)(1) through (3) of this section shall contain:

(i) A statement setting forth the party's interest in the matter presented for review;

(ii) A full statement of relevant, material facts with supporting affidavits and documentation;

(iii) The question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision; and;

(iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(3) A copy of a request for review that is submitted to the Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(4) If a request for review filed pursuant to paragraphs (a)(1) through (3) of this section alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

(d) *Review by the Wireline Competition Bureau or the Commission.*

(1) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission.

(2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.

(e) *Standard of review.*

(1) The Wireline Competition Bureau shall conduct de novo review of requests for review of decisions issued by the Administrator.

(2) The Commission shall conduct de novo review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct de novo review of decisions issued by the Wireline Competition Bureau under delegated authority.

(f) Schools and Libraries Cybersecurity Pilot Program disbursements during pendency of a request for review and Administrator decision. When a party has sought review of an Administrator decision under paragraphs (a)(1) through (3) of this section, the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.

[FR Doc. 2023–27811 Filed 12–28–23; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 88, No. 249
Friday, December 29, 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 COMMERCE

Foreign-Trade Zones Board

[B–65–2023]

Foreign-Trade Zone (FTZ) 125, Notification of Proposed Production Activity; Grand Design RV, LLC; (Motor Homes); Middlebury, Indiana

Grand Design RV, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Middlebury, Indiana, within FTZ 125. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 19, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished product is diesel motorhomes (duty rate is 2.5%).

The proposed foreign-status materials and components are cab chassis and van chassis (duty rate ranges from 4.0% to 25.0%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 7, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: December 22, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–28779 Filed 12–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) did not make sales of subject merchandise at less than normal value (NV), and that certain companies had no shipments of subject merchandise during the period of review (POR) December 1, 2021, through November 30, 2022. In addition, we are rescinding the review with respect to one company. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone: (202) 482–4007.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China).[1] The review covers 48 companies, including mandatory respondent, Senmao.

For events that occurred since the *Initiation Notice* and the analysis behind our preliminary results herein, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Scope of the Order[3]

The product covered by the *Order* is MLWF from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

On May 1, 2023, Kahrs International Inc. (Kahrs) timely withdrew its request for review of the Fusong Jinlong Group (Jinlong).[4] No other parties requested a review of this company.[5] Accordingly, Commerce is rescinding the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China,* 77 FR 5484 (February 3, 2012) (collectively, *Order*).

[4] *See* Kahrs' Letter, ''Notice of Withdrawal of Request for 2021–2022 Administrative Review,'' dated May 1, 2023.

[5] Jinlong consists of the following companies: Fusong Jinlong Wooden Group Co., Ltd.; Fusong Qianqiu Wooden Product Co., Ltd.; Dalian Qianqiu Wooden Product Co., Ltd.; and Fusong Jinqiu Wooden Product Co., Ltd.

administrative review with respect to Jinlong.[6]

Preliminary Determination of No Shipments

Based on an analysis of information from U.S. Customs and Border Protection (CBP), no shipment certifications, and other record information, we preliminarily determine that 23 companies had no shipments of subject merchandise during the POR. For a listing of these companies, *see* Appendix II of this notice. Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review with respect to these companies but, rather, intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[7]

Separate Rates

We preliminarily determine that, in addition to Senmao, two companies not individually-examined are eligible for separate rates in this administrative review, Dalian Deerfu Wooden Product Co., Ltd. (Deerfu) and Dalian Jaenmaken Wood Industry Co., Ltd. (Jaenmaken).[8] The Tariff Act of 1930, as amended (the Act), and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. For the preliminary results of this review, Commerce has determined the estimated dumping margin for Senmao to be zero.[9] For the reasons explained in the Preliminary Decision Memorandum, we are assigning this rate to Deerfu and Jaenmaken, *i.e.,* the non-examined respondents which qualify for a separate rate in this review.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[10] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate (*i.e.* 85.13 percent) is not subject to change. *See* the Preliminary Decision Memorandum for further discussion.

Aside from the companies for which we preliminarily find no shipments and the company for which the review is being rescinded, Commerce considers all other companies for which a review was requested and did not demonstrate separate rate eligibility to be part of the China-wide entity.[11] For the preliminary results of this review, we consider 21 companies to be part of the China-wide entity. For a listing of these companies, *see* Appendix II of this notice.

Methodology

We are conducting this administrative review in accordance with sections 751(a)(1)(B) of the Act and 19 CFR 351.213. We calculated export prices for Senmao in accordance with section 772(a) of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the POR December 1, 2021, through November 30, 2022:

Exporters	Weighted-average dumping margin (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	00.00
Dalian Deerfu Wooden Product Co., Ltd	00.00
Dalian Jaenmaken Wood Industry Co., Ltd	00.00

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to interested parties with an Administrative Protective Order within five days after the date of publication of these preliminary results.[12]

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[13] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[15] As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this administrative review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[16] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[17]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a

[6] *See* 19 CFR 351.213(d)(1).

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011); *see also* the ''Assessment Rates'' section, below.

[8] *See* Preliminary Decision Memorandum at the ''Separate Rate Determinations'' section for more details.

[9] *See* Memorandum, ''Preliminary Results Margin Calculation for Jiangsu Senmao Bamboo and Wood Industry Co., *Assessment* Ltd.,'' dated concurrently with this notice.

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[11] *See Initiation Notice* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the China-wide entity are listed in Appendix II.

[12] *See* 19 CFR 351.224(b).

[13] *See also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[15] *See* 19 351.309(c)(2) and (d)(2).

[16] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[17] *See APO and Service Final Rule.*

hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically-filed hearing request must be received successfully in its entirety by Commerce's electronic system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[18]

Final Results

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b).

If Senmao's *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[19] Commerce will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.*

For Deerfu and Jaenmaken, *i.e.,* the respondents that were not selected for individual examination in this administrative review that qualified for a separate rate, the assessment rate will be the separate rate established in the final results of this administrative review. If, in the final results, the respondents' weighted-average dumping margins continue to be zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[20]

For entries that were not reported in the U.S. sales databases submitted by Senmao during this review, and for the 21 companies that do not qualify for a separate rate, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 85.13 percent).[21] In addition, if we continue to find no shipments of subject merchandise for the 23 companies for which we preliminarily find no such shipments during the POR,[22] any suspended entries of subject merchandise associated with those companies will be liquidated at the China-wide rate.[23]

For Jinlong, *i.e.,* the company for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

We intend to issue appropriate assessment instructions with respect to Jinlong, *i.e.,* the company for which this administrative review is rescinded, to CBP 35 days after the publication of the preliminary results in the **Federal Register**. For all other companies that continue to be subject to review, we intend to issue appropriate assessment instructions to CBP 35 days after the publication of the final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies listed above that have a separate rate, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 85.13 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping 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 increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 19, 2023

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the *Order*
V. Selection of Respondents

[18] *See* 19 CFR 351.310(c)

[19] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[20] *See* 19 CFR 351.106(c)(2).

[21] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 38002 (August 5, 2019).

[22] *See* Appendix II for a list of these companies.

[23] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

Appendix II

No Shipments

Anhui Longhua Bamboo Product Co., Ltd.
Benxi Flooring Factory (General Partnership)
Dalian Shengyu Science and Technology Development Co., Ltd.
Dongtai Fuan Universal Dynamics, LLC
Dun Hua Sen Tai Wood Co., Ltd.
Dunhua City Dexin Wood Industry Co., Ltd.
Dunhua Shengda Wood Industry Co., Ltd.
HaiLin LinJing Wooden Products Co., Ltd.
Hunchun Xingjia Wooden Flooring Inc.
Huzhou Sunergy World Trade Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiangsu Mingle Flooring Co., Ltd.
Jiangsu Simba Flooring Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Kingman Wood Industry Co., Ltd.
Linyi Youyou Wood Co., Ltd.
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.
Power Dekor Group Co., Ltd.
Sino-Maple (Jiangsu) Co., Ltd.
Suzhou Dongda Wood Co., Ltd.
Zhejiang Dadongwu Greenhome Wood Co., Ltd.
Zhejiang Longsen Lumbering Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.

China-Wide Entity

Benxi Wood Company
Dalian Jiahong Wood Industry Co., Ltd.
Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd.
Dunhua City Hongyuan Wood Industry Co., Ltd.
Huzhou Chenghang Wood Co., Ltd.
Huzhou Fulinmen Imp. & Exp. Co., Ltd.
Jiangsu Guyu International Trading Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan HuiJiaLe Decoration Material Co., Ltd.
Jiaxing Hengtong Wood Co., Ltd.
Lauzon Distinctive Hardwood Flooring, Inc.
Linyi Anying Wood Co., Ltd.
Metropolitan Hardwood Floors, Inc.
Muchsee Wood (Chuzhou) Co., Ltd.
Tongxiang Jisheng Import and Export Co., Ltd.
Yekalon Industry Inc.
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Fuerjia Wooden Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

Rescissions

Dalian Qianqiu Wooden Product Co., Ltd., Fusong Jinlong Wooden Group Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., and Fusong Qianqiu Wooden Product Co., Ltd. (collectively, Fusong Jinlong Group)

[FR Doc. 2023–28782 Filed 12–28–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–813]

Citric Acid and Certain Citrate Salts From Belgium: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Citribel nv. (Citribel), a producer/exporter subject to this administrative review, made sales of citric acid and certain citrate salts (citric acid) from Belgium at less than normal value. The period of review (POR) is July 1, 2021, through June 30, 2022.

DATES: Applicable December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, 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) 482–4521.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2023, Commerce published the preliminary results of the 2021–2022 administrative review of the antidumping duty order on citric acid from Belgium, covering one producer/exporter of subject merchandise, Citribel, and invited interested parties to comment.[1] On August 30, 2023, Archer Daniels Midland Company, Cargill, Incorporated, and Primary Products Ingredients Americas LLC (collectively, the petitioners), and Citribel timely submitted case briefs regarding Commerce's *Preliminary Results*.[2] On September 6, 2023, the petitioners timely submitted a rebuttal case brief.[3] For a summary of the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. For a full description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix 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.*

Changes Since the Preliminary Results

Based on a review of the record and analysis of the comments received, we made changes to the preliminary weighted-average dumping margin for Citribel. For detailed information, *see* the Issues and Decision Memorandum.

Final Results of Review

Commerce determines that, for the period of July 1, 2021, through June 30, 2022, the following estimated weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
Citribel nv	9.13

Disclosure

We intend to disclose the calculations performed for these final results to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject

[1] *See Citric Acid and Certain Citrate Salts from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 49442 (July 31, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioners' Letter, ''Petitioners' Case Brief,'' dated August 30, 2023; *see also* Citribel's Letter, ''Citribel N.V. Case Brief,'' dated August 30, 2023.

[3] *See* Petitioners' Letter, ''Petitioners' Rebuttal Brief,'' dated September 6, 2023.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from Belgium; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those sales. Where the respondent did not report entered value, we calculated a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. 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.[5] For entries of subject merchandise during the POR produced by Citribel for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[6] 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, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed 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 has been covered in a prior complete segment of this proceeding, 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 manufacturers or exporters will continue to be 19.30 percent, the all-others rate established in the less-than-fair-value investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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 of administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 22, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–28783 Filed 12–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The U.S. Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with November anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with November anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Citric Acid and Certain Citrate Salts from Belgium: Affirmative Final Determination of Sales at Less Than Fair Value,* 83 FR 26001 (June 5, 2018).

Respondent Selection

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

In the event that Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

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

Notice of No Sales

With respect to AD administrative reviews, we intend to rescind the review where there are no suspended entries for a company or entity under review and/or where there are no suspended entries under the company-specific case number for that company or entity. Where there may be suspended entries, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it may notify Commerce of this fact within 30 days of publication of this notice in the **Federal Register** for Commerce to consider how to treat suspended entries under that producer's or exporter's company-specific case number.

Deadline for Withdrawal of Request for Administrative Review

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

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

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

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

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

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

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

Initiation of Reviews: In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than November 30, 2024.

	Period to be reviewed
AD Proceedings	
Argentina: Oil Country Tubular Goods, A–357–824	5/11/22–10/31/23
Siderca S.A.I.C.	
Tenaris Global Services S.A.	
Austria: Strontium Chromate, A–433–813	11/1/22–10/31/23
Habich GmbH.	
Brazil: Certain Aluminum Foil, A–351–856	11/1/22–10/31/23
CBA Itapissuma Ltda.	
Companhia Brasileira de Alumínio.	
Germany: Thermal Paper, A–428–850	11/1/22–10/31/23
Koehler Oberkirch GmbH.	
Koehler Paper SE; Koehler Kehl GmbH.	
Matra Atlantic GmbH.	
Mitsubishi Hitec Paper.	
Papierfabrik August Koehler SE.	
India: Welded Stainless Pressure Pipe, A–533–867	11/1/22–10/31/23
Prakash Steelage Ltd.	
Seth Steelage Pvt. Ltd.	
Ratnamani Metals & Tubes Ltd.	
Suncity Metals and Tubes Private Limited.	
Suncity Sheets Pvt., Ltd.	
Japan: Thermal Paper, A–588–880	11/1/22–10/31/23
Nippon Paper Industries Co., Ltd.; Nippon Paper Papylia Co., Ltd.	
Mexico: Oil Country Tubular Goods, A–201–856	5/11/22–10/31/23
Siderca S.A.I.C.	
Tenaris Global Services S.A.	
Tubos de Acero de Mexico S.A.	
Mexico: Steel Concrete Reinforcing Bar, A–201–844	11/1/22–10/31/23
Compania Siderurgica del Pacifico S.A. de C.V.	
Deacero S.A.P.I. de C.V., I.N.G.E.T.E.K.N.O.S. Estructurales, S.A. de C.V.	
Gerdau Corsa, S.A.P.I. de C.V.	
Grupo Acerero S.A. de C.V.	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

[4] In the initiation notice that published on November 15, 2023 (88 FR 78298) Commerce inadvertently did not clarify the entries covered by the review with respect to the company listed in this notice. In this notice, we are clarifying that entries of merchandise produced and exported by Dear Year Brothers Mfg. Co., Ltd or produced by Fool Shing Enterprise Co., Ltd, and exported by Dear Year Brothers Mfg. Co., Ltd or produced by Hong Tai Enterprise and exported by Dear Year Brothers Mfg. Co., Ltd are excluded from the antidumping duty order. This exclusion is not applicable to merchandise exported to the United States by Dear Year Brothers Mfg. Co., Ltd in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded producer/exporter combinations. *See Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010).

	Period to be reviewed
Grupo Simec S.A.B. de C.V.; Aceros Especiales Simec Tlaxcala, S.A. de C.V.; Fundiciones de Acero Estructurales, S.A. de C.V.; Grupo Chant, S.A.P.I. de C.V.; Operadora de Perfiles Sigosa, S.A. de C.V.; Orge S.A. de C.V.; Perfiles Comerciales Sigosa, S.A. de C.V.; Siderurgicos Noroeste, S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International 7, S.A. de C.V.; Simec International, S.A. de C.V.	
RRLC S.A.P.I. de C.V.	
Sidertul S.A. de C.V.	
Siderurgica del Occidente y Pacifico S.A. de C.V.	
Simec International 9 S.A. de C.V.	
TA 2000 S.A. de C.V.	
Talleres Y Aceros S.A. de C.V.	
Oman: Aluminum Foil, A–523–815	11/1/22–10/31/23
Oman Aluminium Rolling Company.	
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/22–10/31/23
Aju Besteel.	
Bookook Steel.	
Chan Won Bending.	
Dae Ryung.	
Daewoo Shipbuilding & Marine Engineering (DSME).	
Daiduck Piping.	
Dong Yang Steel Pipe.	
Dongbu Steel Co., Ltd.; Dongbu Steel.	
EEW Korea Company.	
Histeel Co., Ltd. Histeel.	
Hoa Phat Steel Pipe Co., Ltd.	
Hoa Sen Group.	
Husteel Co., Ltd.	
Hyundai RB.	
Hyundai Steel Company.	
Kiduck Industries.	
Kum Kang Kind.	
Kumsoo Connecting.	
Miju Steel Mfg.	
NEXTEEL Co., Ltd.	
Samkand M & T.	
Seah FS.	
SeAH Steel Corporation; Seah Steel.	
SeAH Steel VINA Corporation.	
Steel Flower.	
YCP Co., Ltd.	
Republic of Korea: Thermal Paper, A–580–911	11/1/22–10/31/23
Hansol Paper Company.	
Taiwan: Narrow Woven Ribbons With Woven Selvedge, A–583–844 [4]	9/1/22–8/31/23
Dear Year Brothers Mfg. Co., Ltd.	
The People's Republic of China: Diamond Sawblades and Parts Thereof, A–570–900	11/1/22–10/31/23
ASHINE Diamond Tools Co., Ltd.	
Bosch Power Tools China Co., Ltd.	
Bosun Tools Co., Ltd.	
Chengdu Huifeng New Material Technology Co., Ltd.	
Danyang City Ou Di Ma Tools Co., Ltd.	
Danyang Hantronic Import & Export Co., Ltd.	
Danyang Huachang Diamond Tool Manufacturing Co., Ltd.	
Danyang Like Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Realsharp Tools Co., Ltd.	
Danyang Tongyu Tools Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Diamond Tools Technology (Thailand) Co., Ltd.	
Fujian Quanzhou Aotu Precise Machine Co., Ltd.	
Guangdong Sun Rising Tools Co., Ltd.	
Guilin Tebon Superhard Material Co., Ltd.	
Hailian Saw Technology Co., Ltd.	
Hangzhou Deer King Industrial and Trading Co., Ltd.	
Hangzhou Kingburg Import & Export Co., Ltd.	
Hangzhou Xinweiye Tools Co., Ltd.	
Hebei XMF Tools Group Co., Ltd.	
Henan Huanghe Whirlwind International Co., Ltd.	
Hong Kong Hao Xin International Group Limited.	
Hubei Changjiang Precision Engineering Materials Technology Co., Ltd.	
Hubei Sheng Bai Rui Diamond Tools Co., Ltd.	
Husqvarna (Hebei) Co., Ltd.	
Huzhou Gu's Import & Export Co., Ltd.	

Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	
Jiangsu Fengtai Diamond Tools Co., Ltd.	
Jiangsu Huachang Diamond Tools Manufacturing Co., Ltd.	
Jiangsu Inter-China Group Corporation.	
Jiangsu Jinfeida Power Tools.	
Jiangsu Yaofeng Tools Co., Ltd.	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Orient Gain International Limited.	
Pantos Logistics (HK) Company Limited.	
Protec Tools Co., Ltd.	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Hyosung Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Qingyuan Shangtai Diamond Tools Co., Ltd.	
Quanzhou Sunny Superhard Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Jingquan Industrial Trade Co., Ltd.	
Shanghai Starcraft Tools Co., Ltd.	
Shanghai Vinon Tools Industrial Co.	
Sino Tools Co., Ltd.	
Suzhou Blade Tech Tool Co., Ltd.	
Tangshan Metallurgical Saw Blade Co., Ltd.	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Baiyi Diamond Tools Co., Ltd.	
Wuhan Sadia Trading Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co., Ltd.	
Wuhan ZhaoHua Technology Co., Ltd.	
Xiamen ZL Diamond Technology Co., Ltd.	
Zhejiang Shall Tools Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
Zhenjiang Luckyway Tools Co., Ltd.	
ZL Diamond Technology Co., Ltd.	
ZL Diamond Tools Co., Ltd.	
The People's Republic of China: Fresh Garlic, A–570–831	11/1/22–10/31/23
Jilin Yilong Changbai Mountain Industrial Co.	
Laiwu Ever Green Food Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
The People's Republic of China: Forged Steel Fittings, A–570–067	11/1/22–10/31/23
Jiangsu Forged Pipe Fittings Co. Ltd.	
Qingdao Bestflow Industrial Co., Ltd.	
Xin Yi International Trade Co., Ltd.	
Yingkou Guangming Pipeline Industry Co., Ltd.	
The People's Republic of China: Lightweight Thermal Paper, A–570–920	11/1/22–10/31/23
Guangdong Guanhao High-Tech.	
Guangdong Polygon New Materials.	
Henan Jianghe Paper.	
Turkey: Aluminum Foil, A–489–844	11/1/22–10/31/23
ASAS Aluminyum Sanayi ve Ticaret A.S.Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S., and Ispak Esnek Ambalaj Sanayi A.S.Ilda Pack Ambalaj Panda Aluminyum A.S..	
CVD Proceedings	
India: Welded Stainless Pressure Pipe, C–533–868	1/1/22–12/31/22
Prakash Steelage Ltd.	
Seth Steelage Pvt. Ltd.	
Oman: Aluminum Foil, C–523–816	1/1/22–12/31/22
Oman Aluminium Rolling Company LLC.	
Republic of Korea: Oil Country Tubular Goods, C–580–913	9/29/22–12/31/22
AJU Besteel Co., Ltd.	
Husteel Co., Ltd.	
ILJIN Steel Corporation.	
SeAH Steel Corporation; SeAH Steel Holding Corporation.	
The People's Republic of China: Chlorinated Isocyanurates, C–570–991	1/1/22–12/31/22
Hebei Fuhui Water Treatment Co., Ltd.	
Henan Sinowin Chemical Industry Co., Ltd.	
Heze Huayi Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co., Ltd.	
Linhai Limin Chemicals Co., Ltd.	
Puyang Cleanway Chemicals Ltd.	
Qingdao Fortune Logistics Co., Ltd.	
Shandong Dongyue Chemical Co., Ltd.	
Shandong Taihe Chemicals Co., Ltd.	
Shanghai Special Logistics Co., Ltd.	
Shanghai Tianxiang Logistics Co., Ltd.	
Topdan Industries Co., Limited.	
The People's Republic of China: Forged Steel Fittings, C–570–068	1/1/22–12/31/22

Both-Well (Taizhou) Steel Fittings, Co., Ltd.	
Yingkou Guangming Pipeline Industry Co., Ltd.	
Turkey: Aluminum Foil, C–489–845	1/1/22–12/31/22
ASAS Aluminyum Sanayi ve Ticaret A.S.	
Assan Aluminyum Sanayi ve Ticaret A.S.; Ispak Esnek Ambalaj Sanayi A.S.; Kibar Dis. Ticaret A.S.	
Panda Aluminyum.	
Turkey: Steel Concrete Reinforcing Bar, C–489–819	1/1/22–12/31/22
Ans Kargo Lojistik Tas ve Tic Baykan Dis Ticaret.	
Colakoglu Dis Ticaret A.S.; Colakoglu Metalurji A.S.	
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.; Kaptan Metal Dis Ticaret ve Nakliyat A.S.	
Kibar dis Ticaret A.S.	
Meral Makina Iml Ith Ihr Gida.	
Sami Soybas Demir Sanayi ve Ticaret.	
Yucel Boru Ihracat Ithalat ve Pazarlama.	
Suspension Agreements	
None.	
Deferral of Initiation of Administrative Review	
Republic of Korea: Oil Country Tubular Goods, [5]C–580–913 9/29/22–12/31/22	9/29/22–12/31/22
NEXTEEL Co., Ltd.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether ADs have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

[5] Pursuant to 19 CFR 351.213(c), Commerce received a request from NEXTEEL Co., Ltd. to defer the administrative review of this CVD order with respect to itself for one year. Commerce did not receive any objections to the deferral within 15 days after the end of the anniversary month. As such, we will initiate the administrative review with respect to NEXTEEL Co., Ltd. in the month immediately following the next anniversary month of the CVD order on Oil Country Tubular Goods from the Republic of Korea.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[6] available at *https://www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[8] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[9] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date.

[6] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[7] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[8] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[9] *See* 19 CFR 351.302.

Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 22, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–28781 Filed 12–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Assessment Development Committee Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access the National Assessment Governing Board's (hereafter referred to as Governing Board or Board) special meeting of the Assessment Development Committee. This notice provides information about the meeting to members of the public who may be interested in attending the meeting and/or providing written comments related to the work of the Governing Board. The meeting will be held virtually, as noted below. Members of the public must request registration information by sending an email to *nagb@ed.gov* no later than two business days prior to the meeting.

DATES: The Assessment Development Committee meeting will be held on the following date:

- January 26, 2024, from 3–3:15 p.m., EDT

FOR FURTHER INFORMATION CONTACT: Angela Scott, Designated Federal Official (DFO) for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–7502, fax: (202) 357–6945, email: *Angela.Scott@ed.gov*.

SUPPLEMENTARY INFORMATION: *Statutory Authority and Function:* The Governing Board is established under the National Assessment of Educational Progress Authorization Act, (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.* Notice of the meeting is required under section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.

Assessment Development Committee Meeting

The Assessment Development Committee will meet virtually on January 26th from 3–3:15 p.m. ET to take action on the Assessment and Item Specifications for the 2028 NAEP Science Assessment Framework.

Governing Board policy articulates the Board's commitment to a comprehensive, inclusive, and deliberative process to determine and update the content and format of all NAEP assessments. For each NAEP assessment, this process results in a NAEP framework, outlining what is to be measured and how it will be measured. Periodically, the Governing Board reviews existing NAEP frameworks to determine if changes are warranted. Each NAEP framework development and update process considers a wide set of factors, including but not limited to reviews of recent research on teaching and learning, changes in state and local standards and assessments, and the latest perspectives on the nation's future needs and desirable levels of achievement.

In 2021, the Board initiated a preliminary review of the NAEP Science Framework, which included an initial public comment on whether and how the framework should be updated as well as expert commentary to determine the type of updates needed. In May 2022, the Governing Board formally decided to initiate an update to the NAEP Science Framework and issued a Board Charge providing guidance to the panels of experts who were tasked with developing the framework recommendations. Public comment on draft framework recommendations was sought in March–April 2023 and feedback was incorporated. The Governing Board adopted the 2028 NAEP Science Assessment Framework during its November 2023 quarterly meeting.

The Science Assessment and Item Specifications document provides additional technical and operational details for implementing the framework. During the November 2023 quarterly Board meeting, the Governing Board delegated authority for adopting the Science Assessment and Item Specifications to the Assessment Development Committee.

Minutes of prior Governing Board and Assessment Development Committee meetings are available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Instructions for Accessing and Attending the Meetings: Registration: Members of the public may attend the January 26 Assessment Development Committee meeting virtually. A request for registration information should be sent to *nagb@ed.gov* no later than January 24.

Public Comment: Written comments related to the work of the Governing Board and its standing committees may be submitted to the attention of the DFO no later than 10 business days prior to the meeting. Written comments may be submitted either via email to *Angela.Scott@ed.gov* or in hard copy to the address listed above.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009, the public may inspect the meeting materials, which will be made available upon request no later than five business days prior to each meeting. The public may also inspect the meeting materials and other Governing Board records at 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing *Angela.Scott@ed.gov* to schedule an appointment.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than ten working days prior to each meeting date.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2023–28789 Filed 12–28–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE); Meeting

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the January 24–25, 2024, virtual meeting of NACIE. This notice provides information about the meeting to members of the public who may be interested in attending and how to provide written and/or oral comment for the meeting.

DATES: The NACIE open virtual meeting will be held on January 24–25, 2024, from 1–4:30 p.m. (EST).

FOR FURTHER INFORMATION CONTACT: Crystal C. Moore, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Office 3W243, Washington, DC 20202. Telephone: 202–453–5593, Email: *Crystal.Moore@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: NACIE is authorized by section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7471). The work of NACIE was expanded by Executive Order 14049. In accordance with Section 6141 of the ESEA, NACIE shall advise the Secretary of Education and the Secretary of Interior on the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under title VI, part A of the ESEA, with respect to which the Secretary of Education has jurisdiction and (1) that includes Indian children or adults as participants or (2) that may benefit Indian children or adults. Also in accordance with section 6141 of the ESEA, NACIE shall make recommendations to the Secretary of Education for filling the position of Director of Indian Education whenever a vacancy occurs and shall submit to the Congress, no later than June 30 of each year, a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program. In accordance with section 3 of Executive Order 14049, NACIE shall advise the Co-Chairs of the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (WHI–NATCU), in consultation with the WHI–NATCU, on (1) what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans; (2) how to promote career pathways for in-demand jobs for Native American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives; (3) ways to strengthen Tribal Colleges and Universities and increase their participation in agency programs; (4) how to increase public awareness of, and generate solutions for, the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities; (5) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in Section 1 of Executive Order 14049, consistent with applicable law; and (6) actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education. Also, in accordance with section 3 of Executive Order 14049, NACIE and the Executive Director of the WHI–NATCU (Executive Director) shall, as appropriate and consistent with applicable law, facilitate frequent collaborations between the WHI–NATCU and Tribal Nations, Alaska Native Entities, and other Tribal organizations. Finally, in accordance with Section 3 of Executive Order 14049, NACIE shall consult with the Executive Director so that the Executive Director can address NACIE's efforts pursuant to section 3(a) of Executive Order 14019 in the annual report of the WHI–NATCU submitted to the President.

Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

Meeting Agenda: The purpose of this meeting is to convene NACIE and conduct the following business: discuss fiscal year (FY) 2024 meeting calendar and agendas, Annual Report to Congress, and activity planning; hold an open public comment session; and engage in discussions with federal stakeholders (*e.g.,* U.S. Department of the Interior, Bureau of Indian Education (BIE), WHI–NATCU, U.S. Department of Labor, and U.S. Department of Education, Office of Indian Education).

Instructions for Accessing the Meeting:

Members of the public may access the NACIE meeting via virtual teleconference. Up to 350 lines will be available on a first come, first served basis for those who wish to join via teleconference. The dial-in, listen only phone number for the meeting is: 1–669–254–5252 and Meeting ID is: 160 250 9522, Passcode: 140923, and Dial-in number: 1–669–254–5252. The web link to register to access the meeting via *Zoom.gov* is: *https://www.zoomgov.com/meeting/register/vJItdeyopz4oGLtbQCpCY4h1bYrMVf3v8WE.*

Public Comment: Members of the public interested in submitting written comments may do so via email to Crystal Moore at *Crystal.Moore@ed.gov* by 11:59 p.m. eastern time (ET) on January 22, 2024. Please note that written comments should pertain to the work of NACIE. Members of the public may also make oral comment during the open meeting. Requests to make oral comment will be accepted on a first requested, first served basis. Each commenter will have a maximum of two minutes to state his or her comment and/or question. Oral comments made during the open meeting should pertain to the work of NACIE.

Reasonable Accommodations: The virtual meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than January 22, 2024. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official minutes of this meeting on the OESE website, *https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/,* within 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect NACIE records at the Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5 p.m. ET. Please email Crystal Moore at *Crystal.Moore@ed.gov* to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Section 6141 of the ESEA, as amended (20 U.S.C. 7471).

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2023–28644 Filed 12–28–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Membership

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), U.S. Department of Education.

ACTION: Notice of membership.

SUMMARY: This notice lists the members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI).

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Ave. SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George Alan Smith, Ed.D., Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202, telephone: (202) 453–7757, or email *george.alan.smith@ed.gov.*

SUPPLEMENTARY INFORMATION: This notice is required under section 114(e)(1) of the Higher Education Act of 1965, as amended (HEA).

NACIQI's Statutory Authority and Functions

The NACIQI is established under Section 114 of the HEA, and is composed of a maximum of 18 appointed members—

(A) On the basis of the individuals' experience, integrity, impartiality, and good judgment;

(B) From among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education; and,

(C) On the basis of the individuals' technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration of higher education.

The NACIQI meets at least twice a year and advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part H, title IV of the HEA, as amended;
- The recognition of specific accrediting agencies or associations;
- The preparation and publication of the list of nationally recognized accrediting agencies and associations;
- The eligibility and certification process for institutions of higher education under title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvements in such process;
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

What are the terms of office for the committee members?

The term of office of each member is six years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

Who are the current members of the committee?

The current members of the NACIQI are:

Members Appointed by the Secretary of Education with Terms Expiring September 30, 2025:

- Wallace E. Boston, Ph.D., President Emeritus, American Public University System, Inc., Charles Town, West Virginia. Appointed by Secretary Betsy DeVos.
- Keith Curry, Ed.D., President/Chief Executive Officer, Compton College and Compton Community College District, Compton, California. Appointed by Secretary Miguel Cardona.
- David A. Eubanks, Ph.D., Assistant Vice President for Assessment and Institutional Effectiveness, Furman University, Greenville, South Carolina. Appointed by Secretary Betsy DeVos.
- Molly E. Hall-Martin, Ph.D., Director, W–SARA, Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado. Appointed by Secretary Miguel Cardona.
- D. Michael Lindsay, Ph.D., President, Taylor University, Upland, Indiana. Appointed by Secretary Betsy DeVos.
- Mary Ellen Petrisko, Ph.D., Former President, WASC Senior College and University Commission, Pittsburgh, Pennsylvania. Appointed by Secretary Betsy DeVos.

Members Appointed by the Speaker of the House of Representatives with Terms Expiring September 30, 2026:

- Kathleen Sullivan Alioto, Ed.D., Strategic Advisor, Fundraiser, and Consultant, New York, New York, San Francisco, California, and Boston, Massachusetts. Appointed by Congresswoman Nancy Pelosi.
- Roslyn Clark Artis, J.D., Ed.D., President, Benedict College, Columbia, South Carolina. Appointed by Congresswoman Nancy Pelosi.
- Jennifer Blum, J.D., Principal, Blum Higher Education Advising, PLLC, Washington, DC. Appointed by Congressman Kevin McCarthy.
- Arthur E. Keiser, Ph.D., Chancellor, Keiser University, Fort Lauderdale, Florida. Appointed by Congressman Kevin McCarthy.
- Robert Mayes, Jr., CEO, Columbia Southern Education Group, Elberta, Alabama. Appointed by Congressman Kevin McCarthy.
- Robert Shireman, Senior Fellow, The Century Foundation, Berkeley, California. Appointed by Congresswoman Nancy Pelosi.

Members Appointed by the President Pro Tempore of the Senate with Terms Expiring September 30, 2028:

- Debbie Cochrane, Bureau Chief, California Bureau for Private Postsecondary Education, Alameda, California. Appointed by Senator Chuck Schumer.
- Zakiya Smith Ellis, Ed.D., Principal, Education Counsel, Atlanta, Georgia. Appointed by Senator Chuck Schumer.
- Michael Poliakoff, Ph.D., President, American Council of Trustees and Alumni, Washington, DC. Appointed by Senator Mitch McConnell.
- Claude O. Pressnell Jr., Ed.D., President, Tennessee Independent Colleges and Universities Association, Nashville, Tennessee. Appointed by Senator Mitch McConnell.
- José Luis Cruz Rivera, Ph.D., President, Northern Arizona University, Flagstaff, Arizona. Appointed by Senator Chuck Schumer.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Miguel Cardona,

Secretary of Education.

[FR Doc. 2023–28648 Filed 12–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–536–000]

Eastern Shore Natural Gas Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Worcester Resiliency Upgrade Project

On August 31, 2023, Eastern Shore Natural Gas Company (Eastern Shore), filed an application in Docket No. CP23–536–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Delaware and Maryland. The proposed project is known as the Worcester Resiliency Upgrade Project (Project), and would store approximately 475,000 gallons of liquified natural gas, equivalent to 39,627 Dekatherms, and provide 14,000 Dekatherms per day of corresponding peak firm natural gas transportation service, as well as enhance the resiliency of Eastern Shore's system.

On September 15, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—April 26, 2024
90-day Federal Authorization Decision Deadline[2]—July 25, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Specifically, the proposed Project includes construction and operation of five new facilities and upgrades to four existing facilities including:

- Bishopville Facility, Worcester County, Maryland: construct a 10.56-acre liquified natural gas storage and vaporization facility situated within a rural 135-acre parcel that includes five 100,000 gallon horizontal storage tanks;
- Bishopville Tie-in, Worcester County, Maryland: construct 0.43 mile of 8-inch-diameter pipeline to connect the Bishopville Facility to Eastern Shore's existing Milford pipeline;

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other Federal agencies, and State agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

- Millsboro Controller Upgrade, Sussex County, Delaware: upgrade an existing station to install two new control valve runs to provide pressure and directional control;
- Millsboro Tie-in, Sussex County, Delaware: construct 0.35 mile of 10-inch-diameter pipeline extension to connect the upgraded Millsboro Controller to the Eastern Shore's existing Milford pipeline;
- Berlin Meter and Regulating Station Upgrade, Worcester County, Maryland: replace approximately 350 feet of existing belowground 3-inch tie-in with a new 4-inch tie-in;
- Thompson Meter and Regulating Station Upgrade, Somerset County, Maryland: replace existing station meters;
- Selbyville Meter and Regulating Station Upgrade, Sussex County, Delaware: replace existing meter and regulator facilities;
- Delmar Receiver, Wicomico County, Maryland: install new aboveground Rupture Mitigation Valve and In-line Inspection Receiver and an access road located at the new connection between the Delmar Loop and the Parkesburg Line at the southern end of the Delmar Loop collocated east of U.S. Route 13; and
- Delmar Loop, Wicomico County, Maryland and Sussex County, Delaware: construct 1.14 miles of 10-inch-diameter looping natural gas pipeline collocated with an existing Eastern Shore pipeline and U.S. Route 13.

Background

On October 11, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Worcester Resiliency Upgrade Project (Notice of Scoping),* and on November 22, 2023, the Commission issued a *Notice of Public Scoping Session*. Both the *Notice of Scoping* and the *Notice of Public Scoping Session* were sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the *Notice of Scoping,* the Commission received comments from State Delegate Wayne Hartman, Commissioner Chip Bertino, Senator Mary Beth Carozzi, and Director of Worcester County Department of Environmental Programs, Robert Mitchell. As stated in the *Notice of Public Scoping Session,* Commission staff held a public meeting for the Project on December 13, 2023. Comments were in support of the proposed Project, with no environmental concerns raised by the commenters. All substantive comments will be addressed in the EA.

There are currently no cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. 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*.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP23–536), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28754 Filed 12–28–23; 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: PR24–31–000.

Applicants: Rocky Mountain Natural Gas LLC.

Description: § 284.123 Rate Filing: RMNG Fuel Loss Adjustment Filing to be effective 11/1/2023.

Filed Date: 12/21/23.

Accession Number: 20231221–5295.

Comment Date: 5 p.m. ET 1/11/24.

Docket Numbers: RP24–260–000.

Applicants: KUSA Inc., LLOG Omega Holdings LLC, LLOG Exploration Offshore LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of LLOG Omega Holdings LLC, et al.

Filed Date: 12/21/23.

Accession Number: 20231221–5225.

Comment Date: 5 p.m. ET 1/2/24.

Docket Numbers: RP24–261–000.

Applicants: NGO Transmission, Inc.

Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2024.

Filed Date: 12/22/23.

Accession Number: 20231222–5065.

Comment Date: 5 p.m. ET 1/3/24.

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: RP18–556–004.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing: Petition to Amend Stipulation and Agreement.

Filed Date: 12/21/23.

Accession Number: 20231221–5232.

Comment Date: 5 p.m. ET 12/28/23.

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.

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: December 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28759 Filed 12–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2514–209]

Appalachian Power Company; Notice of Intent To Prepare an Environmental Assessment

On February 28, 2022, as supplemented,[1] Appalachian Power Company filed an application for a new major license for the 26.1-megawatt, two-development Byllesby-Buck Hydroelectric Project (Byllesby-Buck Project or project; FERC No. 2514). The Byllesby-Buck Project is located on the New River, near the city of Galax, in Carroll County, Virginia.

In accordance with the Commission's regulations, on October 13, 2023, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the Byllesby-Buck Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

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*.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	June 2024.[2]
Comments on EA	July 2024.

Any questions regarding this notice may be directed to Jody Callihan at (202) 502–8278 or *jody.callihan@ferc.gov*.

Dated: December 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28758 Filed 12–28–23; 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: EC24–28–000.

Applicants: Vitol PA Wind Marketing LLC, Twin Ridges LLC, Patton Wind Farm, LLC, Highland North LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Twin Ridges LLC, et. al.

Filed Date: 12/20/23.

Accession Number: 20231220–5310.

Comment Date: 5 p.m. ET 1/10/24.

Docket Numbers: EC24–29–000.

Applicants: New Athens Generating Company, LLC, Millennium Power Company, LLC, Gate City Power—NE Generation LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of New Athens Generating Company, LLC, et. al.

Filed Date: 12/21/23.

Accession Number: 20231221–5407.

Comment Date: 5 p.m. ET 1/11/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1257–009; ER10–1258–009.

Applicants: Wabash Valley Energy Marketing, Inc., Wabash Valley Power Association, Inc.

Description: Triennial Market Power Analysis for Central Region of Wabash Valley Power Association, Inc., et. al.

Filed Date: 12/21/23.

Accession Number: 20231221–5397.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER10–1819–039; ER10–1820–042.

Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation.

Description: Triennial Market Power Analysis for Central Region of Northern States Power Company, a Minnesota corporation, et. al.

Filed Date: 12/19/23.

Accession Number: 20231219–5257.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER10–3254–004.

Applicants: Cooperative Energy Incorporated (An Electric Membership Corporation).

Description: Second Supplement to December 21, 2020, Updated Market Power Analysis of Cooperative Energy Incorporated (An Electric Membership Corporation).

Filed Date: 12/21/23.

Accession Number: 20231221–5402.

Comment Date: 5 p.m. ET 1/4/24.

Docket Numbers: ER11–2044–042; ER12–162–035; ER13–1266–047; ER15–2211–044; ER21–2280–005; ER22–1385–006; ER23–674–003; ER23–676–003.

Applicants: BHE Power Watch, LLC, BHE Wind Watch, LLC, BHER Market Operations, LLC., Independence Wind Energy LLC, MidAmerican Energy Services, LLC, CalEnergy, LLC, Bishop Hill Energy II LLC, MidAmerican Energy Company.

Description: Triennial Market Power Analysis for Central Region of MidAmerican Energy Company, et. al.

Filed Date: 12/21/23.

Accession Number: 20231221–5409.

Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER18–490–001.

Applicants: Duke Energy Indiana, LLC.

Description: Triennial Market Power Analysis for Central Region of Duke Energy Indiana, LLC.

[1] The final license application filed February 28, 2022 was supplemented on February 28, 2023.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) (2022) require that EAs be completed within 1 year of the Federal action agency's decision to prepare an EA. *See* National Environmental Policy Act, 42 U.S.C. 4321 *et seq., as amended by* section 107(g)(1)(B)(iii) of the Fiscal Responsibility Act of 2023, Public Law 118–5, sec. 4336a, 137 Stat. 42.

Filed Date: 12/20/23.
Accession Number: 20231220–5315.
Comment Date: 5 p.m. ET 2/20/24.
Docket Numbers: ER20–55–002; ER21–772–002.
Applicants: Resi Station, LLC, OhmConnect, Inc.
Description: Notice of Change in Status of OhmConnect, Inc., et. al.
Filed Date: 12/19/23.
Accession Number: 20231219–5258.
Comment Date: 5 p.m. ET 1/9/24
Docket Numbers: ER20–2590–002.
Applicants: Basin Electric Power Cooperative.
Description: Triennial Market Power Analysis for Northwest Region of Basin Electric Power Cooperative.
Filed Date: 12/20/23.
Accession Number: 20231220–5316.
Comment Date: 5 p.m. ET 2/20/24.
Docket Numbers: ER24–747–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: Second Amendment to Vineyard Wind LLC Design and Engineering Agreement to be effective 12/22/2023.
Filed Date: 12/21/23.
Accession Number: 20231221–5272.
Comment Date: 5 p.m. ET 1/11/24.
Docket Numbers: ER24–748–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Cancellation of WMPA, SA No. 5597; Queue No. AD2–025 to be effective 2/20/2024.
Filed Date: 12/21/23.
Accession Number: 20231221–5289.
Comment Date: 5 p.m. ET 1/11/24.
Docket Numbers: ER24–749–000.
Applicants: Rockland Capital.
Description: Request of Lee County Generating Station, LLC for Tariff Waiver and Expedited Action.
Filed Date: 12/20/23.
Accession Number: 20231220–5307.
Comment Date: 5 p.m. ET 12/29/23.
Docket Numbers: ER24–750–000.
Applicants: Town Hill Energy Storage 1 LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 1/1/2024.
Filed Date: 12/21/23.
Accession Number: 20231221–5296.
Comment Date: 5 p.m. ET 1/11/24.
Docket Numbers: ER24–752–000.
Applicants: San Diego Gas & Electric Company.
Description: Notice of Cancellation of Rate Schedule No. 12 with CalPeak Power—Border, LLC of San Diego Gas & Electric Company.
Filed Date: 12/21/23.
Accession Number: 20231221–5403.
Comment Date: 5 p.m. ET 1/11/24.
Docket Numbers: ER24–754–000.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Baltimore Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: BGE Single Issue Depreciation Filing to Update OATT Att. H–2A Part II to be effective 3/1/2024.
Filed Date: 12/22/23.
Accession Number: 20231222–5175.
Comment Date: 5 p.m. ET 1/12/24.
Docket Numbers: ER24–755–000.
Applicants: CPV Maple Hill Solar, LLC.
Description: § 205(d) Rate Filing: Revised Reactive Power Rate Schedule to be effective 11/29/2023.
Filed Date: 12/22/23.
Accession Number: 20231222–5229.
Comment Date: 5 p.m. ET 1/12/24.

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: December 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28755 Filed 12–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–34–000]

Yellowbud Solar, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 22, 2023, the Commission issued an order in Docket No. EL24–34–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Yellowbud Solar, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Yellowbud Solar, LLC,* 185 FERC ¶ 61,216 (2023).

The refund effective date in Docket No. EL24–34–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–34–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

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. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using

the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: December 22, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28761 Filed 12–28–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0597; FRL–11634–01]

Clothianidin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (FDACS) to use the insecticide clothianidin (CAS No. 210–880–92–5) as a soil drench application to treat up to 125,376 acres of immature (3–5 years old) citrus trees to control the transmission of Huanglongbing (HLB) disease vectored by the Asian Citrus Psyllid (ACP). The applicant proposes a use that has been requested in 5 or more previous years. Therefore, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 16, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0597, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, 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).

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The FDACS has requested the EPA Administrator to issue a specific exemption for the use of clothianidin as a soil drench application on immature (3–5 years old) citrus trees to control the transmission of HLB disease vectored by ACP. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that clothianidin is needed to suppress the transmission of HLB disease vectored by ACP due to the lack of available alternative pesticides and effective control practices. Without this tool, Florida citrus growers are expected to experience significant economic losses due to the severity of this invasive disease and vector complex.

The Applicant proposes to make no more than two applications of clothianidin at a maximum rate of 0.4 lb. a.i./A (24.0 fl. oz per acre) per 12-month period on up to 125,376 acres of immature (3–5 years old) citrus grown in Florida from February 1, 2024, to February 1, 2025. A total of 25,037 lbs. active ingredient of clothianidin may be used on the maximum acreage 125,376 at the highest application rate.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the Inter-

Regional Project Number (IR–4) program that has been requested in 5 or more previous years, and for which a complete application for registration of that use and/or petition for tolerance of residues in or on the commodity has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application.

In 2011, the FDACS submitted a petition for tolerance to EPA that was subsequently withdrawn, and an application/petition has not been resubmitted to the Agency. The notice provides an opportunity for public comment on the application. EPA will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the FDACS.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 20, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–28772 Filed 12–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2012–0830; FRL–11643–01–ORD]

Availability of the BMD Model Code and BMD Modeling Output Files for the Draft IRIS Toxicological Review of Inorganic Arsenic; Notice of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public comment period on the benchmark dose (BMD) model code and BMD modeling output files associated with the Draft IRIS Toxicological Review of Inorganic Arsenic. The original **Federal Register** notice associated with the draft IRIS inorganic arsenic assessment was published on October 16, 2023, and closed on December 15, 2023. After reviewing the comments received on the draft assessment, EPA is opening an additional public comment period on the BMD model code and the BMD modeling output files that were not accessible by the public during the original comment period due to a technical issue. For submissions received during this public comment period, EPA will only address comments on the BMD model code and BMD modeling output files, which are available at: *https://gaftp.epa.gov/EPADataCommons/ORD/DRAFTiAsToxReview/.*

DATES: The 15-day public comment period begins December 29, 2023 and ends January 16, 2024. Comments must be received on or before January 16, 2024.

ADDRESSES: The BMD model code and BMD modeling output files for the draft IRIS Toxicological Review of Inorganic Arsenic are available via the internet on *https://gaftp.epa.gov/EPADataCommons/ORD/DRAFTiAsToxReview/* and also accessible through the IRIS website *www.epa.gov/iris.*

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information related to the BMD model code and BMD modeling output files for the draft IRIS Toxicological Review of Inorganic Arsenic or for issues related accessing the files, contact Ms. Vicki Soto, CPHEA; telephone: 202–564–3077; or email: *soto.vicki@epa.gov.* The IRIS Program will provide updates through the IRIS website (*https://www.epa.gov/iris*) and via EPA's IRIS listserv. To register for the IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect.*

SUPPLEMENTARY INFORMATION: How to Submit Technical Comments to the Docket at *https://www.regulations.gov.*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2012–0830 for the BMD model code and BMD modeling output files for the draft inorganic arsenic IRIS assessment, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail .

Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.

For information on visiting the EPA Docket Center Public Reading Room, visit *https://www.epa.gov/dockets.*

The telephone number for the Public Reading Room is 202–566–1744. The public can submit comments via *www.regulations.gov* or email.

Instructions: Direct your comments on the BMD model code and BMD modeling output files to docket number EPA–HQ–ORD–2012–0830 for Inorganic Arsenic IRIS Assessment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means 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 EPA without going through *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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or as a hard copy

at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2023–28766 Filed 12–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–103]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 18, 2023 10 a.m. EST Through December 22, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230182, Final, BLM, PRO, Programmatic Environmental Impact Statement Addressing Vegetation Treatments Using Herbicides, Review Period Ends: 01/29/2024, Contact: Seth Flanigan 208–373–4094.

Dated: December 22, 2023.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–28749 Filed 12–28–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 194271]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/OMD–24, Physical Access Control System (PACS), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Commission uses this system to maintain records on those individuals to whom the FCC has issued credentials. This modification makes various necessary changes and updates, including formatting changes required by the Office of Management and Budget (OMB) Circular A–108 since its previous publication, the addition of three new routine uses, and the revision of five existing routine uses.

DATES: This modified system of records will become effective on December 29, 2023. Written comments on the routine uses are due by January 29, 2024. The routine uses in this action will become effective on January 29, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Attorney-Advisor, Office of General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OMD–24, as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OMD–24 system of records include:

1. Updating the language in the Security Classification to follow OMB guidance.

2. Updating the language in the Purposes section to be consistent with the language and phrasing currently used generally in the FCC's SORNs and to reflect how the system is currently used (*e.g.,* the system no longer covers frequent visitors, credit union employees, restaurant employees, or parking permit data).

3. Modifying the language in the Categories of Individuals and Categories of Records for clarity; and for consistency with the current uses of the system (which now excludes frequent visitors, credit union employees, restaurant employees, and parking permit data) and with the language and phrasing currently used in the FCC's SORNs.

4. Updating and/or revising language in five routine uses (listed by current routine use number): (1) Litigation; (2) Adjudication; (3) Law Enforcement and Investigation; (4) Congressional Inquiries; and (5) Government-wide Program Management and Oversight.

5. Adding three new routine uses (listed by current routine use number): (11) Breach Notification, the addition of which is as required by OMB Memorandum No. M–17–12; (12) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB Memorandum No. M–17–12; and (13) Non-Federal Personnel.

6. Updating the SORN to include the relevant National Archives and Records Administration (NARA) records schedules.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OMD–24, Physical Access Control System (PACS).

SECURITY CLASSIFICATION:

No information in the system is classified.

SYSTEM LOCATION:

Security Operations Center (SOC), Office of the Managing Director (OMD), FCC, 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

SOC, OMD, FCC, 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Management Act (44 U.S.C. 3541 *et. seq.*); Electronic Government Act (Pub. L. 107–347, sec. 203); Homeland Security Presidential Directive (HSPD) 12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' (2004); Federal Property and Administrative Act of 1949, as amended (Pub. L. 81–152); and Department of Justice Report, ''Vulnerability Assessment of Federal Facilities,'' (1995).

PURPOSE(S) OF THE SYSTEM:

OMD uses the information in this information system for purposes that include, but are not limited to the following:

1. To ensure the safety and security of FCC facilities, systems, and information,

2. To ensure the safety and security of FCC employees, contractors, interns, and guests;

3. To verify that all people entering the FCC facilities, using FCC and Federal information resources (or accessing classified information), are authorized to do so;

4. To track and control FCC badges (PIV cards) issued to individuals entering and exiting these facilities, using FCC systems, or accessing classified information; and

5. To provide a method by which the FCC may ascertain the times each person was in these facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals whose records are maintained in this system include, but are not limited to, individuals who require regular, on-going access to FCC facilities and information technology systems, *e.g.:*

1. Current FCC employees and contractors;

2. Temporary hires and day contractors;

3. Applicants for Federal employment or contract work;

4. FCC students, interns, volunteers, affiliates, and individuals formerly in these positions, *e.g.,* retired FCC employees; and

5. Non-FCC employees who are authorized to perform or use services in FCC facilities on an on-going basis, *e.g.,* building maintenance and cleaning employees.

This system also applies to occasional visitors or short-term guests to whom the FCC will issue temporary identification and credentials, who may include:

1. All visitors to FCC, *e.g.,* non-FCC federal employees and contractors, students, interns, volunteers, and affiliates; and

2. Individuals authorized to perform or use services provided in FCC facilities on an infrequent basis, *e.g.,* service and maintenance workers performing cleaning, maintenance, and repair duties in the Commission's buildings and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include, but are not limited to, records on those individuals to whom the FCC has issued credentials, including the following:

1. FCC employee/temporary hire database, which may include contact information and other personally identifiable information (PII) such as the following: full name (first, middle, and last names), Social Security Number (SSN), birth date, signature, image (photograph), fingerprints, hair color, eye color, height, weight, FCC telephone number, FCC Bureau/Office, FCC office/room number, personal identification number (PIN), background investigation form data and results, date the personal identity verification (PIV) card was issued and expiration dates, PIV registrar approval signature, PIV card serial number, emergency responder designation, copies of documents verifying identification or information derived from such documents (*e.g.,* document title, document issuing authority, document number, document expiration date, other document information), national security level clearance and expiration date, computer system user name, user access and permission rights, authentication certificates, and digital signature information.

2. Contractor database, which may include contact information and other PII such as the following: first, middle, and last name, SSN, birth date, signature, image (photograph), fingerprints, hair color, eye color, height, weight, contractor company name, Federal supervisor, telephone number, FCC point of contact, FCC Bureau/Office, FCC office/room number, FCC telephone number, and FCC contractor badge number, personal identification number (PIN), background investigation form data and results, date the PIV card was issued and expiration dates, PIV registrar approval signature, PIV card serial number, emergency responder designation, copies of documents verifying identification or information derived from such documents (*e.g.,* document title, document issuing authority, document number, document expiration date, other document information), national security level clearance and expiration date, computer system user name, user access and permission rights, authentication certificates, and digital signature information.

3. Day contractor database, which may include contact information and other PII such as the following: First and last name along with badge number, date of issuance and expiration date.

4. Visitor database, which may include contact information and other PII such as the following: first and last name, image (photograph), FCC point of contact and date of issuance.

RECORD SOURCE CATEGORIES:

Sources of records include individual FCC employees to whom the information applies, contractors, or applicants for employment; sponsoring agencies; former sponsoring agencies; other federal agencies; contract employers; former employees; and visitors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

2. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. Law Enforcement and Investigation—When the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, order, or other requirement, to disclose pertinent information to appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or other requirement.

4. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

5. Government-wide Program Management and Oversight—To DOJ to obtain that Department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to OMB to obtain that office's advice regarding obligations under the Privacy Act.

6. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency—To a Federal, State, or local government maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

7. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by Other Than the Agency—To a Federal, State, local, or tribal government, or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the complete records if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel or regulatory action.

8. Labor Relations—To officials of labor organizations recognized under 5 U.S.C. chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. National Security and Intelligence Matters—To Federal, State, local agencies, or other appropriate entities or individuals, or through established liaison channels to selected foreign government in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable to national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

10. Invalid PIV Card Notification—To notify another Federal agency, when, or to verify whether, a PIV card is no longer valid.

11. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

13. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The electronic system of records resides on the FCC's or a vendor's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The information in the electronic database can be retrieved by searching electronically using a variety of parameters including: (1) The name of the individual; (2) Social Security Number (SSN); (3) other ID number (*e.g.,* FCC employee, contractor, or frequent visitor badge number); or (4) PIV card serial number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system related to individuals with FCC access cards is maintained and disposed of in accordance with NARA General Records Schedule (GRS) 5.6 Security Management Records, DAA–GRS–2021–0001; and GRS 4.2, Information Access and Protection Records, DAA–GRS–2019–0001–0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic database is located in FCC facilities that are secured by limited access card readers. The computer servers are password-protected. Access by individuals working at guard stations is password-protected. Each person granted access to the system at guard stations must be individually authorized to use the system. FCC Information Technology backs up these files daily, which are stored in the Cloud at an alternate secure location. The security protocols and features are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting record access or amendment must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

71 FR 55787 (Sept. 25, 2006)

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–28752 Filed 12–28–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 194270]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has modified an existing system of records, FCC/OMD–18, Telephone Call Details, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The FCC's Office of the Managing Director (OMD) will use a vendor-provided management solution to maintain information associated with the FCC's wireless communications equipment, functions, and services. This modification makes various necessary changes and updates, including formatting changes required by the Office of Management and Budget (OMB) Circular A–108 since its previous publication, and the revision of existing routine uses.

DATES: This modified system of records will become effective on December 29, 2023. Written comments on the routine uses are due by January 29, 2024. The routine uses in this action will become effective on January 29, 2024] unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Attorney-Advisor, Office of General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed modification of a system of records maintained by the FCC. The FCC previously provided notice of the system of records FCC/OMD–18 by publication in the **Federal Register** on March 10, 2017 (82 FR 13348). This notice serves to modify FCC/OMD–18 to make various necessary changes and updates, including renaming and clarifying the purpose of the system, making formatting changes required by OMB Circular A–108, and revising existing routine uses. The substantive changes and modifications to the previously published version of the FCC/OMD–18 system of records include:

1. Narrowing the scope of the SORN and renaming the system of records to reflect that only information about FCC employee *wireless* communications equipment, functions, and services is maintained in this system.

2. Updating the system's description to reflect the transition to a vendor-provided solution;

3. Modifying the language in the Categories of Individuals and Categories of Records to reflect changes to the system;

4. Updating and/or revising language in the following routine uses (listed by current routine use number): the former Litigation and Adjudication routine use has been modified into two revised routine uses—(1) Litigation, and (2) Adjudication; (3) Law Enforcement and Investigation; (4) Congressional Inquiries; (5) Government-wide Program Management and Oversight; (9) Communications Providers; and (10) Non-Federal Personnel.

5. Deleting two routine uses (listed by former routine use number), which no longer reflect uses or disclosures of records from this system: (5) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency; and (6) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by Other than the Agency

6. Updating the existing records retention and disposal schedule with a new records schedule: National Archives and Records Administration (NARA) General Records Schedule 5.5: ''Mail, Printing, and Telecommunication Service Management Records.''

The system of records is also revised for clarity and updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OMD–18, FCC Wireless Communications Information.

SECURITY CLASSIFICATION:

No information in the system is classified.

SYSTEM LOCATION:

Information Technology (IT), Office of the Managing Director (OMD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

Information Technology (IT), Office of the Managing Director (OMD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, and 47 U.S.C. 154(i).

PURPOSE(S) OF THE SYSTEM:

This system collects information related to the FCC's wireless communications equipment, functions, and services, and the associated costs and charges for wireless communications equipment, functions, and services. The collection of the records in this system serve the following purposes:

1. Accounting for the information contained in bills for wireless communications equipment, functions, or services; and

2. Ensuring that the FCC operates efficiently and effectively, and guards against any improper uses of FCC wireless communications equipment, functions, or services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. FCC staff (including, but not limited to current and former employees, interns, co-op students, and volunteers) who have been issued FCC wireless communications equipment; and

2. FCC contractors who have been issued FCC wireless communications equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include:

1. Records of the Commission's wireless communications equipment, functions, and services, and the associated costs and charges, which include, but are not limited to:

a. Communications numbers (including telephone numbers, IP addresses, or other unique communications identifier(s) (*e.g.,* International Mobile Equipment Identity (IMEI) numbers));

b. Time (call start and call end) and data usage from wireless communications;

c. Duration of wireless communications (lapsed time);

d. Disposition and cost of communications; and

e. FCC bureau/office to which each relevant identifying wireless communications number is assigned.

2. Type and number of FCC wireless communications devices assigned to FCC staff (employees and contractors);

3. Copies of related wireless communications and service records, including any periodic summaries which may have been compiled to reflect the total number and type of communications and related user charges, usages, and fees from wireless communications equipment assigned to FCC employees; and

4. Names and email addresses of FCC staff and contractors;

5. Personal telephone numbers and personal mailing addresses for FCC staff and contractors, if voluntarily provided by those individuals.

This system does not include or maintain the contents of calls, messages, or other communications to or from FCC wireless equipment or communicated over FCC wireless services or functions.

RECORD SOURCE CATEGORIES:

Record source categories in this system include purchase orders; bills and other documentation associated with the usage and charges for the wireless communications, including but not limited to voice, text, and other teleconferencing services and functions (audio or video), using various equipment and devices (including, but not limited to cellular telephones, other mobile or broadband devices, and teleconferencing services (audio or video)); and individuals about whom records are maintained, as well as their supervisors and managers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

2. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

3. Law Enforcement and Investigation—When the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, order, or other requirement, to disclose pertinent information to appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or other requirement.

4. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

5. Government-wide Program Management and Oversight—To provide information to the DOJ to obtain that department's advice regarding disclosure obligations under FOIA; or to OMB to obtain that office's advice regarding obligations under the Privacy Act.

6. Labor Relations—To officials of labor organizations recognized under 5 U.S.C. chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

7. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Communications Providers—To a communications company providing support to permit account servicing, billing verification, and related requirements.

10. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

1. This electronic system of records resides on the FCC's or a third-party vendor's accredited network.

2. The paper records, if any, are stored in file cabinets in ''non-public'' rooms in the Information Technology (IT) office suite for one year.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, *e.g.,* the individual's name, and/or identifying communications number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FCC maintains and disposes of these various telephone, fax, text, and related electronic transmission service records in this system in accordance with National Archives and Records Administration (NARA) General Records Schedule 5.5: ''Mail, Printing,

and Telecommunication Service Management Records.''

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

The paper documents and files, if any, are maintained in file cabinets in ''non-public'' rooms in the IT office suite. The file cabinets are locked at the end of the business day. Access to the IT offices is via a key and card-coded door.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information pertaining to him or her in the system of records should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting record access or amendment must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

82 FR 13348 (March 10, 2017).

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–28751 Filed 12–28–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10142]

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 January 29, 2024.

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:* Revision with change to the currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP; *Use:* Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. The MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The competitive bidding process defined by the ''The Medicare Prescription Drug, Improvement, and Modernization Act'' (MMA) applies to both the MA and Part D programs. It is an annual process that encompasses the release of the MA rate book in April, the bid's that plans submit to CMS in June, and the release of the Part D and RPPO benchmarks, which typically occurs in August.

Form Number: CMS–10142 (OMB control number: 0938–0832); *Frequency:* Annually; *Affected Public:* Private sector—(Business or other for-profits and Not-for-profit institutions); 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850 (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026).

Dated: December 26, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–28790 Filed 12–28–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7073–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) Virtual Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES:

Meeting Date: Thursday, February 1, 2024 from 12 p.m. to 5 p.m. eastern standard time (e.s.t).

Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments: Thursday, January 18, 2024 5 p.m. (e.s.t).

ADDRESSES:

Meeting Location: Virtual. All those who RSVP will receive the link to attend.

Presentations and Written Comments: Presentations and written comments should be submitted to: Walt Gutowski Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: Persons wishing to attend this meeting must register at the website *https://CMS-APOE-Feb2024.rsvpify.com* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Walt Gutowski, Designated Federal Official, Office of Communications, 7500 Security Boulevard, Mailstop S1–04–08, Baltimore, MD 21244–1850, 410–786–6818, or via email at *APOE@cms.hhs.gov.* Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Panel, which was first chartered in 1999, advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (the Department) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare, Medicaid, Children's Health Insurance Program (CHIP) and Health Insurance Marketplace outreach and education programs.

The APOE has focused on a variety of laws, including the Medicare Modernization Act of 2003 (Pub. L. 108–173), and the Affordable Care Act (Patient Protection and Affordable Care Act, (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)).

The APOE helps the Department determine the best communication channels and tactics for various programs and priorities, as well as new rules and laws. In the coming years, we anticipate the American Rescue Plan, the Inflation Reduction Act, and the SUPPORT Act will be some of the topics the Panel will discuss. The Panel will provide feedback to CMS staff on outreach and education strategies, communication tools and messages and how to best reach minority, vulnerable and Limited English Proficiency populations.

B. Charter Renewal

The Panel's charter was renewed on January 19, 2023, and will terminate on January 19, 2025, unless renewed by appropriate action. The Charter can be found at *https://www.cms.gov/regulations-and-guidance/guidance/faca/apoe.*

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs regarding these programs, including public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructure for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of September 21, 2023, are as follows:

- Mitchell Balk, President, The Mt. Sinai Health Foundation.
- Paula Campbell, Director of Health Equity and Emergency Response, Illinois Primary Care Association .

- Andrea Haynes, MD, Attending Physician, PPC Austin Family Health Center .
- Lydia Isaac, Vice President for Health Equity and Policy, National Urban League.
- Vacheria Keys, Director of Policy and Regulatory Affairs, National Association of Community Health Centers
- Daisy Kim, Principal Legislative Analyst, University of California System.
- Lynn Kimball, Executive Director, Aging and Long-Term Care of Eastern Washington.
- Erin Loubier, Senior Director for Health and Legal Integration and Payment Innovation, Whitman-Walker Health.
- Dr. Alister Martin, CEO, A Healthier Democracy; Physician, Massachusetts General Hospital; Assistant Professor, Harvard Medical School.
- Neil Meltzer, President and CEO, LifeBridge Health.
- Dr. Carol Podgorski, Professor of Psychiatry, Associate Chair of Academic Affairs, University of Rochester Medical Center.
- Melanie Prince, President/CEO MAPYourWay, LLC; Immediate Past President, Case Management Society of America.
- Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
- Carrie Rogers, Associate Director, Community Catalyst.
- Tricia Sandiego, Senior Advisor, Caregiving and Health Team, AARP.
- Marsha Schofield, President, Marsha Schofield & Associates LLC.
- Mina Schultz, Health Policy and Advocacy Manager, Young Invincibles.
- Matthew Snider, JD, Senior Policy Analyst, Unidos US.
- Daniel Spirn, Vice President, Government Relations, Utilization Review Accreditation Commission.
- Emily Whicheloe, Director of Education, Medicare Rights Center.

II. Meeting Format and Agenda

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the February 1, 2024 meeting will include the following:

- Welcome and opening remarks from CMS leadership.
- Recap of the previous (September 21, 2023) meeting.
- Presentations on CMS programs, initiatives, and priorities; discussion of panel recommendations.
- An opportunity for public comment.
- Meeting adjourned.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Meeting Participation

The meeting is open to the public, but attendance is limited to registered participants. Persons wishing to attend this meeting must register at the following weblink *https://CMS-APOE-Feb2024.rsvpify.com* or by contacting the DFO at the address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held virtually. Individuals who are not registered in advance will be unable to attend this meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–28791 Filed 12–28–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: National Health Service Corps Scholar/Students to Service Travel Worksheet, OMB No. 0915–0278—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 27, 2024.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: National Health Service Corps Scholar/Students to Service Travel Worksheet, OMB No. 0915–0278—Revision.

Abstract: Clinicians participating in the HRSA National Health Service Corps (NHSC) Scholarship Program and the Students to Service (S2S) Loan Repayment Program use the online Travel Request Worksheet to request and receive travel funds from the federal government to visit eligible NHSC sites to which they may be assigned in accordance with the Public Health Service Act, section 331(c)(1).

The travel approval process is initiated when an NHSC scholar or S2S

participant notifies the NHSC of an impending interview at one or more NHSC-approved practice sites. The Travel Request Worksheet is also used to initiate the relocation process after an NHSC scholar or S2S participant has successfully been matched to an approved practice site in accordance with the Public Health Service Act, section 331(c)(3). Upon receipt of a completed Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the NHSC scholar or S2S participant and the NHSC logistics contractor regarding travel arrangements and authorization of the funding for the site visit or relocation.

Need and Proposed Use of the Information: This information will facilitate NHSC scholar and S2S participants' receipt of federal travel funds that are used to visit high-need NHSC-approved practice sites. The Travel Request Worksheet is also used to initiate the relocation process after a NHSC scholar or S2S participant has successfully been matched to an approved practice site.

Likely Respondents: Clinicians participating in the NHSC Scholarship Program and the S2S Loan Repayment Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Travel Request Worksheet	800	2	1,600	.0667	106.72
Total	800		1,600		106.72

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–28768 Filed 12–28–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Small Business: Topics in Anti-Infective Therapeutics.

Date: January 10, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marcus Ferrone, PHARMD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, *marcus.ferrone@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–28722 Filed 12–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Stimulants and HIV: Addressing Contemporary and Recurring Epidemics.

Date: February 14, 2024.

Time: 12:00 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North

Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

Name of Committee: National Institute on Drug Abuse, Special Emphasis Panel; Developing Digital Therapeutics for Substance Use Disorders.

Date: March 6, 2024.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *shareen.iqbal@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–28788 Filed 12–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Cell Structure and Function 1 Study Section.

Date: January 25–26, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301.402.3717, *jessica.smith6@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science A.

Date: January 26, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451.4251, *Armaz.aschrafi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–28723 Filed 12–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0292]

National Chemical Transportation Safety Advisory Committee; January 2024 Meeting

AGENCY: United States Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The National Chemical Transportation Safety Advisory Committee (Committee) will conduct a series of subcommittee meetings over two days in League City, TX, and a full committee meeting in Texas City, TX to discuss matters relating to the safe and secure marine transportation of hazardous materials. The subcommittee meetings will also be available by videoconference for those unable to attend in person, however the full committee meeting will be held in person only. All meetings will be open to the public.

DATES:

Meetings: National Chemical Transportation Safety Advisory Committee subcommittees will meet on Tuesday, January 30 and Wednesday, January 31, 2024, from 9 a.m. to 5 p.m. Central Standard Time (CST) each day. The full Committee will meet on Thursday, February 1, 2024, from 9 a.m. until 5 p.m. CST. Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documents: To ensure your comments are reviewed by Committee members before the meeting, submit your written comments no later than January 16, 2024.

ADDRESSES: The subcommittee meetings will be held at INEOS Oligomers USA, 2600 South Shore Boulevard, Suite 400, League City, TX 77573, and the full committee meeting will be held at U.S. Coast Guard Marine Safety Unit Texas City, 3101 FM 2004, Texas City, TX 77591.

Pre-registration Information: Pre-registration is required for in-person access to the meeting or to attend the subcommittee meetings by videoconference. Public attendees will be required to pre-register no later than noon Eastern Standard Time on January 16, 2024, to be admitted to the meeting. In-person attendance may be capped due to limited space in the meeting venue, and registration will be on a first-come-first-served basis. To pre-register, contact Lieutenant Ethan Beard at *Ethan.T.Beard@uscg.mil.* You will be asked to provide your name, telephone number, email, company, or group with which you are affiliated (for subcommittee meetings only), and whether you wish to attend virtually or in person; if a foreign national, also provide your country of citizenship, passport country, country of residence, place of birth, passport number, and passport expiration date.

The National Chemical Transportation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Lieutenant Ethan Beard at *Ethan.T.Beard@uscg.mil* or call 202–372–1419 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings as time permits, but if you want Committee members to review your comment before the meetings, please submit your comments no later than January 16, 2024. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal Decision

Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0292 in the search box and click ''Search''. Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2023–0292. We do not redact personal information from comments which are posted at *https://www.regulations.gov,* so any personal information provided in a comment posted will be viewable by the public. You may wish to review the Privacy and Security Notice found via a link on the homepage of *https://www.regulations.gov,* and 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: Lieutenant Ethan T. Beard, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee, telephone 202–372–1419, or email *Ethan.T.Beard@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting of the National Chemical Transportation Safety Advisory Committee 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. 15101. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U.S. Coast Guard on matters related to the safe and secure marine transportation of hazardous materials. The subcommittees listed in the agenda below were established specifically to address open task statements and will be closed upon issuance of final report.

Agenda

Tuesday, January 30, 2024

Two subcommittees will meet to discuss the following task statements:

9 a.m.–noon CST

Task Statement 22–03: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

1:30 p.m.–5 p.m. CST

Task Statement 21–01: Recommendations on Loading Limits of Gas Carriers and USCG Supplement to International Hazardous Zone Requirements.

Wednesday, January 31, 2024

Two subcommittees will meet to discuss the following task statements:

9 a.m.–noon CST

Task Statement 22–01: Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and Liquefied Natural Gas (LNG).

1:30 p.m.–5 p.m. CST

Task Statement 22–02: Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries.

The task statements and other subcommittee information are located at Homeport at the following address: *https://homeport.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/task-statements.* The agenda for the discussion of each task statement will include the following:

(1) Introduction and review subcommittee task statement.

(2) Public comment period.

(3) Subcommittee discussion and preparation of any proposed recommendations for the full Committee meeting on February 1, 2024.

(4) Adjournment of meeting.

Thursday, February 1, 2024

The agenda for the National Chemical Transportation Safety Advisory Committee meeting on Thursday, February 1, 2024 is as follows:

(1) Call to order.

(2) Roll call and determination of quorum.

(3) Remarks from U.S. Coast Guard leadership.

(4) Chairman and Designated Federal Officer's remarks.

(5) Acceptance of June 15, 2023 meeting minutes and status of task items.

(6) Committee will review, discuss, and formulate recommendations on the following items:

a. Task Statement 21–01: Recommendations on Loading Limits of Gas Carriers and U.S. Coast Guard Supplement to International Hazardous Zone Requirements;

b. Task Statement 22–01: Recommendations to Support Reductions to Emissions and Environmental Impacts Associated with Marine Transport of Chemicals, Liquefied Gases and Liquefied Natural Gas (LNG);

c. Task Statement 22–02: Recommendations on Industry Best Practices and Regulatory Updates Related to the Maritime Transportation of Lithium Batteries;

d. Task Statement 22–03: Recommendations on Testing Requirements for Anti-Flashback Burners for Vapor Control Systems.

(7) Subcommittee recommendation discussion.

(8) Presentation of Task Statement 23–01: Recommendations to Update CG–ENG Policy Letter 02–15.

(9) Task statement tracking discussion.

(10) Public comment period.

(11) Set next meeting date and location.

(12) Adjournment of meeting.

A copy of all meeting documentation will be available at: *https://homeportr.uscg.mil/missions/federal-advisory-committees/national-chemical-transportation-safety-advisory-committee-(nctsac)/committee-meetings* no later than January 24, 2024. Alternatively, you may contact Lieutenant Ethan Beard as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meetings as the Committee discusses the issues and prior to deliberations and voting. There will be a final public comment period at the end of meetings. Speakers are requested to limit their comments to two minutes. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: December 22, 2023.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2023–28753 Filed 12–28–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold a virtual public meeting on Tuesday, January 23, 2024, and Wednesday, January 24, 2024. The meeting will be open to the public via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Tuesday, January 23, 2024, and Wednesday, January 24, 2024, from 8 a.m. to 5 p.m. eastern standard time (EST). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held virtually using the following Microsoft Teams Video Communications link (Tuesday Link: *https://tinyurl.com/bdemyspu;* Wednesday Link: *https://tinyurl.com/yu8pcaan*). Members of the public who wish to attend the virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5 p.m. ET on Friday, January 19, 2024.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Wednesday, January 17, 2024. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Thursday, January 18, 2024, 5 p.m. ET identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email to *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of *http://www.regulations.gov.*

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Tuesday, January 23, 2024, from 3:30 p.m. to 4 p.m. EST and Wednesday, January 24, 2024, from 12 p.m. to 12:30 p.m. EST. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Monday, January 22, 2024, 5 p.m. EST. Please be prepared to submit a written version of your public comment.

FEMA 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 contact Brian Koper at *brian.koper@fema.dhs.gov* as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Public Law 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss the content of the 2023 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Wednesday, January 17, 2024. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Nicholas A. Shufro,

Deputy Assistant Administrator, Risk Analysis, Planning, & Information Directorate, Resilience, Federal Emergency Management Agency.

[FR Doc. 2023–28747 Filed 12–28–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Tuesday, February 27, 2024, and Wednesday, February 28, 2024. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Tuesday, February 27, 2024, and Wednesday, February 28, 2024, from 8 a.m. to 5 p.m. eastern standard time (EST). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at 400 C Street SW, Washington, DC 20472 and virtually using the following Microsoft Teams Video Communications link (Tuesday Link: *https://tinyurl.com/y2wt72by;* Wednesday Link: *https://tinyurl.com/r58zen9e*). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5 p.m. EST on Friday, February 23, 2024.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Wednesday, February 21, 2024. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Thursday, February 22, 2024, 5 p.m. EST identified by Docket ID FEMA–2014–0022, and submitted by the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email:* Address the email to *FEMA-TMAC@fema.dhs.gov*. Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of *http://www.regulations.gov*.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Tuesday, February 27, 2024, from 3:30 p.m. to 4 p.m. EST and Wednesday, February 28, 2024, from 12 p.m. to 12:30 p.m. EST. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Monday, February 26, 2024, 5 p.m. EST. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation to fully participate due to a disability, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov*. The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Pub. L. 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss and vote on the content of the 2023 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Wednesday, February 21, 2024. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Nicholas A. Shufro,

Deputy Assistant Administrator, Risk Analysis, Planning & Information Directorate, Resilience, Federal Emergency Management Agency.

[FR Doc. 2023–28748 Filed 12–28–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–0191; FXES11140800000–234–FF08ESMF00]

Endangered and Threatened Wildlife and Plants; Draft Habitat Conservation Plan and Draft Environmental Assessment; Sacramento Municipal Utility District Operations, Maintenance, and New Construction Habitat Conservation Plan, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Sacramento Municipal Utility District (applicant) for an incidental take permit (permit) under the Endangered Species Act and an accompanying draft habitat conservation plan (plan). We also announce the availability of a draft environmental assessment pursuant to the National Environmental Policy Act. We request public comment on the application, which includes the applicant's proposed plan, and the Service's draft environmental assessment. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before January 29, 2024.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we

receive, will be available for public inspection online in Docket No. FWS–R8–ES–2023–0191 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0191.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R8–ES–2023–0191; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Ian Perkins-Taylor, Fish and Wildlife Biologist, *ian_perkins-taylor@fws.gov* (by email), or at the Sacramento Fish and Wildlife office (by telephone at 916–414–6585). 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: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from Sacramento Municipal Utility District (SMUD; applicant) for a 30-year Permit under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). In support of the application, the applicant prepared a draft habitat conservation plan (plan) pursuant to section 10(a)(1)(B) of the Act. The plan includes seven covered species that are all federally listed as threatened or endangered under the Act. These species comprise five animals and two plants: California tiger salamander (*Ambystoma californiense*) Central California distinct population segment; giant garter snake (*Thamnophis gigas*); valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); vernal pool fairy shrimp (*Branchinecta lynchi*); vernal pool tadpole shrimp (*Lepidurus packardi*); Sacramento Orcutt grass (*Orcuttia viscida*); and slender Orcutt grass (*Orcuttia tenuis*). The plan also includes a conservation strategy to avoid, minimize, and mitigate for covered activities. The applicant requests the permit for incidental take of the five covered animal species incidental to the applicant's ongoing operations and maintenance activities for the applicant's energy infrastructure in Sacramento County and surrounding areas, as well as new construction activities associated with providing energy to its users in Sacramento County, California.

Background

Section 9 of the Act prohibits ''take'' of fish and wildlife species listed as endangered (16 U.S.C. 1538), where take is defined to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). Under section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Issuance of a permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittee would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Applicant's Proposed Activities

As described in the applicant's draft plan, the applicant is proposing to conduct various activities necessary for the ongoing operations and maintenance of the applicant's energy infrastructure in Sacramento County and surrounding areas, as well as some construction of new energy infrastructure to replace or supplement the existing infrastructure. All seven covered species have known occurrences and suitable habitat present within or near the locations where these activities would occur. Therefore, take of the five covered animal species and adverse effects to the two covered plant species could occur in association with the proposed activities. The plan includes a conservation strategy to avoid, minimize, and mitigate impacts to covered species from the proposed activities. Avoidance and minimization measures for the covered species will reduce the impacts to covered species, and the applicant will mitigate for the remaining unavoidable impacts.

National Environmental Policy Act Compliance

The draft environmental assessment was prepared to analyze the impacts of issuing a permit based on the plan and to inform the public of the proposed action, alternatives, and associated impacts and disclose any irreversible commitments of resources. The proposed permit issuance triggers the need for compliance with the National Environmental Policy Act. The proposed action presented in the draft environmental assessment is compared to the no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared. The Service also considered eight other alternatives, but these were eliminated from further consideration because they did not meet the purpose and need of the proposed action or the applicant's objectives.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the Act to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the Act have been met. If met, the Service will issue the permit.

Public Availability of Comments

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 view, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508) and the Department of the Interior's National Environmental Policy Act regulations (43 CFR 46).

Michael Fris,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2023–28719 Filed 12–28–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_WY_FRN_MO4500173507]

Notice of Wyoming Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM's) Wyoming Resource Advisory Council (Council) will meet as follows.

DATES: The Council will participate in a business meeting from 9 a.m. till 3:15 p.m. Mountain Time (MT) and host a short field visit to the National Historic Trails Center from 3:15 p.m. till 4 p.m. MT on January 31, 2024. A virtual participation option will be available for the business meeting. The meeting and field tour are open to the public.

ADDRESSES: The January 31 business meeting will be held at the Casper Field Office located at 2987 Prospector Drive, Casper, WY 82604. The field tour will commence and conclude at the field office and include a visit to the National Historic Trails Center. Individuals that prefer to participate virtually in the meeting must register in advance. Registration information will be posted 2 weeks in advance of the meeting on the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/wyoming.*

FOR FURTHER INFORMATION CONTACT: Azure Hall, BLM Wyoming State Office, telephone: (307) 775–6208, email: *ahall@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Azure Hall. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Council provides recommendations to the Secretary of the Interior concerning issues relating to land use planning and the management of the public land resources located within the State of Wyoming. The Council will participate in a field tour to the National Historic Trails Center. Members of the public are welcome on field tours but must provide their own transportation and meals. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the BLM sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis. Agenda topics may include updates and discussions on statewide planning efforts, district and field manager updates, State Director comments, and other resource management issues the Council may raise. The final agenda will be posted on the Council's web page listed above 2 weeks in advance of the meeting.

A public comment period will be offered at 2:25 p.m. MT. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Written comments for the Council may be sent electronically in advance of the scheduled meeting to Public Affairs Specialist Azure Hall at *ahall@blm.gov,* or in writing to BLM Wyoming/Public Affairs, 5353 Yellowstone Rd., Cheyenne, WY 82009. All comments received will be provided to the Council. 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. While the business meeting and field tour are scheduled from 9 a.m. to 4 p.m. MT, they may end earlier or later depending on the needs of group members. Therefore, members of the public interested in a specific agenda item or discussion at the meeting should schedule their arrival accordingly.

Detailed minutes for Council meetings will be maintained in the BLM Wyoming State Office. Minutes will also be posted to the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/wyoming.*

(Authority: 43 CFR 1784.4–2)

Andrew Archuleta,

BLM Wyoming State Director.

[FR Doc. 2023–28786 Filed 12–28–23; 8:45 am]

BILLING CODE 4331–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO 4500161985]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Control-Silver Peak Project, Inyo and Mono Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) California Desert District Office, Palm Springs, California, intends to prepare an Environmental Impact Statement (EIS) to consider the effects of the Control-Silver Peak Project (Project) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public-scoping process for the EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by February 12, 2024. To afford the BLM the opportunity to consider comments in the draft EIS, please ensure your comments are received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments related to the Control-Silver Peak project by any of the following methods:

- *BLM National NEPA Register: https://bit.ly/44zSlgq.*
- *Email: BLM_CA_CD_TLRR_ControlSilverPeak@blm.gov.*
- *Mail:* Control-Silver Peak Environmental Impact Statement, Bureau of Land Management California Desert District Office, 1201 Bird Center Drive, Palm Springs CA 92262.
- *Fax:* 760–833–7199.

Documents pertinent to this proposal may be examined online at *https://bit.ly/44zSlgq,* and in person at:

- BLM Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, CA 93514.
- BLM Ridgecrest Field Office, 300 S Richmond Road, Ridgecrest, CA 93555.
- BLM California Desert District Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

FOR FURTHER INFORMATION CONTACT: Joan Patrovsky, Project Manager, telephone: 951–214–1775; address: Control-Silver

Peak Project, BLM Desert District Office, 1201 Bird Center Drive, Palm Springs CA 92262; email: *jpatrovs@blm.gov.* Contact Ms. Patrovsky to have your name added to our mailing list. 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 for contacting Ms. Patrovsky. 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:

Purpose and Need for the Proposed Action

The purpose of this Federal action is for the BLM is to respond to a right-of-way application from Southern California Edison for construction, operations, and maintenance of the Control-Silver Peak 55 kilovolt (kV) transmission line on BLM-managed lands, consistent with applicable laws, regulations, and policies. The Secretary of the Interior is authorized to grant rights-of-way on public lands for systems for generation, transmission, and distribution of electric energy (43 U.S.C. 1761(a)(4)); the need for the BLM's action is established by this delegated authority under Title V of the Federal Land Policy and Management Act of 1976.

Preliminary Proposed Action and Alternatives

Southern California Edison is proposing to update and reconfigure approximately 61 linear miles of two existing 55 kV sub-transmission lines originally designed and built in the 1930s. Collectively referred to as the Control-Silver Peak Project, the utility line spans Inyo and Mono counties and the city of Bishop, California.

The proposed project involves approximately 322 acres, of which approximately 76 acres are on BLM-managed public lands, 152 acres are on USFS-managed lands, and 94 acres are on private, State, and local government lands. Updating these transmission lines is mandated by the California Public Utilities Commission.

To address existing overhead electric line non-compliance with the California Public Utilities Commission's General Order 95 and National Electric Reliability Corporation reliability standards, Southern California Edison proposes to conduct the following activities:

- Segment 1—Control Substation to west of the city of Bishop (3.4-mile segment located on BLM-managed lands): The Control-Silver Peak 'A' and 'C' 55 kV sub-transmission lines are each predominately supported on single-circuit lightweight steel poles. Optical groundwire and/or all-dielectric self-supporting (ADSS) fiber optic cable (collectively referred to as telecommunication cable) would be installed on the same existing poles in Segment 1, or ADSS fiber optic cable would be installed underground. All infrastructure installed in Segment 1 would be located within an existing right-of-way. At Control Substation, system protection and telecommunications-associated equipment would be installed.
- Segment 2—west of the city of Bishop to northwest of the city of Bishop (1.4-mile segment not located on Federal lands): Each sub-transmission line in Segment 2 would be rebuilt within the existing rights-of-way. The rebuilt 55 kV sub-transmission lines would utilize two existing single-circuit tubular steel poles (TSPs) and new single-circuit wood pole-equivalent poles. Approximately 25 single-circuit wood pole-equivalents would be installed, two existing single-circuited tubular steel poles would be modified, 49 existing poles would be removed, conductor lines would be replaced along both pole lines, and overhead groundwire and optical groundwire would be installed on one of the two pole lines.
- Segment 3—northwest of the city of Bishop to the California-Nevada border (37.2-mile segment located on both BLM- and USFS-managed lands): The existing sub-transmission poles along the two 55 kV transmission routes would be replaced by one double-circuit sub-transmission line within portions of each of the two existing rights-of-way and within a new right-of-way. The new 55 kV sub-transmission infrastructure would include double-circuit TSPs, double-circuit wood pole-equivalents, and single-circuit H-frames. Optical groundwire would be installed along the length of Segment 3. Approximately 529 double-circuit wood pole-equivalents would be installed; 137 double-circuit TSPs would be installed; 8 single-circuit TSP H-frames would be installed; 1,508 existing structures would be removed; and conductors would be replaced. Optical groundwire and/or fiber optic cable would be installed, as well as system protection and telecommunications-associated equipment at White Mountain Substation and the Fish Lake Valley Metering Station.
- Segment 4—Chalfant Valley between the city of Bishop and the community of Hammil (16-mile segment located in part on BLM-managed lands): Segment 4 consists of the Zack Tap portion of the Control-Silver Peak 'C' 55 kV sub-transmission line. All infrastructure installed in Segment 4 would be located within an existing right-of-way. Approximately two single-circuit wood pole-equivalents would be installed, two existing single-circuit wood poles would be removed, and existing sub-transmission and distribution conductors would be transferred to the replacement poles.
- Segment 5—Deep Springs Valley (2.4-mile segment located in part on BLM lands): Segment 5 consists of the Deep Spring Tap portion of the Control-Silver Peak 'A' 55 kV sub-transmission line. One replacement pole would be located in a new Federal right-of-way; the remaining infrastructure installed in Segment 5 would be located within an existing easement. Approximately eight single-circuit wood pole-equivalents would be installed, eight existing single-circuit wood pole-equivalents would be removed, and the existing sub-transmission conductor would be transferred to the replacement wood pole-equivalents.

A range of reasonable alternatives will be developed and analyzed in the EIS after considering information received during the scoping period. Preliminary action alternatives include a realignment of the line via California State Highway 6 and Nevada State Highway 264. The range of reasonable alternatives will include a no action alternative. Under the no action alternative, the BLM and the USFS would deny the application, and the Control Silver Peak line would remain as existing with ongoing maintenance activities as needed. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives; please indicate the purpose of any suggested alternative.

Summary of Expected Impacts

Preliminary issues for the Project, either beneficial or adverse and of varying intensity, have been identified by BLM personnel and in consultation with Federal, State, and local agencies; Tribes; and Cooperating Agencies. These preliminary issues include potential impacts to:

- Special status wildlife and vegetation species;
- Visual resources;
- Cultural resources; and
- Areas of Critical Environmental Concern

The public scoping process will guide determination of relevant issues that

will influence the scope of the environmental analysis, including alternatives and mitigation measures. The EIS will identify and describe the effects of the Proposed Action on the human environment. The BLM also requests the identification of potential impacts that should be analyzed. Impacts should be a result of the action; therefore, please identify the activity along with the potential impact.

Anticipated Permits and Authorizations

If approved, the BLM would issue a right-of-way grant for BLM-managed lands, and the USFS would amend the existing transmission easement for the Control Silver Peak 55 kV transmission line for USFS-managed lands. Other Federal, State, and local authorizations will be required for the Project. These could include authorizations under the Bald and Golden Eagle Protection Act, the Endangered Species Act, the Clean Water Act, 14 CFR part 77, and other laws and regulations determined to be applicable to the Project.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA process, including a 45-day comment period on the draft EIS. The draft EIS is anticipated to be available for public review late summer 2024; the final EIS is anticipated to be released in fall 2025 and the Record of Decision in winter 2025/2026.

Public Scoping Process

This notice initiates the scoping period.

The BLM will be holding two public scoping meetings and one virtual meeting. The in-person public meetings will be held at the BLM Bishop Field Office—USFS Inyo National Forest Office in Bishop, CA. The specific dates and times of the in-person and virtual scoping meetings will be announced at least 15 days in advance through local media, a news release, social media, and the BLM National NEPA Register (see **ADDRESSES**). Participants must register in advance to attend the virtual scoping meeting.

The date(s) and location(s) of any additional scoping meetings will be announced in advance through local media, a BLM-California news release, social media, and the BLM National NEPA Register (see **ADDRESSES**).

Lead and Cooperating Agencies

The BLM is the lead Federal agency for this EIS and the related National Historic Preservation Act Section 106 process. The following have agreed to participate in the environmental analysis of the Project as Cooperating Agencies: USFS Inyo National Forest, Inyo County, the Los Angeles Department of Water and Power, the United States Fish and Wildlife Service, and the United States Environmental Protection Agency. Additional Federal, State, and local agencies; Tribes; and eligible stakeholders interested in the scoping process may request or be requested by the BLM to participate in the development of the EIS as a Cooperating Agency.

Responsible Official

The BLM California State Director is the responsible official who will make the decisions below.

Nature of Decisions To Be Made

The BLM will use the analysis in the EIS to inform the following: whether to grant, grant with conditions, or deny the application for a right-of-way. Pursuant to 43 CFR 2805.10, if the BLM issues a grant, the BLM decision maker may include terms, conditions, and stipulations determined to be in the public interest.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed action or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Indian Tribal Nations that may be interested in or affected by the proposed Project are invited to participate in the scoping process and may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. The BLM has sent invitations to potentially affected Tribal Nations and initiated government-to-government consultation meetings and intends to continue coordination throughout the NEPA process.

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.

(Authority: 40 CFR 1501.9)

Karen E. Mouritsen,

Bureau of Land Management, California State Director.

[FR Doc. 2023–28746 Filed 12–28–23; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO4500176406]

Notice of Availability of the Final Programmatic Environmental Impact Statement for Approval of Herbicide Active Ingredients for Use on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the final Environmental Impact Statement (EIS) for the Approval of Herbicide Active Ingredients for Use on Public Lands.

DATES: The BLM will not issue a decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability

(NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The final EIS and documents pertinent to this proposal are available for review on the BLM ePlanning project website at *https://go.usa.gov/xtk6a.*

FOR FURTHER INFORMATION CONTACT: Seth Flanigan, Project Manager, telephone: 208–373–4094; email: *sflanigan@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Flanigan. 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: This document provides notice that the BLM has prepared a final programmatic EIS for a review of active ingredients that may be approved for use in vegetation treatments on BLM-managed public lands.

Purpose and Need for the Proposed Action

The BLM's purpose and need is to improve the effectiveness of its invasive plant management efforts by allowing the use of EPA-registered active ingredients not currently authorized for use on BLM public lands. Approving additional active ingredients would diversify the BLM's herbicide treatment options and help meet the purposes that were first identified in the 2007 and 2016 programmatic EISs related to vegetation treatments, which are to make herbicides available for vegetation treatment on public lands and to describe the stipulations that apply to their use.

Proposed Action and Alternatives

The proposed action is to approve the following herbicide active ingredients for use in vegetation treatments on public lands: aminocyclopyrachlor, clethodim, fluozifop-p-butyl, flumioxazin, imazamox, indaziflam, and oryzalin. These active ingredients are registered by the EPA. As part of the process for evaluating whether to approve these active ingredients, the BLM will adopt and depend on Human Health and Ecological Risk Assessments prepared by the U.S. Forest Service.

Schedule for the Decision-Making Process

The BLM anticipates releasing a Record of Decision in January 2024.

Responsible Official

Assistant Director for Resources and Planning.

Nature of Decision To Be Made

Through this process, the BLM will decide whether to approve the seven additional herbicide active ingredients identified earlier for use on BLM-managed public lands. This decision will be based on the best available science and current needs for vegetation management. Any authorization to apply any of these active ingredients at a particular site will be made through a separate, site-specific decision and so is not within the scope of the programmatic EIS or potential decision described in this notice.

Public Participation

In addition to making the draft programmatic EIS available for public comment and review, the BLM hosted a virtual public meeting during the public comment period. The agency received 46 comments, which were incorporated in the final programmatic EIS as appropriate. In coordination with comments received from Native American Tribes, the BLM emphasizes, in the EIS, the need to coordinate with local Tribes during implementation-level analyses and authorizations to reduce and avoid impacts to Tribes that may gather and use native plant materials for cultural or subsistence purposes.

Comments on the draft EIS received from the public and from internal BLM review were considered and incorporated as appropriate into the final EIS. These comments resulted in the addition of clarifying text but did not significantly change the impact analysis.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

Brian St George,

Acting Assistant Director for Resources and Planning.

[FR Doc. 2023–28673 Filed 12–28–23; 8:45 am]

BILLING CODE 4331–27–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–059]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 10, 2024 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 701–TA–686 (Final) (Brass Rod from India). The Commission currently is scheduled to complete and file its determinations and views of the Commission on February 1, 2024.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 27, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–28825 Filed 12–27–23; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1384]

Certain Passive Optical Network Equipment; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 14, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Optimum Communications Services, Inc. of Jersey City, New Jersey. An amended complaint was filed on November 22, 2023. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain passive optical network equipment by reason of the infringement of certain claims of U.S. Patent No. 7,558,260 (''the '260 patent'') and U.S. Patent No. 7,333,511 (''the '511 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation

and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion, and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: *Authority:* The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 22, 2023, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 12–14 of the '511 patent and claims 1 and 3 of the '260 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''optical line termination (OLT) and optical network unit/terminal (ONU/ONT) equipment that conform to passive optical network standards of ITU–T Recommendation series G.984.x for Gigabit-capable Passive Optical Network (G–PON) and its successor standards, including 10GPON/XGS–PON (ITU–T Rec. G.987.3) and TWDM–PON/NG–PON2 (ITU–T Rec. G.989.3) as well as IEEE 802.3ah (EPON) and 802.3av (10G–EPON)'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Optimum Communications Services, Inc., 344 Grove Street #242, Jersey City, NJ 07302

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hangzhou Softel Optic Co., Ltd., 708 709 Haiwei Building, 101 Binkang Road, Binjiang District, Hangzhou, Zhejiang, China 310051

Hangzhou DAYTAI Network Technologies Co., Ltd., 1513 Room, East Communications Building, No. 398, Wensan Road, Xihu District, Hangzhou City, Zhejiang Province, China 310013

Hangzhou Sumlo Industrial Co., Ltd., Room 706–707, Baiyun Bldg-2, No. 190, Tiancheng Road, Hangzhou, Zhejiang, China 310007

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 26, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–28784 Filed 12–28–23; 8:45 am]

BILLING CODE 7020–02–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular No. A–94.

SUMMARY: Office of Management and Budget (OMB) Circular No. A–94 specifies certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government are changed. These updated discount rates are found in Appendix C of the Circular and are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. These rates do not apply to regulatory analysis. The revised Appendix C of Circular No. A–94 can be accessed at *https://www.whitehouse.gov/wp-content/uploads/2023/12/CircularA-94AppendixC.pdf.*

DATES: The revised discount rates will be in effect through December 2024.

FOR FURTHER INFORMATION CONTACT: Jamie Taber, Office of Economic Policy, Office of Management and Budget, 202–395–2515, *a94@omb.eop.gov.*

Wesley Yin,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2023–28727 Filed 12–28–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (23–127)]

National Environmental Policy Act; Agency Master Plan

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Agency Master Plan Final Programmatic Environmental Assessment (PEA) and the resulting Finding of No Significant Impact (FONSI).

SUMMARY: NASA announces its decision to implement the Agency Master Plan. NASA's decision is supported by the detailed analysis found in the Final PEA, as summarized in the agency's FONSI, the availability of which is located under **ADDRESSES**.

ADDRESSES: The complete text of the PEA and the FONSI for the Agency Master Plan are at *https://www.nasa.gov/emd/nepa-public-reviews/.*

FOR FURTHER INFORMATION CONTACT: Ms. Tina Norwood, NASA NEPA Manager, Environmental Management Division, NASA Headquarters Office of Strategic Infrastructure 300 E. Street SW, Washington DC 20546, 202–358–7324 or Email: *tinanorwood@nasa.gov.*

SUPPLEMENTARY INFORMATION: As early as 2011, NASA began integrating and optimizing operations across centers and mission support facilities (*i.e.,* technical capability facilities) to reduce costs and revitalize the capabilities required to enable NASA's portfolio of missions (NASA 2011, 26). In 2015, the Executive Office of the President distributed Management Procedures Memorandum No. 2015–01, tasking federal agencies to ''move aggressively to dispose of surplus properties held by the federal government, make more efficient use of the government's real property assets, and reduce the total square footage of their domestic office and warehouse inventory relative to an established baseline.'' This directive set agency planning goals that were disseminated to centers.

To better achieve its infrastructure reduction targets, NASA proposes to implement a centralized and standardized Agency Master Plan administrative process. This Proposed Action will help ensure program management and planning efforts are aligned across all mission areas and geographically separate centers and facilities, as well as implement a consistent and cost-effective set of processes, systems, and tools for enterprise-wide master planning. The Proposed Action is supported by NASA's 2018 Strategic Plan, which recommended NASA develop an Agency Master Plan that identifies agency facility priorities over a 20-year timeframe (NASA 2018a). The implementation of an Agency Master Plan provides a framework upon which each NASA center is to develop its own Center Master Plan (CMP) tied to Agency-wide requirements, thereby allowing the agency to meet its overall infrastructure management targets and more efficiently (*i.e.,* cost-effectively) achieve its mission as well as sustainment and infrastructure reduction goals.

Joel Carney,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2023–28780 Filed 12–28–23; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, and 50–286; NRC–2023–0180]

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Energy Center; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request from Holtec Decommissioning International, LLC that would permit it, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC, to reduce the required level of primary offsite liability insurance from $450 million to $100 million and to eliminate the requirement to carry secondary financial protection for the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, collectively referred to as the Indian Point Energy Center (IPEC).

DATES: The exemption was issued on November 16, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0180 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–2023–0180. 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.
- *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: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 26, 2023.

For the Nuclear Regulatory Commission.

Marlayna V. Doell,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

Nuclear Regulatory Commission

Docket Nos. 50–003, 50–247, and 50–286

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Exemption

I. Background

Indian Point Nuclear Generating Unit No. 1 (IP1) permanently ceased generation on October 31, 1974, and all fuel was removed from the IP1 reactor vessel by January 1976. In 1996, the U.S. Nuclear Regulatory Commission (NRC, the Commission) issued an order approving the safe-storage condition of

IP1. In 2003, the NRC issued Amendment No. 52 to IP1's provisional operating license, which changed the expiration date of the provisional license to be consistent with that of the Indian Point Nuclear Generating Unit No. 2 (IP2) facility license at that time. Pursuant to title 10 of the *Code of Federal Regulations* (10 CFR) section 50.82(a)(2), the IP1 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. There is no IP1 spent fuel in wet storage at the Indian Point Energy Center (IPEC) site; IP1 spent fuel is stored onsite in dry cask storage at the independent spent fuel storage installation (ISFSI).

By letter dated February 8, 2017 (Agencywide Documents Access and Management System Accession No. ML17044A004), Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC (the IPEC licensees at that time, collectively, Entergy) certified to the NRC that they planned to permanently cease power operations at IP2 and Indian Point Nuclear Generating Unit No. 3 (IP3) by April 30, 2020, and April 30, 2021, respectively. By letters dated May 12, 2020, and May 11, 2021 (ML20113J902 and ML21131A157), Entergy certified to the NRC that power operations permanently ceased at IP2 and IP3 on April 30, 2020, and April 30, 2021, respectively. In the same letters, Entergy certified to the NRC that the fuel was permanently removed from the IP2 and IP3 reactor vessels and placed in the IP2 and IP3 spent fuel pools (SFPs) as of May 12, 2020, and May 11, 2021, respectively.

Based on the docketing of these certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessels, as specified in 10 CFR 50.82(a)(2), the 10 CFR part 50 renewed facility licenses for IP2 and IP3 (Nos. DPR–26 and DPR–64, respectively) no longer authorize operation of the reactors or emplacement or retention of fuel in the reactor vessels. The facility is still authorized to possess, and store irradiated (*i.e.,* spent) nuclear fuel. At the time of the exemption request described below, spent fuel was stored onsite at the IP2 and IP3 facilities in the SFPs and in a dry cask ISFSI.

II. Request/Action

By letter dated March 25, 2022 (ML22084A103), Holtec Decommissioning International, LLC (HDI), one of the licensees of IPEC and an indirect wholly owned subsidiary of Holtec International (Holtec), requested an exemption on behalf of Holtec Indian Point 2, LLC (a licensee of IP1 and IP2, referred to as Holtec IP2) and Holtec Indian Point 3, LLC (a licensee of IP3, referred to as Holtec IP3), from the requirements of 10 CFR 140.11(a)(4) concerning offsite primary and secondary liability insurance.

HDI, Holtec IP2, and Holtec IP3 are hereafter collectively referred to as the licensee. The exemption from 10 CFR 140.11(a)(4) would permit the licensee to reduce the required level of primary offsite liability insurance from $450 million to $100 million and to eliminate the requirement to carry secondary financial protection for IPEC.

The regulation at 10 CFR 140.11(a)(4) requires licensees to have and maintain primary financial protection in an amount of $450 million. In addition, licensees are required to participate in an industry retrospective rating plan (secondary financial protection) that commits licensees to pay into an insurance pool to be used for damages that may exceed primary insurance coverage. Participation in the industry retrospective rating plan will subject the licensee to deferred premium charges up to a maximum total deferred premium of $131,056,000 with respect to any nuclear incident at any operating nuclear power plant and up to a maximum annual deferred premium of $20,496,000 per incident.

Many of the accident scenarios postulated in the updated safety analysis reports for operating power reactors involve failures or malfunctions of systems, which could affect the fuel in the reactor core and, in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of power operations at IPEC and the permanent removal of the fuel from the reactor vessel, many accidents are no longer possible. Similarly, the associated risk of offsite liability damages that would require insurance or indemnification is commensurately lower for such plants. Therefore, the licensee requested an exemption from 10 CFR 140.11(a)(4) to permit a reduction in primary offsite liability insurance and to withdraw from participation in the industry retrospective rating plan.

III. Discussion

Pursuant to 10 CFR 140.8, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 140 when the exemptions are authorized by law and are otherwise in the public interest. The NRC staff has reviewed the licensee's request for an exemption from 10 CFR 140.11(a)(4) and has concluded that the requested exemption is authorized by law and is otherwise in the public interest.

The Price Anderson Act of 1957 (PAA) requires that nuclear power reactor licensees have insurance to compensate the public for damages arising from a nuclear incident. Specifically, the PAA requires licensees of facilities with a ''rated capacity of 100,000 electrical kilowatts or more'' to maintain the maximum amount of primary offsite liability insurance commercially available (currently $450 million) and a specified amount of secondary insurance coverage (currently up to $131,056,000 per reactor). In the event of an accident causing offsite damages in excess of $450 million, each licensee would be assessed a prorated share of the excess damages, up to $131,056,000 per reactor, for a total of approximately $13 billion per nuclear incident. The NRC's regulations at 10 CFR 140.11(a)(4) implement these PAA insurance requirements and set forth the amount of primary and secondary insurance each power reactor licensee must have.

As noted above, the PAA requirements with respect to primary and secondary insurance and the implementing regulations at 10 CFR 140.11(a)(4) apply to licensees of facilities with a ''rated capacity of 100,000 electrical kilowatts or more.'' In accordance with 10 CFR 50.82(a)(2), the license for a power reactor no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel upon the docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel. Therefore, the reactor cannot be used to generate power.

Accordingly, a reactor that is undergoing decommissioning has no ''rated capacity.'' Thus, the NRC may take the reactor licensee out of the category of reactor licensees that are required to maintain the maximum available insurance and to participate in the secondary retrospective insurance pool.

The financial protection limits of 10 CFR 140.11(a)(4) were established to require licensees to maintain sufficient insurance, as specified under the PAA, to satisfy liability claims by members of the public for personal injury, property damage, and the legal cost associated with lawsuits as the result of a nuclear accident at an operating reactor with a rated capacity of 100,000 kilowatts electric or greater. Thus, the insurance levels established by this regulation, as required by the PAA, were associated

with the risks and potential consequences of an accident at an operating reactor with a rated capacity of 100,000 kilowatts electric or greater.

The legal and associated technical basis for granting exemptions from 10 CFR part 140 is set forth in SECY–93–127, ''Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning,'' dated May 10, 1993 (ML12257A628). The legal analysis underlying SECY–93–127 concluded that, upon a technical finding that lesser potential hazards exist after permanent cessation of power operations (and the reactor having no ''rated capacity''), the Commission has the discretion under the PAA to reduce the amount of insurance required of a licensee undergoing decommissioning.

As a technical matter, the fact that a reactor has permanently ceased power operations is not itself determinative as to whether a licensee may cease providing the offsite liability coverage required by the PAA and 10 CFR 140.11(a)(4). In light of the presence of freshly discharged irradiated fuel in the SFP at a recently shutdown reactor, the potential for an offsite radiological release from a zirconium fire with consequences comparable in some respects to an operating reactor accident remains. That risk is very low at the time of reactor shutdown because of design provisions that prevent a significant reduction in coolant inventory in the SFP under normal and accident conditions and becomes no longer credible once the continual reduction in decay heat provides ample time to restore coolant inventory and permits air cooling in a drained SFP. After that time, the probability of a large offsite radiological release from a zirconium fire is negligible for permanently shutdown reactors, but the SFP is still operational, and an inventory of radioactive materials still exists onsite. Therefore, an evaluation of the potential for offsite damage is necessary to determine the appropriate level of offsite insurance post shutdown, in accordance with the Commission's discretionary authority under the PAA to establish an appropriate level of required financial protection for such permanently shutdown facilities.

The NRC staff has conducted an evaluation and concluded that, aside from the handling, storage, and transportation of spent fuel and radioactive materials for a permanently shutdown and defueled reactor, no reasonably conceivable potential accident exists that could cause significant offsite damage. During normal power reactor operations, the forced flow of water through the reactor coolant system (RCS) removes heat generated by the reactor. The RCS transfers this heat away from the reactor core by converting reactor feedwater to steam, which then flows to the main turbine generator to produce electricity. Most of the accident scenarios postulated for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core, which in the most severe postulated accidents would involve the release of large quantities of fission products. With the permanent cessation of reactor operations at IPEC and the permanent removal of the fuel from the reactor core, such accidents are no longer possible. The reactor, RCS, and supporting systems no longer operate and have no function related to the storage of the irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactor, RCS, or supporting systems are no longer applicable.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite. On a case-by-case basis, licensees undergoing decommissioning have been granted permission to reduce the required amount of primary offsite liability insurance coverage from $450 million to $100 million and to withdraw from the secondary insurance pool. One of the technical criteria for granting the exemption is that the possibility of a design-basis event that could cause significant offsite damage has been significantly reduced.

The NRC staff performed an evaluation of the design-basis accidents for IPEC when permanently defueled as part of SECY–22–0102, ''Request by Holtec Decommissioning International, LLC For Exemptions from Certain Emergency Planning Requirements for Indian Point Nuclear Generating Unit Nos. 1, 2, and 3,'' dated November 18, 2022 (ML22231A155). Based on its configuration and licensing basis, with no spent fuel stored in the IP1 SFP and a prohibition against storing any fuel in the pool in the future, there are no postulated Design Basis Accidents (DBAs) that remain applicable to IP1. The IP1 SFP is no longer in use because all spent fuel and other material has been removed, and the IP1 SFP has been drained. At the time of the exemption request, spent fuel was stored onsite in the IP2 and IP3 SFPs, with plans to move all spent fuel to dry cask storage at the onsite ISFSI in accordance with the licensee's Post-Shutdown Decommissioning Activities Report dated December 19, 2019 (ML19354A698).

HDI has stated, and the NRC staff agrees, that while spent fuel remains in the SFPs, the only postulated design-basis accidents that would remain applicable to IPEC in the permanently defueled condition that could contribute a significant dose would be: (1) a fuel handling accident (FHA) in the fuel storage buildings; (2) an accidental release of waste gas; and (3) an accidental release-recycle of waste liquid. For completeness, the NRC staff also evaluated the applicability of other design-basis accidents documented in the IPEC Updated Final Safety Analysis Report (UFSAR) for IP2 and IP3 (ML20259A199 and ML19282B159), respectively to ensure that these accidents would not have consequences that could potentially exceed the 10 CFR 50.67 dose limits and Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'' (ML003716792), dose acceptance criteria or approach the U.S. Environmental Protection Agency (EPA) early phase protective action guides (PAGs) (ML17044A073).

In the IPEC UFSAR, the licensee determined that after a decay time of at least 720 hours (30 days) following permanent cessation of power operations of each unit, the FHA doses would decrease to a level that would not warrant protective actions under the EPA early phase PAG framework, notwithstanding meeting the dose limit requirements under 10 CFR 50.67 and dose acceptance criteria under Regulatory Guide 1.183. The NRC staff notes that the doses from an FHA are dominated by relatively short-lived isotopes such as Iodine-131. Based on the permanent shutdown of IP3 on April 30, 2021, after over two years of decay, the thyroid dose from an FHA would be negligible. The only isotope remaining in significant amounts, among those postulated to be released in a DBA FHA, would be Krypton-85. Because Krypton-85 primarily decays by beta emission, the calculated skin dose from an FHA release would make an insignificant contribution to the total effective dose equivalent, which is the parameter of interest in the determination of the EPA early phase PAGs for sheltering or evacuation. Therefore, the NRC staff concludes that the dose consequence from an FHA for the permanently shutdown IPEC facility would not approach the EPA early phase PAGs.

As part of the supporting documentation for an application for exemptions from various emergency planning requirements, HDI performed an analysis that includes the determination of the dose consequences

for a waste gas decay tank rupture accident. In that analysis, HDI reevaluated the dose from an accidental release of waste gas to reflect the removal of the waste gas decay tank(s) from operation and to reevaluate the dose at 15 months after the shutdown of IP3. Based on the revised analysis, the radiological consequences of a postulated waste gas decay tank rupture were determined to be negligible because the tanks are removed from operation, and depressurized and vented to atmosphere.

Section 6.4, ''Accidental Release-Recycle of Waste Liquid,'' of the IP2 and IP3 Defueled Safety Analysis Reports (DSARs) (ML20259A199 and ML21270A059, respectively) addresses the accidental release of waste liquid and states that the hazard from these releases is derived only from any volatized components. The volatilized components are what comprise the waste gas accident. Thus, the accidental release of liquid waste is evaluated in the analysis for an accidental release of waste gas.

The NRC staff reviewed the consequences of an FHA, waste gas release accident, and liquid tank failure accident in detail during the review of previously approved license amendment requests and exemptions for IPEC and found them to be acceptable. Since this technical information has not changed in relation to this exemption request, the NRC staff relied on these previous conclusions to conduct portions of the review for this exemption request. The NRC staff notes that while HDI continues to rely on the information from previously approved licensing actions, the calculated doses would be expected to be lower when this exemption is implemented due to additional decay time beyond the time assumed in the previously approved actions. Any offsite consequence from a design-basis radiological release is highly unlikely and, thus, a significant amount of offsite liability insurance coverage is not required.

The licensee also analyzed the bounding radiological consequences of a postulated complete loss of SFP water from either the IP2 and IP3 SFPs (*i.e.,* a pool draindown event), which NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' Supplement 1 (ML023470327 and ML023500228), section 4.3.9, identifies is a beyond design-basis event. The HDI analysis considered the distances from both SFPs to both control rooms and the site boundary, as well as a combination of IP3 fuel in the IP2 SFP, to bound the analysis for both units. The analysis considered that the SFP water and the concrete SFP structures serve as radiation shielding. Therefore, a loss of water shielding above the fuel could increase the offsite radiation levels because of the gamma rays streaming out of the SFP and being scattered back to a receptor at the site boundary. The analysis determined that the limiting dose rate in the IP2 and IP3 control rooms at one year after permanent shutdown are less than 0.0259 millirem per hour (mrem/hr) and the dose rate to a receptor at the site boundary is less than 11.55 mrem/hr. Therefore, the NRC staff concludes that the dose consequence from a SFP draindown for the permanently shutdown IPEC facility would not approach the EPA early phase PAGs.

The only beyond design-basis event that has the potential to lead to a significant radiological release at a permanently shutdown and defueled reactor is a zirconium fire in the SFP. The zirconium fire scenario is a postulated, but highly unlikely, accident scenario that involves the loss of water inventory from the SFP resulting in a significant heatup of the spent fuel and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time that IPEC has been permanently shut down.

In SECY–93–127 the NRC staff concluded that there was a low likelihood and reduced short-term public health consequences of a zirconium fire once a decommissioning plant's spent fuel has sufficiently decayed. In its Staff Requirements Memorandum, ''Financial Protection Required of Licensees of Large Nuclear Power Plants during Decommissioning,'' dated July 13, 1993 (ML003760936), the Commission approved a policy that authorized, through the exemption process, withdrawal from participation in the secondary insurance layer and a reduction in commercial liability insurance coverage to $100 million when a licensee is able to demonstrate that the spent fuel could be air-cooled if the SFP was drained of water.

The NRC staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (*e.g.,* Duane Arnold Energy Center, published in the **Federal Register** on May 18, 2021 (86 FR 26961)). Additional discussions of other decommissioning reactor licensees that have received exemptions to reduce their primary insurance level to $100 million are provided in SECY–96–256, ''Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11,'' dated December 17, 1996 (ML15062A483). These prior exemptions were based on the licensee demonstrating that the SFP could be air-cooled consistent with the technical criterion discussed above.

In SECY–00–0145, ''Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,'' dated June 28, 2000, and SECY–01–0100, ''Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools,'' dated June 4, 2001 (ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for offsite insurance. Analyzing when the spent fuel stored in the SFP is capable of adequate air-cooling is one measure that demonstrates when the probability of a zirconium fire would be exceedingly low.

The NRC staff evaluated the issue of zirconium fires and presented independent evaluations of SFP accident risk in NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants'' (ML010430066); NUREG/CR- 6451, ''A Safety and Regulatory Assessment of Generic BWR [Boiling Water Reactor] and PWR [Pressurized Water Reactor] Permanently Shutdown Nuclear Power Plants'' (ML082260098); and NUREG/CR–6441, ''Analysis of Spent Fuel Heatup Following Loss of Water in a Spent Fuel Pool'' (ML021050336). These documents describe the considerations surrounding a seismic event with the potential to result in a loss of SFP coolant that uncovers fuel and discuss the parameters under which the fuel is able to be air cooled in such a scenario.

The NRC staff compared the IPEC facility with the reference plant in NUREG- 6451 and confirmed that the fuel assembly and spent fuel rack parameters for IP2 and IP3 are consistent with those assumed in NUREG–6451, or are conservative when compared to the generic values. Therefore, the NRC staff has high confidence that the stored fuel in the IPEC SFPs will remain in a coolable configuration following a beyond design basis seismic event. Additionally, the NRC staff compared the site-specific conditions at IPEC with the generic risk assumptions in NUREG–1738 and determined that the risk values in

NUREG–1738 bound the risks presented by IPEC. Based on IPEC's conformance with the analysis in NUREG–6451 and NUREG–1738, the NRC finds there is reasonable assurance that the fuel stored in IPEC SFPs is air coolable 15 months after permanent shutdown of the reactor.

In addition, the licensee performed a bounding analysis for the IP2 and IP3 SFPs demonstrating that after the spent fuel has decayed for 15 months, with a complete loss of SFP water inventory with no heat loss or credit for air-cooling (*i.e.,* adiabatic heat-up), a minimum of 10 hours would be available before any fuel cladding temperature reaches 900 degrees Celsius (°C) from the time all cooling is lost. The 10-hour criterion, conservatively, does not consider the time to uncover the fuel and assumes instantaneous loss of cooling to the fuel. The 10-hour time period is also not intended to represent the time that it would take to repair all key safety systems or to repair a large SFP breach. The 10-hour criterion is a conservative period of time in which pre-planned mitigation measures to provide makeup water or spray to the SFP can be reliably implemented before the onset of a zirconium cladding ignition. In addition, in the unlikely event that a release is projected to occur, 10 hours would provide sufficient time for offsite agencies, if deemed warranted, to take appropriate action to protect the health and safety of the public.

Given the permanent shutdown date of IP3 of April 30, 2021, the period in which the spent fuel could heat up to clad ignition temperature within 10 hours under adiabatic conditions ended on August 1, 2022, after 15 months of fuel decay time. This analysis, ''Holtec Spent Fuel Pool Heat Up Calculation Methodology Topical Report, Revision 2,'' dated December 22, 2021 (ML21357A005 [non-public]), was submitted by HDI in support of a request for exemptions from certain emergency planning requirements, dated December 22, 2021 (ML21356B693). HDI provided further information in Enclosure 1, ''Indian Point Unit Nos. 2 and 3 Spent Fuel Pool Heat Up Calculations,'' to HDI's supplemental letter dated February 1, 2022 (ML22032A117).

In the NRC staff's evaluation contained in SECY–22–0102, the NRC staff assessed the HDI accident analyses associated with the radiological risks from a zirconium fire at a permanently shutdown and defueled IPEC after 15 months of fuel decay. For the highly unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, the NRC staff found that there will be a minimum of 10 hours from the initiation of the accident until the cladding reaches a temperature where offsite radiological release might occur. The NRC staff finds that 10 hours is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation. As a result, the likelihood that such a scenario would progress to a zirconium fire is deemed not credible.

Based on the above considerations, the NRC staff has determined that the licensee's proposed reduction in primary offsite liability coverage to a level of $100 million and the licensee's proposed withdrawal from participation in the secondary insurance pool for offsite financial protection are consistent with the policy established in SECY–93–127 and subsequent insurance considerations resulting from zirconium fire risks, as discussed in SECY–00–0145 and SECY–01–0100. The NRC has previously determined in SECY–00–0145 that the minimum offsite financial protection requirement may be reduced to $100 million and that secondary insurance is not required once it is determined that the spent fuel in the SFP is no longer thermal-hydraulically capable of sustaining a zirconium fire based on a plant-specific analysis. In addition, the NRC staff notes that similar exemptions from these insurance requirements have been granted to other permanently shutdown and defueled power reactors upon satisfactory demonstration that the zirconium fire risk from the irradiated fuel stored in the SFP is of negligible concern.

A. The Exemption is Authorized by Law

The PAA and its implementing regulations in 10 CFR 140.11(a)(4) require licensees of nuclear reactors that have a rated capacity of 100,000 kilowatts electric or more to have and maintain $450 million in primary financial protection and to participate in a secondary retrospective insurance pool. In accordance with 10 CFR 140.8, the Commission may grant exemptions from the regulations in 10 CFR part 140 as the Commission determines are authorized by law. The legal and associated technical basis for granting exemptions from 10 CFR part 140 are set forth in SECY–93–127. The legal analysis underlying SECY–93–127 concluded that, upon a technical finding that lesser potential hazards exist after permanent cessation of operations, the Commission has the discretion under the PAA to reduce the amount of insurance required of a licensee undergoing decommissioning.

Based on its review of the exemption request, the NRC staff concludes that the technical criteria for relieving the licensee from its existing primary and secondary insurance obligations have been met. As explained above, the NRC staff found that no reasonably conceivable design-basis accident exists that could cause an offsite release greater than the EPA PAGs and, therefore, that any offsite consequence from a design- basis radiological release is highly unlikely and the need for a significant amount of offsite liability insurance coverage is unwarranted. Additionally, the NRC staff determined that, after 15 months decay, the fuel stored in the IPEC SFPs will be capable of being adequately cooled by air in the highly unlikely event of pool drainage. Moreover, in the highly unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, the NRC staff has determined that at least 10 hours would be available and is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation. Thus, the NRC staff concludes that the fuel stored in the IPEC SFP will have decayed sufficiently by the requested effective date for the exemption of 15 months after permanent cessation of power operations to support a reduction in the required offsite insurance consistent with SECY–00–0145.

The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, section 170, or other laws, as amended, which require licensees to maintain adequate financial protection.

Accordingly, consistent with the legal standard presented in SECY–93–127, under which decommissioning reactor licensees may be relieved of the requirements to carry the maximum amount of insurance available and to participate in the secondary retrospective premium pool where there is sufficient technical justification, the NRC staff concludes that the requested exemption is authorized by law.

B. The Exemption is Otherwise in the Public Interest

The financial protection limits of 10 CFR 140.11 were established to require

licensees to maintain sufficient offsite liability insurance to ensure adequate funding for offsite liability claims following an accident at an operating reactor. However, the regulation does not consider the reduced potential for and consequence of nuclear incidents at permanently shutdown and decommissioning reactors.

The basis provided in SECY–93–127, SECY–00–0145, and SECY–01–0100 allows licensees of decommissioning plants to reduce their primary offsite liability insurance and to withdraw from participation in the retrospective rating pool for deferred premium charges. As discussed in these documents, once the zirconium fire concern is determined to be negligible, possible accident scenario risks at permanently shutdown and defueled reactors are greatly reduced when compared to the risks at operating reactors, and the associated potential for offsite financial liabilities from an accident are commensurately less. The licensee analyzed and the NRC staff confirmed that the risks of accidents that could result in an offsite radiological release are minimal, thereby justifying the proposed reductions in offsite primary liability insurance and withdrawal from participation in the secondary retrospective rating pool for deferred premium charges.

Additionally, participation in the secondary retrospective rating pool could potentially have adverse consequences on the safe and timely completion of decommissioning. If a nuclear incident sufficient to trigger the secondary insurance layer occurred at another nuclear power plant, the licensee could incur financial liability of up to $131,056,000. However, because IPEC is permanently shut down, it cannot produce revenue from electricity generation sales to cover such a liability. Therefore, such liability if subsequently incurred could significantly affect the ability of the facility to conduct and complete timely radiological decontamination and decommissioning activities. In addition, as SECY–93–127 concluded, the shared financial risk exposure to the licensee is greatly disproportionate to the radiological risk posed by IPEC when compared to operating reactors.

The reduced overall risk to the public at decommissioning power plants does not warrant that the licensee be required to carry full operating reactor insurance coverage after the requisite spent fuel cooling period has elapsed following final reactor shutdown. The licensee's proposed financial protection limits will maintain a level of liability insurance coverage commensurate with the risk to the public. These changes are consistent with previous NRC policy as discussed in SECY–00–0145 and exemptions approved for other decommissioning reactors. Thus, the underlying purpose of the regulations will not be adversely affected by the reductions in insurance coverage. Accordingly, an exemption from participation in the secondary insurance pool and a reduction in the primary insurance to $100 million, a value more in line with the potential consequences of accidents, would be in the public interest in that this ensures that there will be adequate funds to address any of those consequences and helps to ensure the safe and timely decommissioning of the reactors.

Therefore, the NRC staff has concluded that an exemption from 10 CFR 140.11(a)(4), which would permit the licensee to lower the IPEC primary insurance levels and to withdraw from the secondary retrospective premium pool at the requested effective date of 15 months after the permanent cessation of power operations, is in the public interest.

C. Environmental Considerations

The NRC's approval of an exemption from insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve surety, insurance, or indemnity requirements.

As the Director of the Division of Decommissioning, Uranium Recovery, and Waste Programs in the NRC's Office of Nuclear Material Safety and Safeguards, I have determined that approval of the exemption request involves no significant hazards consideration, as defined in 10 CFR 50.92, because reducing the licensee's offsite liability requirements for IPEC does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of IPEC or site activities. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident) or any activities conducted at the site. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region resulting from issuance of the requested exemption. The requirement for offsite liability insurance involves surety, insurance, or indemnity matters only.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, the exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 140.11(a)(4) for IPEC. IPEC permanently ceased power operations on October 31, 1974, April 30, 2020, and April 30, 2021, for IP1, IP2 and IP3, respectively. The exemption from 10 CFR 140.11(a)(4) permits IPEC to reduce the required level of primary financial protection from $450 million to $100 million and to withdraw from participation in the secondary layer of financial protection 15 months after permanent cessation of power

operations, which was August 1, 2022. Because this period has already elapsed, the exemption is effective upon issuance.

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

Jane Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–28776 Filed 12–28–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, and 50–286; NRC–2023–0175]

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Energy Center; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request from Holtec Decommissioning International, LLC that would permit it, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC, to reduce the minimum coverage limit for onsite property damage insurance from $1.06 billion to $50 million for the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, collectively referred to as the Indian Point Energy Center (IPEC).

DATES: The exemption was issued on November 14, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0175 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–2023–0175. 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.
- *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: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 26, 2023.

For the Nuclear Regulatory Commission.

Marlayna V. Doell,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–003, 50–247, and 50–286

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Exemption

I. Background

Indian Point Nuclear Generating Unit No. 1 (IP1) permanently ceased generation on October 31, 1974, and all fuel was removed from the IP1 reactor vessel by January 1976. In 1996, the U.S. Nuclear Regulatory Commission (NRC, the Commission) issued an order approving the safe-storage condition of IP1. In 2003, the NRC issued Amendment No. 52 to IP1's provisional operating license, which changed the expiration date of the provisional license to be consistent with that of the Indian Point Nuclear Generating Unit No. 2 (IP2) facility license at that time. Pursuant to title 10 of the *Code of Federal Regulations* (10 CFR) section 50.82(a)(2), the IP1 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. There is no IP1 spent fuel in wet storage at the Indian Point Energy Center (IPEC) site; IP1 spent fuel is stored onsite in dry cask storage at the independent spent fuel storage installation (ISFSI).

By letter dated February 8, 2017 (Agencywide Documents Access and Management System Accession No. ML17044A004), Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC (the IPEC licensees at that time, collectively, Entergy) certified to the NRC that they planned to permanently cease power operations at IP2 and Indian Point Nuclear Generating Unit No. 3 (IP3) by April 30, 2020, and April 30, 2021, respectively. By letters dated May 12, 2020, and May 11, 2021 (ML20133J902 and ML21131A157), Entergy certified to the NRC that power operations permanently ceased at IP2 and IP3 on April 30, 2020, and April 30, 2021, respectively. In the same letters, Entergy certified to the NRC that the fuel was permanently removed from the IP2 and IP3 reactor vessels and placed in the IP2 and IP3 spent fuel pools (SFPs) as of May 12, 2020, and May 11, 2021, respectively.

Based on the docketing of these certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessels, as specified in 10 CFR 50.82(a)(2), the 10 CFR part 50 renewed facility licenses for IP2 and IP3 (Nos. DPR–26 and DPR–64, respectively) no longer authorize operation of the reactors or emplacement or retention of fuel in the reactor vessels. The facility is still authorized to possess and store irradiated (*i.e.,* spent) nuclear fuel. At the time of the exemption request described below, spent fuel was stored onsite at the IP2 and IP3 facilities in the SFPs and in a dry cask ISFSI.

II. Request/Action

By letter dated March 18, 2022 (ML22077A132), Holtec Decommissioning International, LLC (HDI), one of the licensees of IPEC and an indirect wholly owned subsidiary of Holtec International (Holtec), requested an exemption on behalf of Holtec Indian Point 2, LLC (a licensee of IP1 and IP2, referred to as Holtec IP2) and Holtec Indian Point 3, LLC (a licensee of IP3, and referred to as Holtec IP3), from the requirements of 10 CFR 50.54(w)(1) concerning onsite liability insurance. HDI, Holtec IP2, and Holtec IP3 are hereafter collectively referred to as the licensee. The exemption from 10 CFR 50.54(w)(1) would permit the licensee to reduce the required level of onsite

property damage insurance from $1.06 billion to $50 million for IPEC.

The regulation at 10 CFR 50.54(w)(1) requires licensees to have and maintain onsite property damage insurance to stabilize and decontaminate the reactor(s) and reactor site in the event of an accident. The onsite insurance coverage must be either $1.06 billion or whatever amount of insurance is generally available from private sources (whichever is less).

The licensee states that the risk of an incident at a permanently shutdown and defueled reactor is much less than the risk from an operating power reactor. In addition, since reactor operation is no longer authorized at IPEC, there are no events that would require the stabilization of reactor conditions after an accident. Similarly, the risk of an accident that would result in significant onsite contamination at IPEC is also much lower than the risk of such an event at operating reactors. Therefore, the licensee requested an exemption from 10 CFR 50.54(w)(1) to reduce its onsite property damage insurance from $1.06 billion to $50 million, commensurate with the reduced risk of an incident at the permanently shutdown and defueled IPEC site.

III. Discussion

Under 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present.

The financial protection limits of 10 CFR 50.54(w)(1) were established after the Three Mile Island Nuclear Station, Unit 2 accident out of concern that licensees may be unable to financially cover onsite cleanup costs in the event of a major nuclear accident. The specified $1.06 billion coverage amount requirement was developed based on an analysis of an accident at a nuclear reactor operating at power, resulting in a large fission product release and requiring significant resource expenditures to stabilize the reactor and ultimately decontaminate and cleanup the site.

These cost estimates were developed based on the spectrum of postulated accidents for an operating nuclear reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences onsite and offsite can be significant. In an operating plant, the high temperature and pressure of the reactor coolant system (RCS), as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations at IPEC and the permanent removal of the fuel from the reactor vessels, such accidents are no longer possible. As a result, the reactor vessels, RCS, and supporting systems no longer operate and have no function related to the storage of the irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactors, RCS, or supporting systems are no longer applicable.

During reactor decommissioning, the largest radiological risks are associated with the storage of spent fuel onsite. In the exemption request dated March 18, 2022, the licensee discussed both design-basis and beyond design-basis events involving irradiated fuel stored in the SFPs. The licensee determined that there are no possible design-basis events at IPEC that could result in an offsite radiological release exceeding the limits established by the U.S. Environmental Protection Agency's (EPA) early phase Protective Action Guides (PAGs) of 1 roentgen equivalent man (rem) at the exclusion area boundary, as a way to demonstrate that any possible radiological releases would be minimal and would not require precautionary protective actions (*e.g.,* sheltering in place or evacuation). The NRC staff evaluated the radiological consequences associated with various decommissioning activities and the design basis accidents at IPEC, in consideration of the permanently shutdown and defueled condition. The possible design-basis accident scenarios at IPEC have greatly reduced radiological consequences. Based on its review, the NRC staff concluded that no reasonably conceivable design-basis accident exists that could cause an offsite release greater than the EPA PAGs.

The only incident that has the potential to lead to a significant radiological release at a decommissioning reactor is a zirconium fire in the SFP. The zirconium fire scenario is a postulated, but highly unlikely, beyond design-basis accident scenario that involves loss of water inventory from the SFP resulting in a significant heat up of the spent fuel, and culminating in substantial zirconium cladding oxidation and fuel damage. The probability of a zirconium fire scenario is related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the risks from a zirconium fire scenario continue to decrease as a function of the time since IPEC has been permanently shut down.

The Commission has previously authorized a lesser amount of onsite financial protection, based on this analysis of the zirconium fire risk. In SECY–96–256, ''Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11,'' dated December 17, 1996 (ML15062A483), the NRC staff recommended changes to the power reactor financial protection regulations that would allow licensees to lower onsite insurance levels to $50 million upon demonstration that the fuel stored in the SFP can be air-cooled. In its Staff Requirements Memorandum to SECY–96–256, dated January 28, 1997 (ML15062A454), the Commission supported the NRC staff's recommendation that, among other things, would allow permanently shutdown power reactor licensees to reduce commercial onsite property damage insurance coverage to $50 million when the licensee was able to demonstrate the technical criterion that the spent fuel could be air-cooled if the SFP was drained of water.

The NRC staff has used this technical criterion to grant similar exemptions to other decommissioning reactors (*e.g.,* Maine Yankee Atomic Power Station, published in the **Federal Register** (FR) on January 19, 1999 (64 FR 2920); Zion Nuclear Power Station, published in the FR on December 28, 1999 (64 FR 72700); Kewaunee Power Station, published in the FR on March 24, 2015 (80 FR 15638); Crystal River Unit 3 Nuclear Generation Plant, published in the FR on May 6, 2015 (80 FR 26100); Oyster Creek Nuclear Generating Station, published in the FR on December 28, 2018 (83 FR 67365); Pilgrim Nuclear Power Station, published in the FR on January 14, 2020 (85 FR 2153); Three Mile Island Nuclear Station, Unit 1, published in the FR on March 26, 2021 (86 FR 16241); and the Duane Arnold Energy Center, published in the FR on May 18, 2021 (86 FR 26946)). These prior exemptions were based on these licensees demonstrating that the SFP could be air-cooled, consistent with the technical criterion discussed above.

In its March 18, 2022, request, the licensee compared the IPEC fuel storage parameters with those used in NRC generic evaluations of fuel cooling included in NUREG/CR–6451, ''A Safety and Regulatory Assessment of Generic BWR [Boiling-Water Reactor] and PWR

[Pressurized-Water Reactor] Permanently Shutdown Nuclear Power Plants,'' dated August 1997 (ML082260098). The analysis described in NUREG/CR–6451 determined that natural air circulation would adequately cool fuel in the representative PWR.

In SECY–00–0145, ''Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning,'' dated June 28, 2000, and SECY–01–0100, ''Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools,'' dated June 4, 2001 (ML003721626 and ML011450420, respectively), the NRC staff discussed additional information concerning SFP zirconium fire risks at decommissioning reactors and associated implications for onsite property damage insurance. Providing an analysis of when the spent fuel stored in the SFP is capable of air-cooling is one measure that can be used to demonstrate that the probability of a zirconium fire is exceedingly low.

In their letter dated March 18, 2022, HDI stated, and the NRC staff confirmed, that the bounding analyses for the IP2 and IP3 SFPs for beyond design basis events demonstrate that 15 months after shutdown of IP3 a minimum of 10 hours is available before the fuel cladding temperature of the hottest fuel assembly in either SFP reaches 900°C with a complete loss of SFP water inventory. This analysis, ''Holtec Spent Fuel Pool Heat Up Calculation Methodology Topical Report, Revision 2,'' dated December 22, 2021 (ML21357A005 [non-public]), was submitted by HDI in support of a request for exemptions from certain emergency planning requirements, dated December 22, 2021 (ML21356B693). HDI provided further information in Enclosure 1, ''Indian Point Unit Nos. 2 and 3 Spent Fuel Pool Heat Up Calculations,'' to HDI's supplemental letter dated February 1, 2022 (ML22032A117).

As stated in NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' dated February 2001 (ML010430066), 900°C is an acceptable temperature to use for assessing the onset of fission product release, where the SFP is drained and air cooling is not possible; at least 10 hours would be available from the time spent fuel cooling is lost until the hottest fuel assembly reaches a temperature of 900°C. The 10-hour criterion, conservatively, does not consider the time to uncover the fuel and assumes instantaneous loss of cooling to the fuel. The 10-hour time period is also not intended to represent the time that it would take to repair all key safety systems or to repair a large SFP breach. The 10-hour criterion is a conservative period of time in which pre-planned mitigation measures to provide makeup water or spray to the SFP can be reliably implemented before the onset of a zirconium cladding ignition. In addition, in the unlikely event that a release is projected to occur, 10 hours would provide sufficient time for offsite agencies, if deemed warranted, to take appropriate action to protect the health and safety of the public.

In the NRC staff's evaluation contained in SECY–22–0102, the NRC staff assessed the HDI accident analyses associated with the radiological risks from a zirconium fire at a permanently shutdown and defueled IPEC after 15 months of fuel decay. For the highly unlikely beyond design-basis accident scenario where the SFP coolant inventory is lost in such a manner that all methods of heat removal from the spent fuel are no longer available, the NRC staff found that there will be a minimum of 10 hours from the initiation of the accident until the cladding reaches a temperature where offsite radiological release might occur. The NRC staff finds that 10 hours is sufficient time to support deployment of mitigation equipment, consistent with plant conditions, to prevent the zirconium cladding from reaching a point of rapid oxidation. As a result, the likelihood that such a scenario would progress to a zirconium fire is deemed not credible.

Based on the evaluation in SECY–96–256, as well as analysis done by HDI and verified by the NRC staff, the NRC staff determined $50 million to be an adequate level of onsite property damage insurance for a decommissioning reactor once the spent fuel in the SFP is no longer susceptible to a zirconium fire. However, the NRC staff has postulated that there is still a potential for other radiological incidents at a decommissioning reactor that could result in significant onsite contamination besides a zirconium fire. In SECY–96–256, the NRC staff cited the rupture of a large, contaminated liquid storage tank (~450,000 gallons) causing soil contamination and potential groundwater contamination as the costliest postulated event to decontaminate and remediate (other than an SFP zirconium fire). The postulated large liquid radiological waste storage tank rupture event was determined to have a bounding onsite cleanup cost of approximately $50 million. Therefore, the NRC staff determined that the licensee's proposal to reduce onsite insurance to a level of $50 million would be consistent with the bounding cleanup and decontamination cost, as discussed in SECY–96–256, to account for the postulated rupture of a large liquid radiological waste tank at the IPEC site, should such an event occur.

The NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256 and subsequent insurance considerations resulting from additional zirconium fire risks as discussed in SECY–00–0145 and SECY–01–0100, as well as NUREG/CR–6451 and NUREG–1738. In addition, the NRC staff notes that similar exemptions have been granted to other permanently shutdown and defueled power reactors, upon demonstration that the criterion of the zirconium fire risks from the irradiated fuel stored in the SFP is of negligible concern. The NRC staff concluded that 15 months after the permanent shutdown date of IP3 of April 30, 2021, sufficient irradiated fuel decay time will have elapsed at IPEC to decrease the probability of an onsite radiological release from a postulated zirconium fire accident to negligible levels. In addition, the licensee's proposal to reduce onsite insurance to a level of $50 million is consistent with the maximum estimated cleanup costs for the recovery from the rupture of a large liquid radwaste storage tank.

The NRC staff also notes that in accordance with letters submitted by HDI on February 15, 2023, and October 16, 2023 (ML23046A102 and ML23289A158), all the spent fuel from the IP2 and IP3 SFPs has been transferred to dry storage within the ISFSI. As such, an initiating event that would threaten SFP integrity is no longer applicable.

A. The Exemption Is Authorized by Law

The requested exemption from 10 CFR 50.54(w)(1) would allow the licensee to reduce the minimum coverage limit for onsite property damage insurance. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law.

As explained above, the NRC staff has determined that the licensee's proposed reduction in onsite property damage insurance coverage to a level of $50 million is consistent with SECY–96–256. Moreover, the NRC staff concluded that 15 months after the permanent cessation of power operations, sufficient irradiated fuel decay time will have

elapsed at IPEC to decrease the probability of an onsite and offsite radiological release from a postulated zirconium fire accident to negligible levels. In addition, the licensee's proposal to reduce onsite insurance to a level of $50 million is consistent with the maximum estimated cleanup costs for the recovery from the rupture of a large liquid radiological waste storage tank.

The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, based on its review of the licensee's exemption request as discussed above, and consistent with SECY–96–256, the NRC staff concludes that the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to the Public Health and Safety

The onsite property damage insurance requirements of 10 CFR 50.54(w)(1) were established to provide financial assurance that following a significant nuclear incident, onsite conditions could be stabilized and the site decontaminated. The requirements of 10 CFR 50.54(w)(1) and the existing level of onsite insurance coverage for IPEC are predicated on the assumption that the reactor is operating. However, IPEC permanently ceased power operations on October 31, 1974, April 30, 2020, and April 30, 2021 (For IP1, IP2, and IP3, respectively), and permanently defueled as of January 1976, May 12, 2020, and May 11, 2021 (For IP1, IP2, and IP3, respectively). The permanent cessation of operations and defueled status of the facility results in a significant reduction in the number and severity of potential accidents and, correspondingly, a significant reduction in the potential for and severity of onsite property damage. The proposed reduction in the amount of onsite insurance coverage does not impact the probability or consequences of potential accidents. The proposed level of insurance coverage is commensurate with the reduced consequences of potential nuclear accidents at IPEC. Therefore, the NRC staff concludes that granting the requested exemption will not present an undue risk to the health and safety of the public.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption would not eliminate any requirements associated with physical protection of the site and would not adversely affect the licensee's ability to physically secure the site or protect special nuclear material. Physical security measures at IPEC are not affected by the requested exemption. Therefore, the proposed exemption is consistent with the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.54(w)(1) is to provide reasonable assurance that adequate funds will be available to stabilize reactor conditions and cover onsite cleanup costs associated with site decontamination following an accident that results in the release of a significant amount of radiological material. Since IPEC permanently ceased power operations on October 31, 1974, April 30, 2020, and April 30, 2021 (For IP1, IP2, and IP3, respectively), and permanently defueled as of January 1976, May 12, 2020, and May 11, 2021 (For IP1, IP2, and IP3, respectively), it is no longer possible for the radiological consequences of design-basis accidents or other credible events at IPEC to exceed the limits of the EPA PAGs at the exclusion area boundary. The licensee has evaluated the consequences of highly unlikely, beyond-design-basis conditions involving a loss of coolant from the SFP. The analyses show that 15 months after the permanent cessation of power operations, the likelihood of such an event leading to a large radiological release is negligible. The NRC staff's evaluation of the licensee's analyses confirms this conclusion.

The NRC staff also finds that the licensee's proposed $50 million level of onsite insurance is consistent with the bounding cleanup and decontamination cost as discussed in SECY–96–256, to account for the hypothetical rupture of a large liquid radiological waste tank at the IPEC site, should such an event occur. Therefore, the NRC staff concludes that the application of the current requirements in 10 CFR 50.54(w)(1) to maintain $1.06 billion in onsite insurance coverage is not necessary to achieve the underlying purpose of the rule for the permanently shutdown and defueled IPEC reactors.

Under 10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The NRC staff concludes that if the licensee was required to continue to maintain an onsite insurance level of $1.06 billion, the associated insurance premiums would be in excess of those necessary and commensurate with the radiological contamination risks posed by the site. In addition, such insurance levels would be significantly in excess of other decommissioning reactor facilities that have been granted similar exemptions by the NRC.

The NRC staff finds that compliance with the existing rule would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and are significantly in excess of those incurred by others similarly situated.

Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

E. Environmental Considerations

The NRC's approval of an exemption from insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR, ''Nuclear Regulatory Commission,'' is a categorical exclusion provided that: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve surety, insurance, or indemnity requirements.

As the Director of the Division of Decommissioning, Uranium Recovery, and Waste Programs in the NRC's Office of Nuclear Material Safety and Safeguards, I have determined that approval of the exemption request involves no significant hazards

consideration, as defined in 10 CFR 50.92, ''Issuance of amendment,'' because reducing the licensee's onsite property damage insurance for IPEC does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of IPEC or site activities. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident) or any activities conducted at the site. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region resulting from issuance of the requested exemption. The requirement for onsite property damage insurance involves surety, insurance, and indemnity matters only.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), ''Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,'' no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present as set forth in 10 CFR 50.12.

Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.54(w)(1) for IPEC. IPEC permanently ceased power operations on October 31, 1974, April 30, 2020, and April 30, 2021, for IP1, IP2, and IP3, respectively. The exemption from 10 CFR 50.54(w)(1) permits IPEC to reduce the minimum required onsite property damage insurance from $1.06 billion to $50 million 15 months after permanent cessation of power operations, which was August 1, 2022. Because this period has already elapsed, the exemption is effective upon issuance.

Dated: November 14, 2023.

For the Nuclear Regulatory Commission.

Jane Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–28777 Filed 12–28–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, and 50–286; NRC–2022–0223]

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Nuclear Energy Center; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued exemptions in response to a request from Holtec Decommissioning International, LLC that would permit it, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC, to reduce certain emergency planning (EP) requirements. The exemptions eliminate the requirements to maintain an offsite radiological emergency preparedness plan and reduce the scope of onsite EP activities at the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, collectively referred to as the Indian Point Energy Center (IPEC), based on the reduced risks of accidents that could result in an offsite radiological release at a decommissioning nuclear power reactor.

DATES: The exemption was issued on November 1, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0223 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–2022–0223. 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.
- *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: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534; email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 26, 2023.

For the Nuclear Regulatory Commission.

Marlayna V. Doell,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–003, 50–247, and 50–286

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC; Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Exemption

I. Background

Indian Point Energy Center (IPEC) Units 1, 2, and 3, are decommissioning power reactors located on approximately 239 acres of land on the east bank of the Hudson River at the Village of Buchanan in upper Westchester County, New York. The

licensee, Holtec Decommissioning International, LLC (HDI), is the holder of IPEC Facility Operating License Nos. DPR–5, DPR–26, and DFP–64. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

Indian Point Nuclear Generating Unit No. 1 (IP1) permanently ceased generation on October 31, 1974, and all fuel was removed from the IP1 reactor vessel by January 1976. In 1996, the NRC issued an order approving the safe-storage condition of IP1. In 2003, the NRC issued Amendment No. 52 to IP1's provisional operating license that changed the license's expiration date to be consistent with that of the Indian Point Nuclear Generating Unit No. 2 (IP2) license at that time. Pursuant to 10 CFR 50.82(a)(2), the IP1 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. HDI states that there is no IP1 spent fuel in wet storage at the IPEC site; IP1 spent fuel is stored onsite in dry cask storage in an independent spent fuel storage installation (ISFSI).

By letter dated February 8, 2017 (ADAMS Accession No. ML17044A004), Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Indian Point 3, LLC (the IPEC licensees at that time, collectively, ''Entergy'') certified to the NRC that it planned to permanently cease power operations at IP2 and Indian Point Nuclear Generating Unit No. 3 (IP3) by April 30, 2020, and April 30, 2021, respectively. By letters dated May 12, 2020, and May 11, 2021 (ML20113J902 and ML21131A157, respectively), Entergy certified to the NRC that power operations permanently ceased at IP2 and IP3 on April 30, 2020, and April 30, 2021, respectively. In the same letters, Entergy certified to the NRC that the fuel was permanently removed from the IP2 and IP3 reactor vessels and placed in the IP2 and IP3 spent fuel pools (SFPs) as of May 12, 2020, and May 11, 2021, respectively.

Based on the docketing of these certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, as specified in title 10 of the *Code of Federal Regulations* (10 CFR) section 50.82(a)(2), the 10 CFR part 50 renewed facility operating license for IPEC (Nos. DPR–26 and DPR–64) no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. The facility is still authorized to possess, and store irradiated (*i.e.,* spent) nuclear fuel. Spent fuel is currently stored onsite at the IP2 and IP3 facilities in the SFPs and in a dry cask ISFSI.

Many of the accident scenarios postulated in the updated safety analysis reports (USARs) for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core and, in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of power operations at IPEC and the permanent removal of the fuel from the reactor vessels, many accidents are no longer possible. The reactors, reactor coolant system (RCS), and supporting systems are no longer in operation and have no function related to the storage of the irradiated fuel. Therefore, the emergency planning (EP) provisions for postulated accidents involving failure or malfunction of the reactors, RCS, or supporting systems are no longer applicable.

The EP requirements of 10 CFR 50.47, ''Emergency plans,'' and appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' continue to apply to nuclear power reactors that have permanently ceased operation and have permanently removed all fuel from the reactor vessel. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that is permanently shut down and defueled from those for a reactor that is authorized to operate. To reduce or eliminate EP requirements that are no longer necessary due to the decommissioning status of the facility, HDI must obtain exemptions from those EP regulations. Only then can HDI modify the IPEC Emergency Plan to reflect the reduced risk associated with the permanently shutdown and defueled condition of IPEC.

II. Request/Action

By letter dated December 22, 2021 (ML21356B693), revised February 1, 2022 (ML22033A348), HDI requested exemptions from certain EP requirements of 10 CFR part 50 for IPEC. Specifically, HDI requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) that require establishment of plume exposure and ingestion pathway EP zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, which establish the elements that comprise the content of emergency plans. In a letter dated February 1, 2022 (ML22032A017), HDI provided responses to the NRC staff's requests for additional information (RAI) concerning the proposed exemptions.

The information provided by HDI included justifications for each exemption requested. The exemptions requested by HDI would eliminate the requirements to maintain formal offsite radiological emergency plans, reviewed by the Federal Emergency Management Agency (FEMA) under the requirements of 44 CFR, ''Emergency Management and Assistance,'' part 350, ''Review and Approval of State and Local Radiological Emergency Plans and Preparedness,'' and reduce the scope of onsite EP activities at IPEC. HDI stated that application of all the standards and requirements in 10 CFR 50.47(b), 10 CFR 50.47(c), and 10 CFR part 50, appendix E are not needed for adequate emergency response capability, based on the substantially lower onsite and offsite radiological consequences of accidents still possible at the permanently shutdown and defueled facility, as compared to an operating facility. If offsite protective actions were needed for a highly unlikely beyond-design-basis accident that could challenge the safe storage of spent fuel at IPEC, provisions exist for offsite agencies to take protective actions using a comprehensive emergency management plan (CEMP) under the National Preparedness System to protect the health and safety of the public. A CEMP in this context, also referred to as an emergency operations plan (EOP), is addressed in FEMA's Comprehensive Preparedness Guide 101, ''Developing and Maintaining Emergency Operations Plans.'' Comprehensive Preparedness Guide 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decision-making and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An EOP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for ''all-hazards planning.

III. Discussion

In accordance with 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) the exemptions

are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

As noted previously, the current EP regulations contained in 10 CFR 50.47(b) and appendix E to 10 CFR part 50 apply to both operating and shutdown power reactors. The NRC has consistently acknowledged that the risk of an offsite radiological release at a power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel is significantly lower, and the types of possible accidents are significantly fewer, than at an operating power reactor. However, current EP regulations do not recognize that once a power reactor permanently ceases operation, the risk of a large radiological release from credible emergency accident scenarios is significantly reduced. The reduced risk is largely the result of the low frequency of credible events that could challenge the SFP structure, and the reduced decay heat and reduced short-lived radionuclide inventory due to decay. The NRC's NUREG/CR- 6451, ''A Safety and Regulatory Assessment of Generic BWR and PWR Permanently Shutdown Nuclear Power Plants,'' dated August 31, 1997 (ML082260098) and NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' dated February 28, 2001 (ML010430066), confirmed that for permanently shutdown and defueled power reactors bounded by the assumptions and conditions in the reports, the risk of offsite radiological release is significantly less than that for an operating power reactor.

In the past, EP exemptions similar to those requested by HDI, have been granted to licensees of permanently shutdown and defueled power reactors. However, the exemptions did not relieve the licensees of all EP requirements. Rather, the exemptions allowed the licensees to modify their emergency plans commensurate with the credible site-specific risks that were consistent with a permanently shutdown and defueled status. Specifically, the NRC's approval of these prior exemptions from certain EP requirements was based on the licensee's demonstration that: (1) the radiological consequences of design-basis accidents would not exceed the limits of the U.S. Environmental Protection Agency's (EPA) Protective Action Guidelines (PAGs) at the exclusion area boundary, and (2) in the unlikely event of a beyond- design-basis accident resulting in a loss of all modes of heat transfer from the fuel stored in the SFP, there is sufficient time to initiate appropriate mitigating actions, and if needed, for offsite authorities to implement offsite protective actions using a CEMP approach to protect the health and safety of the public. Based on prior exemption requests, the NRC has generally approved such exemptions when the site-specific analysis demonstrates that there is sufficient time following a loss of SFP coolant inventory until the onset of fuel damage to implement onsite mitigation of the loss of SFP coolant inventory and if necessary, to implement offsite protective actions. In prior exemptions, sufficient time was demonstrated if the time exceeded 10 hours from the loss of coolant until the fuel temperature would be expected to reach 900 degrees Celsius (°C), assuming no air cooling.

With respect to design-basis-accidents at IPEC, the licensee provided analysis demonstrating that 15 months following permanent cessation of power operations, the radiological consequences of the only remaining design-basis accident with potential for offsite radiological release (a fuel handling accident in the Reactor Building, where the SFP is located) will not exceed the limits of the EPA PAGs at the exclusion area boundary. With respect to beyond-design-basis accidents at IPEC, HDI analyzed a beyond-design-basis accident involving a complete loss of SFP water inventory, where adequate fuel handling building air exchange with the environment and air cooling of the stored fuel was available. HDI's analysis demonstrated that, as of 10 hours, air cooling of the spent fuel assemblies was sufficient to keep the fuel within safe temperature range, indefinitely, without fuel cladding damage or offsite radiological release.

The NRC staff reviewed the licensee's justification for the requested exemptions against the criteria in 10 CFR 50.12(a) and determined, as described below, that the criteria in 10 CFR 50.12(a) will be met, and that the exemptions should be granted. An assessment of the HDI EP exemptions is described in SECY–22–0102 dated November 18, 2022 (ML22231A160). The Commission approved the NRC staff's recommendation to grant the exemptions in the staff requirements memorandum to SECY–22–0102, dated October 24, 2023 (ML23297A027). Descriptions of the specific exemptions requested by HDI and the NRC staff's basis for granting each exemption are provided in SECY–22–0102. The staff's detailed review and technical basis for the approval of the specific EP exemptions requested by HDI are provided in the NRC staff's safety evaluation dated November 1, 2023 (ML23067A082)

A. The Exemption Is Authorized by Law

The licensee has proposed exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, which would allow HDI to revise the IPEC Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. As stated above, in accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemptions are authorized by law.

B. The Exemption Presents No Undue Risk to the Public Health and Safety

As stated previously, HDI provided analyses that show the radiological consequences of design-basis accidents will not exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, formal offsite radiological emergency plans required under 10 CFR part 50 will no longer be needed for protection of the public beyond the exclusion area boundary, based on the radiological consequences of design-basis accidents still possible at IPEC.

Although highly unlikely, there is one postulated beyond-design-basis accident that might result in significant offsite radiological releases. However, NUREG–1738 confirms that the risk of beyond-design-basis accidents is greatly reduced at permanently shutdown and defueled reactors. The NRC staff's analyses in NUREG–1738 concludes that the event sequences important to risk at permanently shutdown and defueled power reactors are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to the operating power reactors, where typically a large number of different sequences make significant contributions to risk. Per NUREG–1738, relaxation of offsite EP requirements, under 10 CFR part 50, a few months after shutdown resulted in

only a small change in risk. The report further concludes that the change in risk due to relaxation of offsite EP requirements is small because the overall risk is low, and because even under current EP requirements for operating power reactors, EP was judged to have marginal impact on evacuation effectiveness in the severe earthquake event that dominates SFP risk. All other sequences including cask drops (for which offsite radiological emergency plans are expected to be more effective) are too low in likelihood to have a significant impact on risk.

Therefore, granting exemptions to eliminate the requirements of 10 CFR part 50 to maintain offsite radiological emergency plans and to reduce the scope of onsite EP activities will not present an undue risk to the public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The requested exemptions by HDI only involve EP requirements under 10 CFR part 50 and will allow HDI to revise the IPEC Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. Physical security measures at IPEC are not affected by the requested EP exemptions. The discontinuation of formal offsite radiological emergency plans and the reduction in scope of the onsite EP activities at IPEC will not adversely affect HDI's ability to physically secure the site or protect special nuclear material. Therefore, the proposed exemptions are consistent with the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, is to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway EP zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite radiological emergency plans. The standards and requirements in these regulations were developed by considering the risks associated with operation of a nuclear power reactor at its licensed full-power level. These risks include the potential for a reactor accident with offsite radiological dose consequences.

As discussed previously in Section Ill of this document, because IPEC Units 1, 2, and 3 are permanently shutdown and defueled, there will no longer be a risk of a significant offsite radiological release from a design-basis accident exceeding early phase PAGs at the exclusion area boundary, and the risk of a significant offsite radiological release from a beyond-design-basis accident is greatly reduced when compared to the risk at an operating power reactor. In a letter dated December 22, 2021 (ML21356B693), revised February 1, 2022 (ML22033A348), the licensee provided analyses to demonstrate that the radiological consequences of design-basis accidents at IPEC will not exceed the limits of the EPA PAGs at the exclusion area boundary. The NRC staff has confirmed the reduced risks at IPEC by comparing the generic risk assumptions in the analyses in NUREG–1738 to site-specific conditions at IPEC; and has determined that the risk values in NUREG–1738 bound the risks presented by IPEC.

In addition, the significant decay of short-lived radionuclides that has occurred since shutdown of IPEC provides assurance in other ways. As indicated by the results of research conducted for NUREG–1738 and more recently, for NUREG–2161, ''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor'' (ML14255A365), while other consequences can be extensive, accidents from SFPs with significant decay time have little potential to cause offsite early fatalities, even if the formal offsite radiological EP requirements were relaxed. HDI's analysis of a beyond-design-basis accident involving a complete loss of SFP water inventory, where adequate fuel handling building air exchange with the environment and air cooling of the stored fuel is available, shows that as of 10 hours, air cooling of the spent fuel assemblies was sufficient to keep the fuel within safe temperature range, indefinitely, without fuel cladding damage or offsite radiological release.

The only analyzed beyond-design-basis accident scenario that progresses to a condition where a significant offsite release might occur, involves the highly unlikely event where the SFP drains in such a way that all modes of cooling or heat transfer are assumed to be unavailable, which is postulated to result in an adiabatic heat up of the spent fuel. HDI's analysis of this beyond-design-basis accident shows that 15 months after shutdown, a minimum of 10 hours would be available between the time the fuel is initially uncovered (at which time adiabatic heat up is conservatively assumed to begin), until the fuel cladding reaches a temperature of 1652 degrees Fahrenheit (°F) (900°C), which is the temperature associated with rapid cladding oxidation and the potential for a significant radiological release. This analysis conservatively does not include the period of time from the initiating event causing a loss of SFP water inventory until all cooling means are lost.

The NRC staff has verified HDI's analyses and its calculations. The analyses provide reasonable assurance that in granting the requested exemptions to HDI, there is no design-basis accident that will result in an offsite radiological release exceeding the EPA PAGs at the exclusion area boundary. In the highly unlikely event of a beyond-design-basis accident affecting the SFP that results in a complete loss of heat removal via all modes of heat transfer, because all Units at IPEC have been shutdown for well over 15 months, there will be a minimum of 10 hours available before an offsite release might occur and, therefore, at least 10 hours to initiate appropriate mitigating actions to restore a means of heat removal to the spent fuel. If a radiological release were projected to occur under this unlikely scenario, a minimum of 10 hours is considered sufficient time for offsite authorities to implement protective actions using a CEMP approach to protect the health and safety of the public.

Exemptions from the offsite EP requirements in 10 CFR part 50 have previously been approved by the NRC when the site-specific analyses show that at least 10 hours are available following a loss of SFP coolant inventory accident with no air cooling (or other methods of removing decay heat) until cladding of the hottest fuel assembly reaches the zirconium rapid oxidation temperature. The NRC staff concluded in its previously granted exemptions, as it does with the HDI-requested EP exemptions, that if a minimum of 10 hours are available to initiate mitigative actions consistent with plant conditions, or if needed, for offsite authorities to implement protective actions using a CEMP approach, then formal offsite radiological emergency plans, required under 10 CFR part 50, are not necessary at permanently shut down and defueled power reactors.

Additionally, in HDI's letters to the NRC dated December 22, 2021, and February 2, 2022, HDI described the SFP makeup strategies that could be used in

the event of a catastrophic loss of SFP inventory. The multiple strategies for providing makeup water to the SFP include: using existing plant systems for inventory makeup; an internal strategy between IP2 and IP3 that relies on installed Primary Water Storage Tank, fire water inside the SFP buildings, and fire water using a temporary diesel pump from outside of the SFP buildings; or an external strategy that uses portable pumps to initiate makeup flow into the SFPs through a standpipe and standard fire hoses routed to the SFPs or to a spray nozzle. These strategies will continue to be required as License Condition 2(N), ''Mitigation Strategy License Condition'' and 2(AC), ''Mitigation Strategy License Condition'' for Units 2 and 3 respectively. Considering the very low probability of beyond-design-basis accidents affecting the SFP, these diverse strategies provide multiple methods to obtain additional makeup or spray water to the SFP before the onset of any postulated offsite radiological release. Because of the length of time, it would take for the fuel to heat up, there are 10 hours available to respond to any draindown event that might cause such an occurrence by restoring cooling or makeup or providing spray to the IP2 or IP3 SFPs.

For all the reasons stated above, the NRC staff finds that HDI's requested exemptions meet the underlying purpose of all of the standards in 10 CFR 50.47(b), as well as the requirements in 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, and satisfies the special circumstances in 10 CFR 50.12(a)(2)(ii) in view of the greatly reduced risk of offsite radiological consequences associated with the permanently shutdown and defueled state of the IPEC facility. The staff further concludes that the exemptions granted by this action will maintain an acceptable level of emergency preparedness at IPEC and provide reasonable assurance that adequate offsite protective measures, if needed, can and will be taken by State and local government agencies using a CEMP approach, in the highly unlikely event of a radiological emergency at the IPEC facility. Since the underlying purposes of the rules, as exempted, would continue to be achieved, even with the elimination of the requirements under 10 CFR part 50 to maintain formal offsite radiological emergency plans and the reduction in the scope of the onsite EP activities at IPEC, the special circumstances required by 10 CFR 50.12(a)(2)(ii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of these exemptions will not have a significant effect on the quality of the human environment, as discussed in the NRC staff's Environmental Assessment and Finding of No Significant Impact published on October 31, 2023 (88 FR 74536).

IV. Conclusions

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that HDI's request for exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, and as summarized in Enclosure 2 to SECY–22–0102, are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants HDI exemptions from certain EP requirements of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, as discussed and evaluated in detail in the staff's safety evaluation dated November 1, 2023 (ML23067A082). The exemptions are effective upon issuance.

Dated: November 1, 2023.

For the Nuclear Regulatory Commission.

Jane Marshall, Director,

Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2023–28778 Filed 12–28–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–131 and CP2024–137; MC2024–133 and CP2024–139; MC2024–134 and CP2024–140]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 2, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–131 and CP2024–137; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 152 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 21, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* January 2, 2024.

2. *Docket No(s).:* MC2024–133 and CP2024–139; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage & Parcel Select Contract 2 to Competitive Product List and Notice of Filing of Materials Under Seal; *Filing Acceptance Date:* December 21, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* January 2, 2024.

3. *Docket No(s).:* MC2024–134 and CP2024–140; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 153 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 21, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* January 2, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2023–28725 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Ground Advantage® & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Ground Advantage® & Parcel Select Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–136, CP2024–142.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28732 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 26, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 159 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–144, CP2024–150.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28744 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 21, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 153 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–134, CP2024–140.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28738 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 153 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–141, CP2024–147.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28741 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 21, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 152 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–131, CP2024–137.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28737 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, USPS Ground Advantage® & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 21, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail, USPS Ground Advantage® & Parcel Select Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–133, CP2024–139.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28731 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 26, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 158 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–143, CP2024–149.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28743 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, USPS Ground Advantage®, and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, USPS Ground Advantage®, and Parcel Select Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–140, CP2024–146.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28733 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 150 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–128, CP2024–134.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28735 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 39 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–135, CP2024–141.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28730 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Ground Advantage® Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–127, CP2024–133.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28728 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 154 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–137, CP2024–143.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28739 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 38 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–130, CP2024–136.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28729 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 151 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–129, CP2024–135.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28736 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 153 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–138, CP2024–144.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28740 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, USPS Ground Advantage®, and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, USPS Ground Advantage®, and Parcel Select Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–139, CP2024–145.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28734 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 29, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 26, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 157 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–142, CP2024–148.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–28742 Filed 12–28–23; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and Purpose of Information Collection: Medical Reports; OMB 3220–0038

Under sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR 220.

Annuities are also payable to (1) qualified spouses and widow(ers) under sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA who have a qualifying child who became disabled before age 22; (2) surviving children on the basis of disability under section 2(d)(1)(iii)(C), if the child's disability began before age 22; and (3) widow(er)s on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition that makes them unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(er)s and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G–3EMP, Report of Medical Condition by Employer; G–197, Authorization to Disclose Information to the Railroad Retirement Board; G–250, Medical Assessment; G–250A, Medical Assessment of Residual Functional Capacity; G–260, Report of Seizure Disorder; RL–11B, Disclosure of Hospital Medical Records; RL–11D, Disclosure of Medical Records from a State Agency; RL–11D1, Request for Medical Evidence from Employers, and RL–250, Request for Medical Assessment, to obtain the necessary medical evidence. One response is requested of each respondent. Completion is required for all forms to obtain benefits except Form RL–11D1, which is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (88 FR 73054 on October 24, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Medical Reports.

OMB Control Number: 3220–0038.

Form(s) submitted: G–3EMP, G–197, G–250, G–250a, G–260, RL–11B, RL–11D, RL–11D1, and RL–250.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households; Private Sector; State, Local and Tribal Government.

Abstract: The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders

them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Changes proposed: The RRB proposes no changes to Form G–3EMP, G–197, G–250, G–250A, G–260, RL–11B, RL–11D, RL–11D1, and RL–250.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	600	10	100
G–197	6,000	10	1,000
G–250	11,950	30	5,975
G–250A	50	20	17
G–260	100	25	42
RL–11B	5,000	10	833
RL–11D	250	10	42
RL–11D1	600	20	200
RL–250	11,950	10	1,992
Total	36,500	.....	10,201

2. Title and Purpose of Information Collection: Report of Stock Options and Other Payments; OMB 3220–0203

The Railroad Retirement Board (RRB) is directed by 45 U.S.C. 231f(c)(2) to establish a financial interchange (FI) between the railroad retirement and social security systems to place the Social Security Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds and the Centers for Medicare and Medicaid Services (CMS) Hospital Insurance (HI) Trust Fund in the same condition they would have been had railroad employment been covered by the Social Security Act and Federal Insurance Contributions Act (FICA). Each year, the RRB estimates the benefits and expenses that would have been paid by these trust funds, as well as the payroll taxes and income taxes that would have been received by them. To make these estimates, the RRB requires information on all earnings data that are not taxable under the Railroad Retirement Tax Act (RRTA) but would be taxable under FICA.

A recent court ruling, *Wisconsin Central Ltd.* v. *U.S.,* determined that non-qualified stock options (NQSOs) are not taxable under section 3231 of RRTA but would be taxable under FICA. Additionally, in *Union Pacific Railroad Co.* v. *U.S.,* the Eight Circuit Court of Appeals determined whether certain ratification payments were taxable under the RRTA. The RRB requires railroad employer to provide information on the value of NQSOs and any ratification payments from the railroad employer separately from a railroad worker's reported RRTA compensation to determine the payroll taxes due to the Social Security Administration (SSA) and CMS and administer transfer of funds between the RRB, SSA and CMS accordingly.

The payroll information collected from the BA–15 is essential for the calculation of payroll taxes and benefits used by the FI. Failure to collect NQSOs and ratification payment information will result in understating the payroll taxes that should have been collected and the benefit amounts that would have been payable under the Social Security Act for FI purposes. Accurate compensation file tabulations are also an integral part of the data needed to estimate future tax revenues and corresponding FI amounts. Without information on NQSOs and ratification payments, the amount of funds to be transferred between the RRB, SSA and CMS cannot be determined.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (88 FR 73055 on October 24, 2023) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Report of Stock Options and Other Payments.

OMB Control Number: 3220–0203.

Form(s) submitted: BA–15.

Type of request: Revision of a currently approved collection of information.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Section 7(b) (6) of the Railroad Retirement Act (45 U.S.C. 231f(c)(2)) requires a financial interchange between the SSA, CMS, and the RRB trust funds. The collection obtains non-qualified stock options and ratification payments for railroad employees. The information is used to calculate the correct payroll taxes and benefits that would have been paid to place the OASIDI and CMS trust funds in the same condition they would have been had railroad employment been covered by the SS and FIC acts.

Changes proposed: The RRB proposes minor non burden impacting changes to the Form BA–15:

- remove the word ''ratification'' and replace with ''other'' in the first paragraph of the form and section 24–27 of the Form tab,
- remove the word ''ratification'' and replace with ''other'' in the Instructions tab for number 14–17 & 24–27,
- remove the word ''ratification'' and replace with ''other'' in the Data Layout tab for 28–31, and
- remove the first row titled ''Column'' in the Data Layout tab.

The burden estimate for the ICR is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
BA–15 (by secure Email, FTP, or CD–ROM)—Positive	50	300	250
BA–15 (by secure Email, FTP, or CD–ROM)—Negative	550	15	137.5
Total	600	.....	388

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.*

Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–1275 or *Brian.Foster@rrb.gov* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Brian Foster,

Clearance Officer.

[FR Doc. 2023–28760 Filed 12–28–23; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–420, OMB Control No. 3235–0479]

Submission for OMB Review; Comment Request; Extension: Rule 15c2–7

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c2–7 (17 CFR 240.15c2–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the Rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the Rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When Rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative, and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 3,493 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that number as the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as OTC Link, operated by OTC Markets Group Inc. (''OTC Link''). According to a representative of OTC Link, it has not received any Rule 15c2–7 notices since the previous PRA extension for Rule 15c2–7 in 2020; nor does OTC Link anticipate receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the Rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (×) 45 seconds/notice).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by January 29, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 26, 2023.

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–28785 Filed 12–28–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20128 and #20129; KANSAS Disaster Number KS–20002]

Administrative Disaster Declaration of a Rural Area for the State of Kansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a rural area for the State of Kansas dated 12/22/2023.

Incident: Severe Storms, Straight-Line Winds, Tornadoes and Flooding.

Incident Period: 07/14/2023 through 07/21/2023.

DATES: Issued on 12/22/2023.

Physical Loan Application Deadline Date: 02/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 09/23/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wallace

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 201286 and for economic injury is 201290.

The State which received an EIDL Declaration is Kansas.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–28764 Filed 12–28–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20144 and # 20145; UTAH Disaster Number UT–20001]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Utah

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Utah (FEMA–4752–DR), dated 12/23/2023.

Incident: Flooding.

Incident Period: 05/01/2023 through 05/27/2023.

DATES: Issued on 12/23/2023.

Physical Loan Application Deadline Date: 02/21/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 09/23/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/23/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Iron, Morgan, Sanpete, Utah, Wasatch.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 201446 and for economic injury is 201450.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–28787 Filed 12–28–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2023–0050]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections, and one extension collection for OMB-approval.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAmain* by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA–2023–0050] in your submitted response.

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 27, 2024. Individuals can obtain copies of the collection instruments by writing to the above email address.

Employee Work Activity Questionnaire—20 CFR 404.1574(a)(1)–(3)—0960–0483. Social Security Disability Insurance (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments, but are unable to continue working, they submit Form SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA also uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of SSDI beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3033 Phone	5,000	1	15	1,250	$59.07	19	*** $167,345
SSA–3033 Returned via mail	10,000	1	15	2,500	59.07	.....	*** 147,675
Totals	15,000	.....	.....	3,750	.....	.....	315,020

* We based this figure on average general and operations manager's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes111021.htm*).
** We based this figure on the average FY 2023 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 29, 2024. Individuals can obtain copies of these OMB clearance packages by writing to the *OR.Reports.Clearance@ssa.gov.*

1. Medicaid Use Report—20 CFR 416.268—0960–0267. Section 1619(b) of the Social Security Act (Act) and 20 CFR 416.268 of the Code of Federal Regulations (Code) require SSA to determine eligibility for: (1) special SSI payments, and (2) special SSI eligibility status for a person who works despite a disabling condition. Section 20 CFR 416.268 of the Code also provides that to qualify for special SSI eligibility status, an individual must establish that termination of eligibility for benefits under title XIX of the Act would seriously inhibit their ability to continue employment. SSA uses the collected information to determine if an individual is entitled to special title XVI SSI payments and, consequently, to Medicaid or Medi-Cal.

In most cases, if an SSI beneficiary is blind or disabled, regardless of age, and they have Medicaid before beginning to work again, they can retain their Medicaid benefits while continuing to work as long as their disabling condition still exists. During a personal or telephone Redetermination interview with the SSI recipient, an SSA employee asks the following questions:

- Have you used any medical care or services in the past 12 months that were paid for by Medicaid (or Medi-Cal, etc.)?
- Do you expect to receive any medical care or services in the next 12 months that will be paid for by Medicaid (or Medi-Cal, etc.)?
- Without Medicaid (Medi-Cal, etc.), would you be unable to pay your medical bills if you become ill or injured in the next 12 months?

Generally, a response of ''yes'' to one of those three questions will lead to SSA determining that an SSI recipient whose payments have stopped based on earnings, is entitled to special SSI payments and, consequently, to Medicaid benefits under section 1619 (b) of the Act. The respondents are SSI recipients for whom SSA has stopped payments based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field offices and teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
20 CFR 416.268 SSI Claims System	99,000	1	3	4,950	* $12.81	** 21	*** $507,276

* We based this figure on average SSI payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*).
** We based this figure on the average FY 2023 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

2. Appeal of Determination for Extra Help with Medicare Prescription Drug Costs—0960–0695. Public Law 108–173, also known as the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), amended title XVIII of the Act to establish a subsidy program to help certain individuals with limited income and resources pay for Medicare Part D prescription drug coverage. SSA also commonly refers to this subsidy program as Extra Help.

Individuals seeking Extra Help may apply via the SSA–1020 paper form or i1020 online application (OMB No. 0960–0696). If SSA determines that the claimant is not eligible for Extra Help, SSA will mail a notice to the claimant indicating that SSA denied the claim. Extra Help denial notices include appeal rights and explain how to request an appeal. Individuals learn about the appeal process for Extra Help via determination notices, 800# representatives, as well as SSA and CMS websites. Individuals voluntarily initiate the Extra Help appeal process by printing the form from SSA's online website and sending the completed form to SSA, contacting SSA's 800 Number to request an appeal, or going into the field office to request the appeal. If the individual chooses to call the 800# or go into the field office, an SSA technician enters the individual's request into the MAPS system. The system then electronically sends the request to the Subsidy Determination Unit, who

schedules an appointment for the appeal and sends an appointment notice to the individual.

Individuals who appeal SSA's decision regarding eligibility or continuing eligibility for Medicare Part D Extra Help must complete Form SSA–1021. The respondent may mail the completed form to either the local field office or to the Wilkes-Barre Direct Operations Center. The respondent may also complete the form with assistance from an SSA technician via an in-person interview at the Field Office or over the telephone. SSA technicians enter all claims into Medicare Application Processing System (MAPS), which automatically adjudicates claims based on the data the technicians input. Respondents are Medicare beneficiaries, or proper applicants acting on behalf of a Medicare beneficiary, who do not agree with the outcome of an SSA Extra Help eligibility determination and want to file an appeal.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1021—(Paper version)	1,859	1	10	310	* $29.76		*** $9,226
SSA–1021—(Internet version: MAPS)	5,291	1	10	882	* $29.76	** 24	*** $89,220
Totals	7,150			1,192			*** $98,446

* We based this figure on average U.S. worker's hourly wages; State and local government worker's salaries; and attorney representative payee wages as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm).*

** We based this figure on the average FY 2023 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

Dated: December 26, 2023.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2023–28774 Filed 12–28–23; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Extension of Exclusions and Request for Comments: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice and request for comments.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the Section 301 investigation of China's acts, policies and practices related to technology transfer, intellectual property and innovation by excluding from additional duties certain products of China. In September 2023, the U.S. Trade Representative determined to extend 352 previously reinstated exclusions and 77 COVID-related exclusions through December 31, 2023. This notice announces the U.S. Trade Representative's determination to extend for five months, through May 31, 2024, these same exclusions. This notice also announces that USTR is opening of a docket for public comments on whether to further extend particular exclusions.

DATES: The extension announced in this notice will extend the reinstated and COVID-related product exclusions through May 31, 2024.

January 22, 2024: The public docket on the web portal at *http://comments.USTR.gov* will open for interested persons to submit comments.

February 21, 2024 at 11:59 p.m. ET: To be assured of consideration, submit written comments on the public docket by this time.

ADDRESSES: You must submit all comments through the online portal: *https://comments.ustr.gov/.*

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Senior Associate General Counsel Philip Butler or Assistant General Counsel Edward Marcus at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In the course of this investigation, the U.S. Trade Representative has imposed additional duties on products of China in four tranches. *See* 83 FR 28719 (June 20, 2018); 83 FR 40823 (August 16, 2018); 83 FR 47974 (September 21, 2018), as modified by 83 FR 49153 (September 28, 2018); and 84 FR 43304 (August 20, 2019), as modified by 84 FR 69447 (December 18, 2019) and 85 FR 3741 (January 22, 2020). For each tranche of additional duties, the U.S. Trade Representative established a process by which interested persons could request the exclusion of particular products subject to the action. With few exceptions, most of these exclusions expired in 2019 and 2020.

Reinstated Exclusions

On October 8, 2021, the U.S. Trade Representative invited the public to submit comments on whether to reinstate certain exclusions previously granted and extended. *See* 86 FR 56345 (October 8, 2021). On March 28, 2022, the U.S. Trade Representative determined to further modify the action by reinstating 352 expired exclusions. The reinstated exclusions applied as of October 12, 2021, and extended through December 31, 2022. *See* 87 FR 17380 (March 28, 2022) (March 28 notice). On December 21, 2022, the U.S. Trade Representative determined to extend the 352 reinstated exclusions through September 30, 2023. *See* 87 FR 78187 (December 21, 2022).

COVID-Related Exclusions

On March 25, 2020, USTR requested public comments on proposed modifications to exclude from additional duties certain medical-care products related to the U.S. response to COVID. 85 FR 16987 (March 25, 2020). On December 29, 2020, USTR announced 99 product exclusions for medical-care products and products related to the U.S. COVID response. 85 FR 85831 (December 20, 2020). For

background on previous extensions to exclusions related to the U.S. response to COVID, see prior notices including 86 FR 13785 (March 10, 2021), 86 FR 63438 (November 16, 2021), 87 FR 33871 (June 03, 2022), and 87 FR 73383 (November 29, 2022). On May 17, 2023, the U.S. Trade Representative determined to extend 77 of the COVID-related exclusions through September 30, 2023. *See* 88 FR 31580 (May 17, 2023) (May 17 notice).

Four-Year Review

In accordance with section 307(c)(3) of the Trade Act of 1974, on September 8, 2022, USTR announced that it would be conducting a review of the July 6, 2018 and August 23, 2018 actions, as modified. *See* 87 FR 26797 (May 5, 2022); 87 FR 55073 (September 8, 2022). In a notice published on October 17, 2022 (87 FR 62914), USTR announced that it was opening a docket on November 15, 2022 (USTR–2022–0014) for interested persons to submit comments with respect to any aspect of Section 307(c) considerations, including whether certain tariff headings (including those with a product specific exclusion) should remain covered by the actions.

To allow for consideration under the four-year review, on September 11, 2023, the U.S. Trade Representative determined to extend the 429 product specific exclusions still in effect (352 reinstated exclusions and 77 COVID-related exclusions) through December 31, 2023. *See* 88 FR 62423 (September 11, 2023) (September 11 notice).

B. Determination To Further Extend Exclusions

In light of public comments submitted in the four-year review, the U.S. Trade Representative has determined that it is appropriate to seek comments on whether to further extend any of the 429 product specific exclusions. Accordingly, to provide time for public comments and pursuant to sections 301(b), 301(c) and 307(a) of the Trade Act of 1974, as amended, the U.S. Trade Representative will extend the 429 exclusions for five months, until May 31, 2024. The U.S. Trade Representative's determination considers public comments previously submitted, advice of advisory committees, and advice of the interagency Section 301 Committee.

The extensions announced in the notice are available for any product that meets the description in the product exclusion. Further, the scope of each exclusion and modification is governed by the scope of the ten-digit Harmonized Tariff Schedule of the United States (HTSUS) subheadings and product descriptions in annex A and annex B of the September 11, 2023 notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

C. Request for Public Comment

On January 22, 2024, USTR will open a docket to receive public comments on whether to further extend particular exclusions beyond May 31, 2024. USTR will evaluate each exclusion on a case-by-case basis. The focus of the evaluation will be on the availability of products covered by the exclusion from sources outside of China, efforts undertaken to source products covered by the exclusion from the United States or third countries, why additional time is needed, and on what timeline, if any, the sourcing of products covered by exclusion is likely to shift outside of China. In addition, USTR will consider whether or not extending the exclusion will impact U.S. interests, including the overall impact of the exclusion on the goal of obtaining the elimination of China's acts, policies and practices covered in the Section 301 investigation.

D. Procedures To Comment on Particular Exclusions

The 352 reinstated exclusions can be found in the Annex of the March 28 notice. *See also* 87 FR 62485 (October 14, 2022); 87 FR 62486 (October 14, 2022); 88 FR 46362 (July 19, 2023) The 77 COVID-related exclusions can be found in the Annex of the May 17 notice. See also 88 FR 38120 (June 12, 2023). For ease of reference, USTR is also posting a list of the exclusions at *http://comments.USTR.gov.*

As noted above, the public docket on the portal will be open from January 22, 2024 to February 21 2024. Fields on the comment form marked with an asterisk (*) are required fields. Fields with gray (BCI) notation are for business confidential information, which will not be publicly available. Fields with a green (Public) notation will be publicly available. Additionally, interested persons will be able to upload documents to supplement their comments. Commenters will be able to review the public version of their comments before they are posted.

Set forth below is a summary of the information to be entered on the exclusion comment form.

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The exclusion covered by the comment.
- Whether you support or oppose extending the exclusion beyond May 31, 2024.
- The availability of products covered by the exclusion from sources outside of China.
- Efforts undertaken to source the product from the United States or third countries.
- Why additional time is needed to shift sourcing out of China and on what timeline, if any, you expect sourcing to shift outside of China.

E. Submission Instructions

To be assured of consideration, you must submit your comment when the public docket on the portal is open—from January 22, 2024 to February 21, 2024. Interested persons seeking to comment on more than one exclusion must submit a separate comment for each exclusion. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of their knowledge.

Annex A

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.67 and U.S. notes 20(ttt)(i), 20(ttt)(ii), 20(ttt)(iii), and 20(ttt)(iv) to subchapter III of chapter 99 of the HTSUS. *See* 88 FR 62423 (September 11, 2023). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on January 1, 2024, and before 11:59 p.m. eastern daylight time on May 31, 2024. Effective on January 1, 2024, the article description of heading 9903.88.67 of the HTSUS is modified by deleting ''December 31, 2023,'' and by inserting ''May 31, 2024,'' in lieu thereof.

Annex B

The U.S. Trade Representative has determined to extend all exclusions previously extended under heading 9903.88.68 and U.S. notes 20(uuu)(i), 20(uuu)(ii), 20(uuu)(iii), and 20(uuu)(iv) to subchapter III of chapter 99 of the HTSUS. *See* 88 FR 62423 (September 11, 2023). The extension is effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on January 1, 2024, and before 11:59 p.m. eastern daylight time on May 31, 2024.

Effective on January 1, 2024, the article description of heading 9903.88.68 of the HTSUS is modified by deleting ''January 1, 2024,'' and by inserting ''June 1, 2024,'' in lieu thereof.

Megan Grimball,

Co-Chair of Section 301 Committee, Office of the United States Trade Representative.

[FR Doc. 2023–28770 Filed 12–28–23; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2023–0177]

Transforming Transportation Advisory Committee; Public Meeting

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The Office of the Secretary of Transportation (OST) announces a public meeting of the Transforming Transportation Advisory Committee (TTAC) on Thursday, January 18, 2024. This notice announces the date, time, and location of the meeting, which will be virtually open to the public. The purpose of the TTAC is to provide information, advice, and recommendations to the Secretary on matters relating to transportation innovations.

DATES: This meeting will be held on Thursday, January 18, 2024 from 9 a.m. to 3 p.m. eastern time (ET). A link allowing for live viewing of the meeting will be posted to *https://www.transportation.gov/ttac* ahead of the meeting start time.

ADDRESSES: The TTAC members will be meeting in-person at USDOT Headquarters in Washington, DC. The public may attend the meeting virtually, with information available on the USDOT TTAC website (*https://www.transportation.gov/ttac*) at least one week in advance of the meeting date.

FOR FURTHER INFORMATION CONTACT: Vincent White, Jr., Senior Advisor for Innovation and TTAC Designated Federal Officer, Office of the Secretary, *ttac@dot.gov,* (202) 770–8887.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Secretary of Transportation (Secretary) established TTAC as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. 2) to provide information, advice, and recommendations to the Secretary on matters relating to transportation innovations. TTAC is tasked with advice and recommendations to the Secretary about needs, objectives, plans, and approaches for transportation innovations.

Description of Duties: TTAC will undertake only tasks assigned to it by the Secretary of Transportation or designee and provide direct, first-hand information, advice, and recommendations by meeting and exchanging ideas on the tasks assigned. In addition, TTAC will respond to ad-hoc informational requests from OST.

II. Agenda

At the meeting, the agenda will cover the following topics:

1. Call to Order, Official Statement of the Designated Federal Officer, Meeting Logistics
2. Opening Remarks
3. Overview of Committee Purpose
4. Committee Member Introductions
5. Committee Business
6. Break for Lunch
7. DOT Leadership Remarks
8. Committee Business
9. Recap of Meeting Progress and Review of Next Steps

III. Public Participation

The meeting will be open to the public via livestream. Members of the public who wish to observe the virtual meeting can access the livestream accessible on the following website: *https://www.transportation.gov/ttac.*

We are committed to providing equal access to this meeting for all participants. Sign language interpretation and live-captioning will be available during the livestream. If you need alternative formats or services because of a disability, such as interpretation or other ancillary aids, or if you require translation into a language other than English, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than Thursday, January 11, 2024.

Members of the public may also submit written materials, questions, and comments to the Committee in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than Thursday, January 11, 2024.

All advance submissions will be reviewed by the Designated Federal Officer. If approved, advance submissions shall be circulated to the TTAC members for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

Authority: The Committee is a discretionary Committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app. 2.

Issued in Washington, DC, on December 22, 2023.

Vincent Gerard White Jr.,

Senior Advisor for Innovation.

[FR Doc. 2023–28771 Filed 12–28–23; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL REGISTER

Vol. 88 Friday,

No. 249 December 29, 2023

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 220, 225, et al.

Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 292

[FNS–2023–0029]

RIN 0584–AE96

Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Interim final rule.

SUMMARY: The Consolidated Appropriations Act, 2023 requires the Secretary of Agriculture to make available an option to States to provide summer meals for non-congregate meal service in rural areas with no congregate meal service and to establish a permanent summer electronic benefits transfer for children program (Summer EBT) for the purpose of ensuring continued access to food when school is not in session for the summer. This interim final rule amends the Summer Food Service Program (SFSP) and the National School Lunch Program's Seamless Summer Option (SSO) regulations to codify the flexibility for rural program operators to provide non-congregate meal service in the SFSP and SSO, collectively referred to as the summer meal programs. This rule also establishes regulations and codifies the Summer EBT Program in the Code of Federal Regulations.

DATES:

Effective date: This rule is effective December 29, 2023.

Comment date: To be considered, written comments on this interim final rule must be received on or before April 29, 2024.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this interim final rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.
- All written comments submitted in response to this interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the internet via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Division Director, Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703–305–2537.

SUPPLEMENTARY INFORMATION:

I. Background

Summer is frequently the most challenging time of the year for children at risk of food insecurity when they no longer have access to daily school meals. The Summer Food Service Program (SFSP), authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761, has been the primary source of nutritional support for vulnerable children during the summer since its formal inception in 1975. The purpose of the SFSP is to provide nutritious meals to children in low-income areas when schools are not in session during the summer months, as well as during long school breaks in communities with year-round school calendars. Schools can also offer meals through the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP), which allows school food authorities to provide meals to children during the summer months, school breaks, and unanticipated school closures using the procedures of the school lunch and breakfast programs. The SFSP and SSO are collectively referred to as USDA summer meal programs. Through the summer meal programs, program operators provide meals and snacks to children at meal sites in their communities; these meals are served at no cost to children and were historically required to be consumed in a congregate setting on the meal site premises.

Among the USDA Child Nutrition Programs (CNPs), the summer meal programs are unique in many ways, including the seasonal nature of their operations, the diversity of organizations that operate the programs, and the range of sites at which meals are offered. Many sites offer summer programming in addition to meals. Meals served as part of the summer meal programs are served at a wide variety of sites, including schools, recreation centers, parks, camps, and places of worship. In July 2022, the summer meal programs served an average of 4.1 million children daily at more than 36,000 sites nationwide.

Although the summer meal programs are an important source of nutrition for many children, program access remains inconsistent or out of reach for some communities and families that cannot reliably access summer meals. Children who may have difficulty accessing summer meals include those:

- living in rural areas who would have to travel long distances to receive a meal,
- living in communities without summer meal sites,
- living in areas with limited safe and reliable transportation options, and in families whose schedules do not allow them to travel to a site daily.

USDA, State administering agencies, program operators, and other nutrition security champions have worked hard to expand the reach of summer meal programs over the years. Despite these efforts, only 1 in 6 children [1] who eat free or reduced price school meals participate in the summer meal programs in a typical year, leaving a large gap between children in need of summer meals and those who receive them. This ongoing summer nutrition gap indicates that the nutritional needs of children throughout the U.S. during the summer months cannot be met with a one-size-fits-all approach.

In December 2022, Congress took action to address the summer nutrition gap by providing new tools to serve low-income children during the summer months. On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023 (the Act) (Pub. L. 117–328), which amended section 13 of the NSLA to allow children in rural areas to take their meals off-site beginning in 2023, and established a permanent, nationwide Summer Electronic Benefits Transfer for Children Program (Summer EBT) beginning in 2024. Regulations to amend the summer meal programs and establish Summer EBT are being promulgated through this interim final rule (IFR), as required by the Act.[2]

As mentioned above and pursuant to the requirements of the NSLA, which authorizes the summer meal programs, summer meal program rules previously required that children remain at a meal service site while they consumed their meal or snack. This approach to program implementation, known as congregate meal service, has many benefits including providing the opportunity for children to socialize and engage in supervised activities offered at the site. However, as previously noted, some communities lack the resources or infrastructure to operate meal sites and supervise a meal service, and some families face significant barriers traveling to a site for each meal. The Act addresses these challenges by providing flexibility for sites in rural areas to provide a non-congregate meal service, which means allowing children to take meals off-site, for example, to their homes.

The Act also authorized a new permanent method for offering additional summer nutrition assistance for children. The new Summer EBT program will provide benefits on EBT cards so that families can purchase food for their children. Together, these changes will revolutionize how our nation supports the nutritional needs of children during the summer months, when school is not in session.

These two alternatives to connecting children to nutrition during the summer may be new as permanent options, but both have been tested extensively in recent years. Non-congregate meal service in the summer meal programs has been tested through demonstration projects, program waivers during the COVID–19 pandemic, and operational guidance in summer 2023; Summer EBT has been piloted through demonstration projects since 2011 and the Pandemic EBT program offered in response to COVID–19 was similar to Summer EBT in many ways.

A. USDA's Vision for Complementary Summer Nutrition Programs

USDA's goal across all summer nutrition programs is simple: to connect children with nutritious food during the summer months. While traditional congregate summer meal service remains a vital tool for providing low-income children with nutritious meals at no cost, USDA recognizes that not all children who would benefit from summer nutrition assistance are currently being reached through existing Programs. Due to numerous barriers to access that have already been highlighted, including time, distance, and transportation, many children who are eligible for free and reduced price school meals are not well served by traditional congregate summer meal sites. In particular, these challenges have been historically difficult to overcome in rural areas. USDA's goal is

[1] Calculated from 2022 FNS administrative data.

[2] 42 U.S.C. 1761(a)(13)(F) (''Not later than 1 year after December 29, 2022, the Secretary shall promulgate regulations (which shall include interim final regulations) to carry out this section. . . .'').

to leverage the provisions codified through this IFR, working aggressively to close access gaps and ensure that children receive critical nutrition assistance during the summer months.

The Consolidated Appropriations Act, 2023, as implemented by this rulemaking, expands the reach of USDA's summer nutrition programs by establishing three distinct and essential pillars of summer nutrition assistance that will work in tandem and in a complementary fashion. In addition to the traditional congregate summer meal option provided through the SFSP and the SSO, State agencies and Program operators can now utilize two new methods of providing children with summer nutrition assistance. Non-congregate meal service will address critical access challenges in rural areas by allowing SFSP and SSO Program operators to provide meals available for pick up or delivery that children can eat at the time and place that is convenient for them. Summer EBT is a nationwide, permanently authorized program that provides EBT benefits to eligible children that can be used to buy groceries. Taken together, these three pathways for providing summer nutrition assistance will help to better support rural, suburban, and urban communities alike.

The complementary nature of these nutrition assistance options is the foundation of their great potential to benefit children across the nation. They are intended to be used simultaneously for the purposes of delivering a more complete summer nutrition safety net. To illustrate, SFSP and SSO meal sites have provided nutritious summer meals, as well as recreational, educational, and other enrichment opportunities to generations of children. However, in rural areas, where there may be a lack of transportation, sites, funds, and staff to support traditional congregate meal service, non-congregate meal service can be used to help provide children in these areas with equitable access to nutritious food. Significantly, the provisions established by the Act and implemented under this rulemaking also allow for program operators to use the non-congregate option to complement congregate meals at the times when congregate meal service is not offered; for example, a rural site serving congregate meals during the week may also offer ''wraparound'' service, providing take-home meals for the weekend. The Summer EBT Program's addition of EBT benefits for children introduces a new layer of nutrition assistance that is flexible and allows families to supplement summer meals with foods of their choice that are available anytime, including when meal sites are not open. The combination of these three approaches for providing nutrition during the summer months will help to ensure both equitable and more comprehensive access for children, and USDA looks forward to continued partnership with States, Tribes, and local stakeholders to use all the tools that are now available to meet their communities' needs.

B. Non-Congregate Meal Service

Demonstration Projects

The Act instructed USDA to incorporate best practices and lessons learned from demonstration projects carried out under section 749(g) of the Agriculture, Rural Development, Food and Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132), which provided $85 million to USDA beginning in 2010 to initiate and implement the Summer Food for Children demonstration projects.[3] One demonstration project was the Enhanced Summer Food Service Program (eSFSP), which tested changes to the existing structure and delivery mechanism of SFSP for the purpose of determining effects on program participation. The eSFSP included the Meal Delivery demonstration which offered breakfast and lunch delivery to homes of eligible children in rural areas, as well as the Food Backpack demonstration which provided weekend and holiday meals to SFSP participants for consumption when SFSP sites were not open. In 2013, the demonstration project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excess Heat was first implemented. Under this demonstration project, SFSP and SSO sponsors who were operating approved outdoor meal sites without temperature-controlled alternative sites could operate as non-congregate sites on days when the area was experiencing excessive heat. In addition to excessive heat, USDA approved four States to participate in the demonstration due to smoke and air-quality concerns in summer 2019. In more recent years, USDA implemented Meals-to-You (MTY) under the demonstration authority. MTY was developed in response to stakeholder feedback about the challenges and difficulties of serving summer meals in sparsely populated communities and remote areas. Through MTY, food boxes were mailed directly to families of children who were eligible for free or reduced price school meals. Each eligible child received a weekly box, which contained five breakfast meals, five snacks, and five lunch/supper meals.

Historically, non-congregate meals were operated on a small scale through the above mentioned demonstration projects. However, during the COVID–19 public health emergency (PHE), non-congregate meals became more widely available as an important part of USDA's response to the pandemic. In March 2020, Federal, State, and local level efforts to reduce the spread of COVID–19 resulted in the abrupt closure of schools across the country, disrupting access to school meals for millions of children. In response, State agencies and program operators requested individual waivers under the authority of section 12(l) of the NSLA and implemented program flexibilities, such as the flexibility to allow non-congregate meal service through SFSP and SSO. To better address the urgent need for resources and operational flexibilities required to serve children throughout the pandemic, Congress provided USDA with temporary authority to waive statute and regulations on a nationwide basis for Child Nutrition Programs through the Families First Coronavirus Response Act of 2020 (FFRCA) (Pub. L. 116–127), and later through subsequent statutory extensions to help USDA continue to respond to changing needs throughout the pandemic. Such efforts included USDA issuing the Nationwide Waiver to Allow Non-Congregate Feeding and other complementary non-congregate waivers under section 2202(a) of the FFCRA. These waivers ensured that children continued to receive nutritious meals and helped to mitigate the impacts of the COVID–19 PHE.

For summer 2023, USDA provided guidance on non-congregate meal service operations in rural areas as required by the Act. Many of the non-congregate flexibilities allowed for summer 2023 operations were allowed through previous demonstrations, waivers, and guidance on non-congregate meal service operations during the COVID–19 PHE. Through this IFR, USDA is promulgating regulations for the summer meal programs rural non-congregate option for program year 2024 and beyond. These regulations are based on a combination of best practices from demonstration projects, non-congregate flexibilities offered during the COVID–19 pandemic, and prior guidance that was issued for operating rural non-

[3] Information and supporting materials on each of the Summer Food for Children demonstration projects are available at: *https://www.fns.usda.gov/ops/summer-food-children-demonstrations.*

congregate meal service in summer 2023.

Stakeholder Feedback

Between April 5, 2023, and June 15, 2023, USDA hosted 21 listening sessions with external stakeholders on the topic of non-congregate summer meals. Input was gathered from State agency program administrators,[4] school food authorities (SFAs) and other program operators, advocacy groups, and program participants. Listening session participants were asked a series of questions related to implementation, service models, program integrity, challenges, benefits, and definitions; each session also included open time where participants could share additional thoughts of interest to them. USDA also held consultations with Tribal leaders from Indian Tribal Organizations (ITOs) to obtain their input on the topic of non-congregate summer meals, as well as rural experts at Federal agencies to obtain their input on defining and identifying rural areas. USDA recorded and analyzed all comments shared during the listening sessions and has taken all comments into careful consideration when developing this rule.

Stakeholders were generally positive about non-congregate summer meals, citing enhanced program access as the primary benefit. However, 14 State agencies voiced concerns with program integrity and five State agencies expressed concern about nutritional quality and/or food safety of meals served. Fifteen additional stakeholders voiced concern about inadequate staff support to manage non-congregate meal service. Stakeholders said that the existing (long-standing) definition of ''rural'' did not sufficiently encompass rural areas and offered ideas for how the definition of ''rural'' could be expanded (see section II. A. ii. for rural definition discussion). Finally, stakeholders requested clear and timely guidance from USDA on a wide range of topics, including best practices, eligibility, and program integrity efforts; State agencies requested that guidance be issued anywhere from 6 to 18 months in advance of summer program operations.

C. Summer EBT

Section 13A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762, authorizes the Secretary to establish a program under which States, and Indian Tribal Organizations (ITOs) that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program may, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits. For 2024, the value of the benefit will be $40 per child for each month of the summer with amounts adjusted for Alaska, Hawaii, and the U.S. Territories.

Summer EBT Demonstration Projects

Although Summer EBT is the newest, permanent Federal food assistance entitlement program, it is not a new approach to addressing food insecurity during the summer months. In fact, Summer EBT has been tested through more than a decade of demonstration projects administered by USDA in collaboration with States and Indian Tribal Organizations. Prior to the publication of this interim final rulemaking, and under the same authority as the SFSP demonstration projects provided in 2010 (section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132)), the Summer Electronic Benefits Transfer for Children (SEBTC) demonstration project was implemented to help reduce summer food insecurity among children. Starting in 2011, the SEBTC demonstration distributed a monthly food benefit during the summer months to children eligible for free or reduced price school meals. Most States operating the demonstration projects utilized a debit card (or Supplemental Nutrition Assistance Program (SNAP)) model whereby eligible participants received benefits on a debit card, which could be redeemed at any SNAP-authorized retailer. Some States and several ITOs operated the Summer EBT program using a WIC-like model whereby eligible participants could purchase only foods prescribed in a defined food package at WIC-authorized retailers using their Summer EBT cards.

Through rigorous evaluation, the SEBTC demonstration projects have proven successful at mitigating food insecurity and improving diet quality and variety. SEBTC benefits reduced the most severe category of food insecurity among children during the summer by one-third when compared to those receiving no benefits.[5] Evaluations of USDA's previous experience with SEBTC demonstration projects indicated that this model could be effectively implemented in a wide variety of communities. The SEBTC demonstration projects were an innovative approach to meeting the nutritional needs of children during the summer months as the model provides families with flexibility to purchase food for their children at times and places that are convenient for them.

Pandemic Electronic Benefit Transfer

The effectiveness of the SEBTC demonstration projects facilitated the implementation of Pandemic Electronic Benefit Transfer (P–EBT). From 2020 to 2023, P–EBT was part of the COVID–19 pandemic response to prevent food insecurity among children while they did not have access to school meals. The Families First Coronavirus Response Act, (Pub. L. 116–127), as amended by the Continuing Appropriations Act, 2021 and Other Extensions Act (Pub. L. 116–159), the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), the American Rescue Plan Act of 2021 (Pub. L. 117–2), and the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) provided the Secretary authority to approve State agency plans to administer P–EBT. Children were eligible to receive P–EBT benefits if they would have received free or reduced price meals under the NSLA but missed those meals due to COVID–19. For example, the child's school was closed or operating at reduced hours or attendance due to COVID–19, or the child did not attend school because they were sick with COVID–19. Through P–EBT, eligible school children received temporary emergency nutrition benefits through EBT cards that families could use to purchase food at local retailers, allowing families with eligible children to purchase healthy food more easily during the pandemic.

The American Rescue Plan Act (Pub. L. 117–2) specifically authorized the extension of P–EBT for the covered summer period after any school year in which there was a public health emergency designation for all children who met P–EBT income eligibility requirements under the schools component of P–EBT. In December 2023, the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) authorized USDA to allow State agencies to implement P–EBT for summer 2023 without the need for an approved P–EBT plan for the preceding school year, limited P–EBT eligibility for school children to only those children who attended NSLP-participating schools at the end of the preceding school year,

[4] USDA invited all State agencies to provide input, and the vast majority (47) of States actively participated in the listening sessions.

[5] Food and Nutrition Service. (2013). SEBTC Demonstration: Evaluation Findings for the Full Implementation Year 2012 Final Report. U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/SEBTC2012.pdf.*

and redefined the P–EBT benefit amount for summer 2023 to $120 for the entire covered period, with amounts adjusted for Alaska, Hawaii, and the U.S. Territories.

With the end of the COVID–19 PHE on May 11, 2023, FY 2023 was the final fiscal year that children were eligible for P–EBT benefits. The permanent Summer EBT program for school-aged children will begin in summer 2024 ensuring eligible school-aged children will continue to receive critical nutrition assistance.

Summer EBT as a Permanent Program

Beginning in summer 2024, the NSLA permanently establishes Summer EBT benefits at $40 per month per eligible child and indexes the benefit to the SNAP Thrifty Food Plan to account for inflation. Summer EBT will provide EBT benefits to children from low-income households during the summer months to ensure continued access to nutrition when school is not in session. USDA anticipates that Summer EBT will help to close the summer nutrition gap for more than 29 million children once implemented nationwide. As amended, the NSLA allows States that participate in SNAP and Territories participating in NAP (including Puerto Rico, American Samoa and the Commonwealth of the Northern Mariana Islands) to issue benefits which are usable at SNAP or NAP retailers. The NSLA also provides that ITOs administering WIC may deliver Summer EBT benefits to be used at WIC authorized retailers. Benefit redemptions are made through EBT cards or 'other electronic methods.' The permanent Summer EBT Program is separate and distinct from the earlier SEBTC demonstration projects, which were limited in scope and conducted for the purpose of gaining insight into the effectiveness of the model. The permanent Summer EBT Program is also separate and distinct from P–EBT, which was a specific Federal Government response to COVID–19.

USDA published the following initial guidance for 2024 Summer EBT implementation prior to publication of this rulemaking to assist States with preparations:

1. SEBT 01–2023, *Initial Guidance for State Implementation of Summer EBT in 2024,* June 7, 2023;

2. SEBT 02–2023, *Initial Guidance for Implementation of Summer EBT in 2024 by Indian Tribal Organizations Administering WIC,* June 13, 2023;

3. SEBT 03–2023, *Summer EBT Eligibility, Certification, and Verification,* July 31, 2023;

4. SEBT 01–2024, *Summer EBT Administrative Funding Process for FY2024,* October 18, 2023.

Through this rulemaking, the Summer EBT Program will be codified in a new part 292 of Title 7 of the Code of Federal Regulations, which will supersede the memos listed above.

Summary of Stakeholder Feedback

Between April and June 2023, USDA hosted 24 listening sessions to solicit input about Summer EBT from State agencies administering SNAP and Child Nutrition Programs, school food authorities (SFAs) and other program operators, advocacy groups, local elected officials, and families. USDA also consulted with Tribal leaders on Summer EBT in May 2023, attended two conferences to meet with and gather feedback directly from ITOs administering WIC, and met with Tribal WIC administrators virtually. Listening session participants were asked for input about approaches to program implementation, program integrity, program costs, customer service, and technical aspects of Summer EBT operations. Participants were offered the opportunity to raise other issues of interest to them as well. USDA carefully considered this input when developing this rule.

Across listening sessions, State agencies, school food authorities, program participants and external organizations consistently expressed a desire for the Summer EBT program to run seamlessly and automatically, particularly around eligibility determinations and enrollment. State agencies, SFAs, and advocates expressed that data sharing and collection between State agencies [and between State agencies and local education agencies (LEAs)] must be streamlined and automated, and noted that centralized databases could help simplify the data-sharing process. Relatedly, many State agencies, school food authorities, and external organizations identified the need for States to provide Statewide applications for children who must apply using a Summer EBT application to avoid placing the responsibility of collecting and processing applications on LEAs, especially those participating in the Community Eligibility Provision (CEP) who do not collect school meals applications. Some State agency staff asked that USDA provide and maintain a nationwide Summer EBT application. There was universal concern about the impacts for both LEAs and households of requiring students at special provision schools (*e.g.,* CEP schools) who are not ''identified'' to apply for Summer EBT. Households with children enrolled in provision schools are not accustomed to completing annual income applications for school meal benefits and may not know if their child is ''identified'' through participation in other means tested programs or if an income application must be completed. Without effective processes to communicate with families and to collect applications, this could cause confusion and negatively impact program participation. Likewise, many CEP schools do not collect income applications even on a periodic basis as eligibility because the level of Federal reimbursement for the NSLP/SBP is solely based on the number of identified students. These schools do not currently have resources and staffing to support this effort. Additionally, a number of external organizations and States urged USDA to allow the use of ''alternative'' income applications to confer Summer EBT eligibility.

Additionally, FNS received numerous inquiries from States regarding which State Agency should lead the Summer EBT Program. Although SNAP and Child Nutrition Programs are generally administered by separate agencies at the State level, these agencies have historically teamed up to improve children's nutrition. For example, SNAP and Child Nutrition agencies successfully stood up and implemented direct certification, a process that streamlines enrollment and reduces burden for millions of children every year, and they jointly provided P–EBT benefits at a time when many children were vulnerable to food insecurity. Similarly, State agencies should work together in a collaborative way to determine how they can best use their resources and expertise to support Summer EBT, and jointly decide the appropriate roles and responsibilities of each agency.

State agencies, ITOs, and external organizations expressed significant concerns about the 50 percent match funding required for Summer EBT administrative costs, particularly given the fact that, in many States, the window to request or allocate State funding for Summer EBT through the regular budgetary process was closing or had already closed. Some States shared that this may prevent them from standing up the program in Summer 2024. ITOs similarly expressed concerns about the required match, and specifically asked for a ''planning year'' in which benefits are not issued, but administrative funding can be received to set up the program. States and ITOs also requested clearer guidance from

USDA related to administrative funding and financial management.

States, school food authorities, and advocates also discussed lessons learned from operating P–EBT, and ways to improve operations when delivering the Summer EBT Program. Specifically, USDA heard the importance of delivering benefits timely, developing clear lines of communication on customer service (*e.g.,* clear points of contact for households), and increased participant education, such as better messaging to households. States and advocates also noted the need to improve data quality, primarily ensuring that addresses for participants are accurate and current at the time benefits are issued.

Finally, ITOs shared robust feedback on three specific topics: the benefit delivery model for ITOs, enrolling eligible children, and de-duplication of benefits.

ITOs shared that they would appreciate flexibility in the benefit delivery model, meaning the ability to operate using a cash value benefit (CVB), a food package, a combination of the two, or an alternative approach. ITOs also shared concerns about communicating with families about the option to participate in the ITO-administered program and coordinating with States to ensure that children do not receive benefits from both State *and* ITO-operated Summer EBT programs. ITOs thus asked USDA to issue strong regulatory language requiring States to cooperate with ITOs on general program operations and data sharing. Additionally, ITOs recommended that ITOs administering the Program serve their entire jurisdictions to streamline program implementation and minimize de-duplication.

II. Discussion of the Interim Final Rule—SFSP and SSO Non-Congregate Option

This section of the preamble discusses the actions USDA is taking to implement the statutory provisions for non-congregate meal service in the SFSP in 7 CFR part 225 and the SSO in 7 CFR parts 210 and 220. All Program regulations and guidance, instructions, and handbooks issued by the USDA Food and Nutrition Service (FNS) apply to both congregate and non-congregate operations except as otherwise specified through this rulemaking.

A. Definitions

i. Site, Congregate Meal Service, and Non-Congregate Meal Service

SFSP regulations under 7 CFR part 225 have historically been framed in the context of the long-standing congregate meal service model under the NSLA. Prior to amendments made in the Act, provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D) and Program regulations at § 225.6(i)(15) required Program meals to be served in a congregate setting and consumed by participants on site in order to be eligible for reimbursement. Therefore, under current regulations at § 225.2, ''site'' means a *physical* location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting. Currently, there is no separate statutory or regulatory definition of *congregate meal service.* However, the establishment of the non-congregate meal service option underscores the need to explicitly define and distinguish *congregate* and *non-congregate* meal service for Program purposes.

For Summer 2023, the NSLA was amended to allow Program operators to operate a non-congregate meal service in rural areas consistent with implementation models previously used in USDA summer demonstration projects, as discussed in section I. B. of this IFR. The two models available for both SFSP and SSO during summer 2023 were home delivery and meal pick-up. Under the home delivery model, meals are delivered directly to homes in eligible areas with eligible children. In the context of this model, FNS advised State agencies and sponsors through summer 2023 guidance to consider the non-congregate meal service operation overall as the site (for example, a delivery route or courier distribution process), instead of the individual residences to which the meals were delivered. Therefore, the inclusion of the phrases ''physical location'' and ''supervised setting'' in the definition of site at 7 CFR 225.2 is inconsistent with providing different models of non-congregate meal service, as non-congregate meals can be consumed anywhere, and do not have to be consumed under supervision.

Therefore, this rulemaking revises the existing definition of ''site'' and adds new definitions of ''congregate meal service'' and ''non-congregate meal service'' to provide clarity and applicability to new and existing Program requirements. USDA is codifying these working definitions as established in summer 2023 guidance into part 225.

Accordingly, this IFR makes the following amendments in § 225.2:

- Amends the definition of ''site'' to mean the place where a child receives a Program meal. A site may be the indoor or outdoor location where congregate meals are served, a stop on a delivery route of a mobile congregate meal service, or the distribution location or route for a non-congregate meal service. However, a child's residence is not considered a non-congregate meal site for Program monitoring purposes.
- Adds a definition of ''congregate meal service'' to mean a food service at which meals that are provided to children are consumed on site in a supervised setting; and
- Adds a definition of ''non-congregate meal service'' to mean a food service at which meals are provided for children to consume all the components off-site. The definition further clarifies that non-congregate meal service must only be operated at sites designated as ''rural'' and with no ''congregate meal service,'' as determined in § 225.6(h)(3) and (4).

ii. Rural

Newly added section 13(a)(13)(A) of the NSLA makes available to States the option to provide Program meals for non-congregate consumption in a rural area with no congregate meal service. This expansion of summer meal service prompted renewed interest in reviewing, revising, and modernizing the SFSP's long-standing definition of ''rural.''

In 1978, the Department proposed a definition of ''rural'' (44 FR 8) in response to the provisions of the NSLA and Child Nutrition Amendments of 1977 (Pub. L. 95–166), which amended section 13(a)(4) of the NSLA, 42 U.S.C. 1761(a)(4), to include a rural outreach mandate. Public Law 95–166 also instructed USDA to conduct a study of the food service operations to include: (i) an evaluation of meal quality as related to costs; and (ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in the NSLA should be made, including whether different reimbursement levels should be established for self-prepared meals and vended meals and which site-related costs, if any, should be considered administrative costs. Through this study, USDA confirmed sponsors that prepare their own meals and sponsors that operate in rural areas may incur higher costs than other types of sponsors [44 FR 36365, January 2, 1979]. As a result, USDA provided additional reimbursement to rural sites and self-preparation sites in the final rulemaking, which still stands today under regulations at § 225.9(d)(7). Because of the fiscal implications under that final rulemaking, USDA also codified the definition of ''rural'' as proposed (*Rural* means any county

which is not a part of a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget). USDA had considered revising the definition of rural to include ''pockets'' of rurality within Metropolitan Statistical Areas (MSAs); however, USDA was not able to develop a universally applicable definition based on the varied data collected at the time of the rulemaking and said it would re-consider the definition after evaluating implementation of the provisions in the 1979 program year. In 1980, based on experience gained during the 1979 Program year, the Department revised the definition of ''rural'' to include an option for States, with concurrence from USDA, to establish ''pockets'' of rurality within MSAs (45 FR 1844). The rural definition has not been further updated since 1980.

SFSP regulations at § 225.2 define ''rural'' as: (a) any area in a county which is not a part of a MSA or (b) any ''pocket'' within a MSA which, at the option of the State agency and with Food and Nutrition Service Regional Office (FNSRO) concurrence, is determined to be geographically isolated from urban areas. The current definition is based on the Office of Management and Budget's (OMB) Standards for delineating core-based statistical areas (CBSA), specifically MSAs. Delineations are the result of the application of published standards to Census Bureau data on population estimates and commuting ties. USDA has released guidance over the years to provide technical assistance to States in this area. On April 21, 2015, USDA published memorandum SFSP 17–2015, *Rural Designations in the Summer Food Service Program—Revised,* available at: Rural Designations in the Summer Food Service Program—Revised | Food and Nutrition Service (*usda.gov*), to clarify rural designations in SFSP and to promote the use of FNS' Rural Designation Map, which was designed to help State agencies and sponsors more easily identify rural areas according to paragraph (a) of the regulatory definition.

After the release of initial summer 2023 rural non-congregate guidance, USDA heard concerns from stakeholders that the current definition of ''rural'' was too generalized geographically to identify rural areas and pockets effectively. MSAs are comprised of a central county or counties containing the core area (*i.e.,* the central urban area with a population of 50,000 or more) plus adjacent outlying counties having a high degree of social and economic integration with that core as measured through commuting. Because MSAs can include a cluster of counties surrounding one county with an urban center and because counties can be geographically expansive, MSAs often encompass areas that are considered rural based on additional information such as data at the census tract level. For example, a census tract within an outlying county may be sparsely populated and could be considered rural, but the county contains other census tracts or areas that have a high degree of social and economic integration with the population core, which results in the county being classified as part of the MSA.

Therefore, after consultation with Federal partners, USDA provided further guidance allowing States to use the following classification schemes to designate rural areas and pockets in summer 2023: (1) USDA Economic Research Service's (USDA–ERS) Rural Urban Commuting Area (RUCA) codes 4–10, and in some isolated cases, RUCA codes 2–3; (2) USDA–ERS' Rural-Urban Continuum Codes (RUCC) 4–9; (3) USDA–ERS' Urban Influence Codes (UIC) 3–12; and (4) the National Center for Education Statistics (NCES) Locale Classifications and Criteria, codes 41–43. The guidance also allowed for the use of other data sources on a case-by-case basis with FNS approval.

In the listening sessions held to inform this rule, stakeholders confirmed that the current definition of rural in § 225.2 does not adequately capture all rural areas. Stakeholders shared that the limitations of the existing definition were largely addressed by the addition of the classification schemes allowed in summer 2023 and noted that the use of these schemes seemed to satisfy most site location requests. However, some stakeholders still encouraged USDA to consider other factors in the definition of rural such as: access to public transportation, food deserts, physical barriers, and characteristics of rurality. One stakeholder encouraged USDA avoid overly rigid criteria or reliance on physical characteristics as many of these elements are influenced by community and State resources and priorities rather than inherent qualities, and that defining features of rural communities may vary by region. State agencies also reported a need for a streamlined process for identifying and approving rural areas and pockets, and requested one comprehensive mapping tool to determine rural designation. Therefore, based on feedback received from stakeholders and Federal partners, USDA is revising the current definition of ''rural'' to include the classification systems allowed for summer 2023 implementation. These classification schemes were used in summer 2023 to identify rural ''pockets,'' but now will be incorporated into the regulatory definition to define what rural is under the Program. In addition, this IFR will amend the current definition to provide discretion for the Department to accommodate updates to these classification schemes and to consider other classification schemes that were not identified through summer 2023 operations. Finally, USDA agrees with comments that potential community characteristics such as the presence of food deserts and physical barriers are not inherently rural or objective measures of rurality, nor may they be necessarily applied consistently across States and communities. However, to accommodate possible alternative standards that may be developed or identified, the revised definition will allow State agencies and USDA to consider requests to designate areas that may be rural in character based on other data sources on a case-by-case basis. Under this rulemaking, the definition of rural will mean:

- *Any area in a county not a part of an MSA based on the OMB's delineation of MSAs.* This criterion will allow for non-MSA counties to be designated as rural under the Program.
- *Any area in a county classified as a non-metropolitan area based on RUCC and UIC.* This criterion will allow for counties classified as rural according to USDA–ERS' RUCC and UIC codes to be designated as rural under the Program.
- *Any census tract classified as a non-metropolitan area based on RUCA codes.* This criterion will allow census tract areas classified as rural according to USDA–ERS' RUCA codes to be designated as rural under the Program.
- *Any area of an MSA not part of a Census Bureau-defined urban area.* This criterion will allow for areas located within MSAs that are classified as rural according to NCES' Locale Classifications and Criteria, which is based on the Census Bureau's urban and rural areas, to be designated as rural under the Program.
- *Any area of a State, which is not part of an urban area as determined by the Secretary; or,*
- *Any ''pocket'' within an MSA which, at the option of the State agency and with FNSRO approval, is determined to be rural in character based on other data sources.* These last two criteria provide discretion for the Department and the State agency to consider other areas that may not be identified through this new definition.
- *Any subsequent substitution or update of the aforementioned*

classification schemes that Federal governing bodies create. This criterion is intended to accommodate updates or substitutions to the classification schemes that will be incorporated into the definition under this rule.

This framework more accurately represents rural populations and territories and is responsive to stakeholder feedback, while upholding established standard measures of rurality. Expanding the definition to allow the use of multiple recognized Federal classification schemes to designate areas as rural (without having to seek prior USDA approval) will also ease administrative burden and streamline the site identification and approval process for State agencies and Program operators. It also acknowledges the frequent stakeholder concern that any one objective measure cannot capture all rural pockets, and therefore, allows discretion for State agencies to identify rural pockets based on other data sources if needed with approval from USDA.

Accordingly, this rule expands the definition of ''rural'' in § 225.2 to include rural populations and territories within MSAs based on the summer 2023 approved sources, and to provide flexibility for ''pockets'' based on other data sources on a case-by-case basis. The amended definition of ''rural'' in § 225.2 will also provide discretion to USDA for any potential updates or changes to classification schemes at a future date. Following the publication of this rule, USDA will also release an updated FNS Rural Designation Map to reflect the new, comprehensive framework, which will provide one comprehensive mapping tool to assist State agencies in determining rural designations. In addition, this rule adds a new provision to establish an annual effective date by which USDA will issue updates to the approved rural data sources to be used for rural designations in that program year. The IFR also adds an effective period to the rural designation to establish the frequency at which sponsors must re-establish rural designation for non-congregate meal service sites. See section II. G. iv. and section II. B. vi., respectively, for a discussion of those provisions.

iii. Conditional Non-Congregate Site

Prior to the Act, sites were required to be located in areas which meet the definition of ''areas in which poor economic conditions exist'' or qualify as camps. Specific to non-congregate meals, the Act amended the NSLA to allow meal service in rural areas that are not areas in which poor economic conditions exist for children who are determined to be eligible for free or reduced price school meals. The current regulations under § 225.2 do not include a definition for a site which qualifies for Program participation on the basis that the site conducts a non-congregate meal service for eligible children in an area that does not meet the definitions of ''areas in which poor economic conditions exist,'' and which does not qualify as a camp.

Under statutory and regulatory requirements, for Program purposes ''areas in which poor economic conditions exist'' is defined as: (1) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under the NSLP and the School Breakfast Program (SBP); (2) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under the NSLP and the SBP; (3) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced price school meals under the NSLP and the SBP; or (4) A closed enrolled site in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the NSLP and the SBP, as determined by approval of applications in accordance with § 225.15(f). See, 42 U.S.C. 1761(a)(1)(A) and § 225.2. The definition of ''camps'' included in § 225.2 ''means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.''

FNS clarified in its implementation guidance for summer 2023 that sponsors may claim meals served to children who are eligible for free or reduced price school meals even if the rural area does not meet the definition of ''areas in which poor economic conditions exist.'' Non-congregate meals may be served to children who are not eligible for free or reduced price meals in rural areas, but they may not be claimed for reimbursement. Therefore, this rule adds a definition for ''conditional non-congregate site'' to codify this new site type and clarify applicable Program requirements.

Accordingly, this rule adds the following definition in § 225.2 for ''conditional non-congregate site'' as a site which qualifies for Program participation because it conducts a non-congregate meal service for children eligible for free or reduced price meals in an area that does not meet the definition of ''areas in which poor economic conditions exist'' and is not a ''Camp'' as defined in § 225.2.

iv. New Site

FNS provides administrative and operational flexibilities for experienced sponsors and sites that have already operated the SFSP without significant operational problems. For example, when applying to participate in the Program, experienced sponsors are not required to submit the same level of detail regarding organizational and operational information required of new sponsors and those with previous operational problems. For new sponsors, and sponsors that experienced significant operational problems in the previous year, detailed information is required including, but not limited to, site information, arrangements for meeting health and safety standards, and budgets. This information is necessary for State agencies to determine if new sponsors and sites, or those with previous operational problems, are capable of administering the SFSP efficiently and effectively, and complying with all program requirements. Likewise, new sponsors and sites, and sponsors and sites that have experienced significant operational problems in the previous year, may be held to more rigorous levels of training and monitoring, at the State's discretion. To help clarify requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, § 225.2 contains definitions of ''new sponsor'', ''new site'', ''experienced sponsor'', and ''experienced site''.

For summer 2023, USDA determined and communicated through guidance that experienced sites which proposed to operate non-congregate meal service for the first time, including those sites switching from a congregate meal service model to a non-congregate model or to operating a hybrid of both congregate and non-congregate models, were ''new'' sites. These sites were required to follow monitoring procedures for new sites. Through this rulemaking, USDA is codifying the summer 2023 guidance, and requiring that all sites proposing to operate non-congregate meal service for the first time to use procedures for new sites (see sections II. B. and F. for application and

monitoring procedures). Therefore, this rule revises the current definition of ''new site'' to reflect these changes. This rulemaking does not affect the experience determination for sponsors.

Accordingly, this rule amends the definition of ''new site'' in § 225.2 to clarify that experienced sites operating a non-congregate meal service for the first time are considered new under the Program.

v. Site Supervisor and Operating Costs

Under this rulemaking, USDA is also modifying existing definitions of ''site supervisor'' and ''operating costs'' in § 225.2 to reflect the provision of non-congregate meal service under the Program.

USDA published the final rule, *Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program* (87 FR 79213), on September 19, 2022, which added a definition in § 225.2 for ''site supervisor'' stating that the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including but not limited to: ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

Therefore, with the new requirements established by the Act for non-congregate meal service, this rule amends the definition for ''site supervisor'' to mean the individual who has been trained by the sponsor and is responsible for all administrative and management activities at the site, including, but not limited to: maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts. Except for non-congregate meal service sites using delivery services, the individual is on site for the duration of the food service.

Program regulations in § 225.2 define the term ''operating costs'' to mean the cost of operating a food service under the Program, including the: cost of obtaining food, labor directly involved in the preparation and service of food, cost of nonfood supplies, rental and use allowances for equipment and space, and cost of transporting children in rural areas to meal service sites in rural areas. This rule amends the definition for ''operating costs'' to include the costs to deliver non-congregate meals in rural areas under the Program as an allowable cost.

Accordingly, this rule revises the definition of ''site supervisor'' and ''operating costs'' in § 225.2 to reflect the provision of non-congregate meal service under the Program.

vi. Good Standing

Under current Program regulations, there is no definition for good standing. The final rule, *Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program,* 87 FR 57304, September 19, 2022, reflected on the qualities that contribute to a Program operator's successful performance. USDA indicated that an SFSP Program operator would be considered in ''good standing'' if it was reviewed by the State agency with no major Program findings or it had completed and implemented all corrective actions from the last compliance review. In addition, FNS intends to publish the proposed rule, *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP),* RIN # 0584–AE83, which will propose changes to the existing serious deficiency process in the CACFP for unaffiliated centers and establishes a serious deficiency process for the SFSP. As part of the rule, USDA will propose a new definition of ''good standing'' for SFSP. USDA recognizes that providing further clarification to determine what good standing means will benefit State agencies and program operators.

USDA has determined that many of the requirements and allowable options codified at § 225.16(i) for non-congregate meal service will only be allowed for sponsors in good standing, as discussed in section II. E. of this rule. However, good standing is not currently defined under Program regulations at § 225.2. Therefore, in order to support State agency ability to determine if a sponsor is in good standing, this rule will codify ''good standing'' to mean the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time. This definition mirrors the definition that will be proposed in *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP),* RIN # 0584–AE83. USDA will review comments received on this definition both through the proposed rule, as well as through this rulemaking, and may further revise this definition as needed in future rulemaking.

Accordingly, this rule adds a definition of ''good standing'' at § 225.2.

B. State Agency Responsibilities

i. Department Notification

Consistent with provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.3(b), by November 1 each fiscal year each State agency must notify USDA regarding the State's intention to administer the Program in that fiscal year. Each State agency desiring to take part in the Program must enter into a written agreement with FNS for the administration of the Program. The Act amended section 13(n)(1) of the NSLA to require, for summer 2023 only, that each State desiring to participate in the Program must notify the USDA of its intent to administer the Program and must submit a management and administration plan (MAP) for the Program by April 1, 2023. In addition, the Act amended section 13(n)(2) of the NSLA to include that beginning in 2024, each State agency desiring to participate in the Program must notify the Department by January 1 of each year.

Accordingly, this rule amends the regulatory deadline at § 225.3(b) for a State to notify the Department of its intent to administer the SFSP from November 1 to January 1 of each fiscal year. This rule also makes changes to the MAP requirements in § 225.4, which are described in this section of the preamble. Finally, this rule establishes a requirement at § 225.3(e) for State agencies administering the summer meal programs and Summer EBT Program to develop and implement a coordinated services plan for the programs in their State. This plan is a separate requirement from the MAP and is meant to coordinate the statewide availability of services offered through the Summer Food Service Program. See section IV. for discussion of those requirements.

ii. Program Management and Administration Plan

Prior to the Act, provisions under the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.4 required State agencies to submit a MAP for approval by February 15 for the current fiscal year (*i.e.,* a plan that will cover program operations during the following summer). The State agency must include the State's administrative budget, an estimate of need for monies to pay for the cost of conducting health inspections, and the State's plans for use of Program funds (including providing technical assistance, monitoring, corrective action, fiscal integrity, and to ensure compliance with food service

management company procurement monitoring) in the MAP.

The Act amended section 13(n)(1) of the NSLA to require that, for summer 2023, each State agency will have until April 1, 2023, to submit their MAP, which must include the State's plan for using non-congregate meal service, if applicable, including plans to provide a reasonable opportunity to access meals across all areas of the State, in addition to the MAP requirements previously required under the NSLA (*i.e.,* the State's administrative budget for the fiscal year, an estimate of need for monies to pay for the cost of conducting health inspections, and the State's plan for the use of program funds, providing technical assistance, monitoring, taking timely action against program violators, certifying fiscal integrity, and to ensuring compliance with food service management company procurement monitoring). The summer 2023 Program guidance provided State agencies additional information detailing the plans for implementation of non-congregate meal service in their MAP. This information included participation projections, sponsor information, plans for targeting and outreach, how State Administrative Funds (SAF) would be used to support non-congregate meal service for summer 2023, and strategies for providing technical assistance to ensure integrity requirements are met. Guidance also allowed State agency discretion to establish statewide policies regarding aspects of rural non-congregate meal service, based on past experiences gained during the COVID–19 pandemic. State agencies were required to include statewide details related to the non-congregate meal service option in the MAP. Summer 2023 MAP submissions indicated that two State agencies used statewide discretion to prohibit the use of the non-congregate meal service for summer 2023 operations to allow them to evaluate non-congregate processes in order to safeguard Program integrity.

This rule codifies the amendments made to section 13(n)(2) of the NSLA, which provides that the MAP must include all provisions previously required under the NSLA, the new additional requirement under section 13(n)(1), and the State agency's plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals. This includes the State's plan to identify rural areas with no congregate meal service, and plan to target priority areas for non-congregate meal service. A discussion of the provisions and an ''area with no congregate meal service'' is described further below. USDA understands that State agencies are best positioned to determine how non-congregate meal service may be conducted through sponsors to provide Program access to eligible children while maintaining Program accountability. Apart from the case-by-case determinations outlined in section II. E. of this rulemaking, State agencies should include any additional proposed statewide requirements or restrictions and operational safeguards as part of the State's plan to use non-congregate meal service in their MAP.

Accordingly, this rule codifies non-congregate meal service requirements in the MAP by adding a new § 225.4(d)(9) and (10). SAF as outlined in § 225.5, may be requested based on projected program growth with the additional meals that will be served as a part of both congregate and non-congregate meal service. The SAF can be used to support outreach to service institutions and encourage participation in both congregate and non-congregate meal service, as well as implementation of program accountability and integrity efforts.

iii. Priorities and Outreach Mandate

Program regulations at § 225.6(a)(2) require that, by February 1 of each fiscal year, each State agency must announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As a part of this effort, each State agency must identify rural areas, Indian Tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and actively seek eligible applicant sponsors to serve such areas. State agencies must identify priority outreach areas in accordance with USDA guidance and prioritize outreach efforts in these areas.

The Act amended section 13(a)(13)(D) of the NSLA to require State agencies to identify areas with no congregate meal service that could benefit the most from the provision of non-congregate meals and encourage participating service institutions in those areas to provide non-congregate meals as appropriate. Accordingly, this rule amends program requirements at § 225.6(a)(2) to reflect this new priority area for State agencies as required by statute. In addition, the rule revises the paragraph structure at § 225.6(a)(2) to improve the clarity of the regulations.

iv. Application Requirements—Content of Sponsor Applications and Site Information Sheets

Annually, each State agency must inform all the previous year's sponsors which meet current eligibility requirements, as well as all other potential sponsors, of the application deadline for Program participation. Program regulations at § 225.6 outline State agency responsibilities when approving Program sponsors and sites. When reviewing applications, the State agency should consider the resources and capabilities of each applicant to sufficiently operate all proposed sites. This rule clarifies the State agency review requirements for the content of sponsor application and site application approval, which are discussed in this section.

Program regulations at § 225.6(g)(1) and (2) require that State agencies develop site information sheets for new or experienced sites where a food service is proposed. The site information sheets provide State agencies with the documentation needed to determine if the site can demonstrate administrative capability and financial viability to effectively operate a meal service. The site information sheet completed by the sponsor must demonstrate or describe the estimated number and types of meals to be served and times of service; documentation of eligibility; and, if the site qualifies as a camp, documentation of the number of children enrolled in the Program who meet the Program's income standards. New sites are also required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.

Program regulations do not include site information specific to non-congregate meal service. Therefore, this rule modifies the minimum information that must be demonstrated or described on the site information sheets to reflect the provision of non-congregate meal service under the Program. This information provided in the site information sheet for new sponsors must describe an organized and supervised system for serving meals to children; whether the site is rural and the documentation supporting the rural designation as discussed later in this section; whether the meal service is congregate or non-congregate; and, if the site qualifies as a conditional non-congregate site, documentation of the number of children enrolled in the

Program who meet the Program's income standards. For experienced sites, the site information sheets must include whether the meal service to be provided is congregate or non-congregate; whether the site is rural and documentation supporting the rural designation which is discussed later in this section; and, if the site qualifies as a conditional non-congregate site, documentation of the number of children enrolled in the Program who meet the Program's income standards.

As noted above, this rule is adding a documentation requirement for experienced sites to demonstrate that they are rural. Current regulations do not require that the site information sheet demonstrate or describe whether the site is rural for experienced sites, as required for new sites or sites with operational problems. This application requirement was removed for experienced sites under the Final Rule, *Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring* (64 FR 72889), to eliminate duplicative and unnecessary requirements for experienced sponsors, with the intent of reducing the paperwork associated with the application process for these sponsors. However, USDA has concluded that determining rurality is necessary for all Program sponsors due to the effect of a rural designation and non-congregate participation. This rule also adds an effective period to the rural designation to establish the frequency at which sponsors must re-establish rural designation for non-congregate meal service sites, which is discussed in later in this section of the rule.

In addition, USDA is codifying non-congregate meal service options under this IFR, as discussed in section II. E. ii. As part of those options, USDA will require integrity safeguards to prevent unallowable or duplicate meal distribution. Under this rule, sponsors opting to distribute multiple days' worth of meals must have procedures in place that document, to a reasonable extent, that the proper number of meals are distributed to each eligible child. In addition, sponsors opting to distribute meals to parents or guardians on behalf of children must have procedures in place to document that meals are only distributed to parents or guardians of eligible children and that duplicate meals are not distributed to any child. Therefore, this rule will require this information to be included in the applications for new sponsors, sponsors that have experienced significant operational problems in the prior year, and experienced sponsors.

Accordingly, this rule adds a new § 225.6(c)(2)(xi) and (3)(viii) to require that the application for new sponsors, sponsors that have experienced significant operational problems in the prior year, and experienced sponsors include procedures to document that meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options of multi-day meal issuance and parent or guardian meal pick-up. In addition, this rule amends Program regulations at § 225.6(g)(1)(iv) and(g)(2)(iii) to require sponsors to identify whether each meal service will be congregate or non-congregate. This rule also adds new § 225.6(g)(1)(xiv) and (g)(2)(viii) to require Program sponsors who are operating conditional non-congregate sites to specify the number of children enrolled who meet the Program's income standards. In addition, this rule amends requirements at § 225.6(g)(1)(iii) and 225.6(g)(2)(ii) to establish whether a site is rural, and that documentation supporting the rural designation is required. This rule also establishes the frequency at which the site must re-establish rural designation, which is described later in this section of this rule. Due to the addition of the new requirements, the rule revises the subordinate paragraph numbering at § 225.6(g)(1) and (2). Furthermore, this rule amends § 225.6(b)(6) to include State agency requirements for sponsor application approval related to site reviews, as discussed in section II. F. of this rulemaking. Lastly, this rule clarifies the requirement at § 225.6(g)(1)(v) with terms consistent with those defined in § 225.2.

v. Approval of Sites and Determining No Congregate Meal Service

Program regulations at § 225.6(h) provide the site requirements that must be evaluated by the State agency before site approval is granted. Program regulations at § 225.6(h)(1) require State agencies to ensure the proposed food service site is located in an ''area in which poor economic conditions exist,'' or will serve specific groups of eligible children; the area which the site proposes to serve will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; the site is approved to serve no more than the number of children for which its facilities are adequate and; if it is a site proposed to operate during any unanticipated school closure, it is a non-school site. Regulations at § 225.6(h)(2)(i), (ii), (iii), and (v) are specific to congregate meal service operations and require that each vended site must have an approved level for the maximum number of children's meals which may be served under the Program, which is commonly known as a ''site cap.''

Summer 2023 Program guidance provided specific requirements that the State agency must follow when approving Program sites to operate non-congregate meal service. Those requirements included:

- The proposed non-congregate meal service site must be in a rural area;
- The area proposing to be served will not be served by a congregate meal service; and
- Safeguards must be implemented to ensure children will not receive more than the maximum allowance of summer meals per day.

All existing application and approval requirements, including the priority system when approving applicants to operate sites that propose to serve the same area or the same enrolled children (7 CFR 225.6(b)(5)) and site cap requirements, continued to apply for both congregate and non-congregate meal service. In addition, summer 2023 guidance also included considerations when determining if an area was already being served by a congregate site. This guidance allowed for State agency discretion when approving sites for non-congregate meal service, if they ensured adherence to the requirements provided above, but with the caveat that State agencies may not deny a site based solely on the sponsor's intent to provide a non-congregate meal service. Sites that served the same children on different days, different weeks, or for different meals on the same day could provide a combination of congregate and non-congregate meal service if the State agency could ensure that the congregate and non-congregate sites would not serve the same population of children for the same meal service on the same day. Summer 2023 guidance also allowed congregate sites that existed prior to that time to switch from congregate to non-congregate meal service. However, the Department encouraged State agencies and sponsors to work to identify and prioritize those rural areas that the congregate Program cannot reliably reach.

USDA received mixed feedback from stakeholders related to defining an area with no congregate meal service. Some stakeholders suggested setting parameters for an ''area with no congregate meal service,'' such as a

specified distance from congregate sites. Other stakeholders suggested that an ''area with no congregate meal service'' should be left to State agency discretion, since Program operations vary across States. One stakeholder suggested requiring sponsors to provide an integrity plan prior to site approval to avoid meal duplication.

This final rule incorporates new statutory requirements and summer 2023 Program guidance with additional regulatory clarifications as to how to determine areas with no congregate meal service.

First, in accordance with summer 2023 guidance which stated that State agencies may not deny a site based solely on the sponsor's intent to provide a non-congregate meal service, USDA is adding a new § 225.6(b)(12) to require that the State agency must not deny a sponsor's application based solely on the sponsor's intent to provide a non-congregate meal service.

Second, this rule amends Program regulations at § 225.6(h)(1)(i) to require that the proposed site will serve an ''area in which poor economic conditions exist,'' unless it is a conditional non-congregate site, as discussed in this rulemaking. This rule also amends § 225.6(h)(2) to clarify that each vended site must have an approved level for the maximum number of children's meals which may be served under the Program as they relate to congregate and non-congregate meal service.

Third, this rule adds a new § 225.6(h)(3) to address the elements of the proposed site operations that the State agency must ensure when approving the application of sites to provide non-congregate meal service. Under this rulemaking, the State agency must ensure that the proposed site: is rural; will only distribute the allowable number of reimbursable meals that would be provided over a 10-calendar day period, although the State agency may establish a shorter calendar day period on a case-by-case basis and without regard to sponsor type (as described in section II. E.); serves an area in which poor economic conditions exist or is approved for reimbursement only for meals served free to enrolled children who meet the Program's income standards; and will not serve an area where children would receive the same meal at an approved congregate meal site, unless it can be demonstrated to the satisfaction of the State agency that the site will serve a different group of children who may not be otherwise served. Also, as discussed in sections II. A. and F., this rule clarifies that all sites proposing to operate non-congregate meal service for the first time must use procedures for new sites. The rule reflects this regulatory change by adding a requirement that the State agency must ensure that the sponsor follows the site information sheet requirements at § 225.6(g)(1) for new sites, where a non-congregate food service operation is proposed for the first time.

Fourth, this rule adds a new § 225.6(h)(4) to address the elements of the proposed site operations that the State agency must ensure when approving the application of a site which will provide both a congregate meal service and a non-congregate meal service, effectively allowing State agencies to approve sites which will operate both meal services, with some restrictions to ensure the non-congregate meal service does not compete with or duplicate the congregate meal service. This includes regulations to require the State agency to ensure that the proposed site will only conduct a non-congregate meal service when the site is not providing a congregate meal service, and that the sponsor has a system in place to prevent meal service overlap when providing a congregate and non-congregate meal service at the same site to reasonably ensure children are not receiving more than the daily maximum allowance of meals. Note that for sites that operate both congregate and non-congregate service, it is not considered a meal service overlap if the site provides a congregate breakfast and then a non-congregate lunch intended to be consumed at a later time offsite (for example). Finally, the new requirements for approving sites operating a non-congregate meal service are in addition to the existing program requirements at § 225.6(h)(1) and (2).

Some stakeholders requested that USDA establish more specific criteria or standards to define ''an area with no congregate meal service.'' However, USDA agrees with the majority of stakeholders who suggested that USDA allow some discretion for State agencies to consider operational and environmental factors, which may vary by location. USDA also determined that providing discretion would avoid introducing complexity into the regulations and allow necessary flexibility to support successful implementation. USDA intends to provide additional guidance and technical assistance to support implementation of this provision.

Accordingly, this IFR adds a new § 225.6(b)(12) to require that the State agency must not deny a sponsor's application based solely on the sponsor's intent to provide a non-congregate meal service. The IFR also makes the following amendments to § 225.6(h):

- Amends Program regulations at § 225.6(h)(1)(i) to include conditional non-congregate sites.
- Adds a new § 225.6(h)(3) and (4) to include site application approval requirements that State agencies must ensure when evaluating the proposed site which will provide a non-congregate meal service and determining an ''area with no congregate meal service.''
- Revises terminology used in § 225.6(h)(2) to clarify the applicability of regulations to both congregate and non-congregate meal services.

vi. Duration of Rural Designation

The Act authorized non-congregate meal service in ''rural areas where no congregate meal service is available.'' Currently, no effective period is established in statute, regulations, or guidance for rural designations. As discussed in section II. B. iv. of this rule, current Federal regulations do not require an experienced site to demonstrate it is rural as part of the site information sheets. However, USDA concluded that determining rurality is a necessary documentation submission, regardless of the level of site or sponsor experience, due to the significant effect of a rural designation under the non-congregate provision added by the Act. Therefore, this rule adds a new documentation requirement for experienced sites (discussed at section II. B. iv.) and establishes the frequency at which the site must re-establish its rural designation.

This rule codifies the requirement that Program sponsors re-determine their sites' rural designations every 5 years. Once a site is established as rural based on the rural definition in Program regulations at § 225.2, the rural status is effective for a period of 5 years from the date of determination. At the discretion of the State agency, redetermination prior to the 5-year period may be required, if the State agency determines that an area's rural status has changed significantly since the previous determination.

USDA evaluated the effective period for similar application documentation requirements (such as area eligibility) as well as the frequency in which the allowable rural data sources are updated. Using this information, USDA determined a streamlined approach to minimize administrative burden. Standards, classifications, and delineations of rural data sources allowed under summer 2023 and moving forward (see section II.A.ii.) are updated with each decennial census

and periodically based on annual census surveys. Although more frequent redeterminations may more accurately and timely capture changes to an area's rural status, particularly during periods that overlap with census years, USDA concludes that shorter effective periods for rural designation may be too burdensome and are unnecessary for State agencies and Program operators.

Accordingly, this rule adds language at § 225.6(g)(1)(iii) and (g)(2)(ii) to require new documentation of rural designation every 5 years, or earlier, if the State agency believes that an area's rural status has changed significantly since the previous determination.

vii. Clarifications to Existing Requirements: Free Meal Policy Statement, State-Sponsor Agreement, and Corrective Action Procedures

This rule clarifies existing requirements in §§ 225.6 and 225.11, which fall under the purview of the State agency. These clarifications reflect the provision of non-congregate meal service under the Program, specifically in response to the addition of the new site type, conditional non-congregate site, as defined under this rulemaking.

Program regulations at § 225.6 require that State agencies provide and obtain specific information regarding a sponsor's meal service sites. Regulations at § 225.6(f) require that as part of the free meal policy statement, sponsors must submit a nondiscrimination statement of their policy for serving meals to children. This rule clarifies that sponsors operating conditional non-congregate sites are exempt from including a statement that meals served are free at all sites. In addition, the rule clarifies that sponsors operating conditional non-congregate sites that charge separately for meals must also include specific eligibility information in the policy statement, and that each sponsor of a conditional non-congregate site must submit a copy of its hearing procedures with its application.

Furthermore, Program regulations at § 225.6(i) require that a sponsor approved for Program participation must enter into a written agreement with the State agency. Under the requirements in which all sponsors must agree to in writing, the rule clarifies that a sponsor of sites operating as conditional non-congregate sites are excepted from serving meals without cost to all children and may charge for meals served to children who do not meet the Program's income standards. These sponsors may claim reimbursement only for meals served to children who meet the Program's income standards. In addition, the rule clarifies that the requirement to maintain children on site while meals are consumed only applies for sponsors providing a congregate meal service. Finally, this rule revises the language at § 225.6(i) to reflect the definition of ''termination for convenience'' that will be proposed in *Serious Deficiency Process in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP),* RIN # 0584–AE83. Program regulations at § 225.6(i) allow the State agency or sponsor to terminate the agreement at its convenience, for considerations unrelated to the sponsor's performance of Program responsibilities under the agreement. USDA is revising this language to clarify that the State agency or sponsor may terminate the agreement at its convenience, *upon mutual agreement, due to considerations unrelated to either party's performance of Program responsibilities under the agreement.* USDA will review comments received on this definition both through the proposed rule, as well as through this rulemaking, and may further revise this terminology as needed in future rulemaking.

Program regulations at § 225.11 require the State agency to use corrective action procedures to improve Program performance, such as investigations, denial of applications and termination of sponsors, meal service restrictions, meal disallowances, corrective action and termination of sites, and technical assistance for improved meal service. This rule clarifies that the serious deficiencies of the simultaneous service of more than one meal to any child and excessive instances of off-site meal consumption outlined in Program regulations at § 225.11 (c)(4)(iv) and (viii), respectively, are specific to congregate meal service operations. Also, as discussed in section II. B. v. and section II. E. i. of this rule, non-congregate meals must be served according to the number and type of meals allowed for the site type at 7 CFR 225.16(b)(3), and sponsors must implement an organized and supervised system which prevents overlap between meal services to reasonably ensure children are not receiving more than the daily maximum allowance of meals. Therefore, USDA is adding a new Program violation that is specific to non-congregate meal service to the list outlined at § 225.11(c)(4). Under this IFR, for non-congregate meal service operations, distributing more than the daily meal limit when multi-day service is used is considered a serious deficiency which is grounds for disapproval of applications and for termination when the violation is recorded at a significant proportion of the sponsor's sites.

In addition, Program regulations at § 225.11(d) require that, with the exception of residential camps, the State agency must restrict to one meal service per day any site determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time, and all sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set. The regulations also require the State agency to make a reasonable effort to locate another source of meal service for these children if this action results in children not receiving meals under the Program. Given the exceptions to the meal service time requirements for non-congregate meal service provided through this rulemaking (see section II. E.), and that restricting non-congregate sites to one meal service per day could impact children served by that site, this rule clarifies that non-congregate meal service sites are also excepted from the meal service restrictions at § 225.11(d).

Accordingly, this rule amends § 225.6(f) to clarify nondiscrimination and hearing procedures statement requirements for non-congregate meal service. Additionally, this rule amends § 225.6(i) introductory text, (i)(4), (i)(7)(i) and (ii), and (i)(15) to clarify State-sponsor agreement requirements for sites that provide non-congregate meal service. Lastly, this rule amends § 225.11(c)(4) and (d) to clarify corrective action procedures as they relate to congregate and non-congregate meal service.

C. Requirements for Sponsor Participation

i. Sponsor Eligibility

Program regulations at § 225.14 outline requirements for sponsor participation. The requirements include application procedures, sponsor eligibility, and demonstration of administrative and financial ability to manage a food service effectively. Sponsor eligibility is limited to public or private nonprofit SFAs; public or private nonprofit residential summer camps; units of local, municipal, county, Tribal, or State governments; public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program; and private nonprofit organizations as defined in § 225.2 and outlined at § 225.14(b). Additionally, Program regulations at § 225.14(d) provide requirements that are specific to

sponsor types, such as camps. The Act requires State agencies to encourage participating service institutions in rural areas with no congregate meal service to provide non-congregate meals as appropriate.

Summer 2023 guidance allowed any service institution that met the definition of sponsor in Program regulations at § 225.2 to participate in the non-congregate meal service option with State agency approval, including sponsors new to the Program. Camps were also allowed to participate, though guidance acknowledged that regulations require camps to provide a regularly scheduled food service as part of an organized program for enrolled children, and such programming is generally understood to be congregate in nature. Furthermore, Summer 2023 guidance instructed that to participate, experienced sponsors must be considered in ''good standing.'' However, sponsors that have experienced serious deficiencies in prior years may be approved to operate non-congregate meal service if, to the satisfaction of the State agency, all appropriate corrective actions to prevent recurrence of the deficiencies were taken as outlined in Program regulations at § 225.6(b)(9).

USDA received stakeholder feedback that expressed integrity concerns related to non-congregate meal service provided by community sponsors in recent years, most notably during non-congregate meal service operations provided during the COVID–19 pandemic. Several State agencies expressed more confidence in SFAs' ability to operate non-congregate meal service as compared to other program sponsors due to their familiarity with NSLP and SBP meal service operations, as well as potential greater logistical capacity. One stakeholder commented that in their State only SFA sponsors were allowed to operate non-congregate meal service. However, three State agencies and four additional stakeholders emphasized the need to maintain access when considering important integrity measures. Finally, USDA did not receive direct feedback on camp (as defined at § 225.2) participation from stakeholders. A limited number of State agencies reported that they did not include camps in non-congregate service this summer due to their interpretation that such sites are inherently congregate in nature.

Program sponsors who provide year-round meal service have consistent program operations and thus are more readily able to demonstrate administrative capabilities than sponsors who only operate during the summer period. Although several stakeholders expressed concern for certain sponsor types operating a non-congregate meal service, USDA concludes that all service institutions listed under requirements at § 225.14(b) are eligible to sponsor the Program, including providing congregate and non-congregate meal services, and thus, this rulemaking establishes no restrictions on providing non-congregate meal service based on sponsor type. This decision is based on the need to maintain program access and support the stipulation that all sponsors considered in good standing and who meet all other program requirements should have the opportunity to provide non-congregate meal service. This decision also pertains to public or nonprofit private residential summer camps. As defined in 7 CFR 225.2, camps must provide a regularly scheduled food service as part of an organized program for enrolled children, and as mentioned above, such programming is generally understood to be congregate in nature. However, USDA recognizes that there may be situations where it makes sense to allow a camp to operate a non-congregate meal service for their enrolled children, such as service of the third meal if a congregate meal service is not provided, or meals provided to be consumed over the weekend while an enrolled child is in an active camp session, but during which there are no congregate meals provided. USDA encourages State agencies to work with potential sponsors of all types to determine how their proposed site(s) and operations can best serve communities in identified rural areas that could benefit the most from the provision of non-congregate meals and fill in gaps in service.

Accordingly, this rule makes no regulatory changes to existing sponsor eligibility requirements § 225.14(b), effectively allowing all service institutions listed under requirements at § 225.14(b) to be eligible to sponsor the Program, including operating both congregate and non-congregate meal services. Although USDA is not making changes to sponsor eligibility, this rule limits some meal service options to sponsors in good standing and retains the meal service option of offer versus serve to SFAs, as discussed in section II. E. of this rule.

i. Clarifications to Existing Requirements: General Requirements at § 225.14(c)

Program regulations at § 225.14(c)(3) require that, to be eligible to participate in the SFSP, applicant sponsors must conduct a regularly scheduled food service for children in areas in which poor economic conditions exist or must qualify as a camp. With the establishment of the non-congregate option in eligible rural areas, conditional non-congregate sites, as defined under this rulemaking, can also provide a regularly scheduled food service for children in non-area eligible locations.

Accordingly, this rule amends § 225.14(c)(3) to clarify this qualification for applicant sponsors which will operate a conditional non-congregate site.

D. Responsibilities of Sponsors

i. Identification and Determination of Eligible Children

As discussed in the background section of this rule, for summer 2023 non-congregate meal service operations, the Act allowed State agencies to use service models developed for demonstration projects carried out under section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132). Summer 2023 guidance allowed home delivery and meal pick-up options as provided in past demonstrations. The home delivery model allowed for non-congregate meals to be delivered directly to homes of participants. Program guidance required that sponsors approved to provide non-congregate meal service through home delivery must be able to identify and invite households of eligible children to participate in the meal delivery service. The guidance also required that sponsors obtain written consent from the eligible child's parent or guardian that the household wants to receive delivered meals. Written consent could include hard copy, email, or other electronic means of communication. Furthermore, sponsors were required to confirm the household's current contact information and the number of eligible children in the household to ensure the correct number of meals were delivered to the correct location.

In addition, Summer 2023 Program guidance required non-SFA sponsors that planned to obtain individual children's program eligibility information through free and reduced price school meal eligibility data to enter into a written agreement or Memorandum of Understanding (MOU) with an SFA. However, non-SFA sponsors could also use the household application procedures outlined in Program regulations at § 225.15(f) to identify eligible children in non-area eligible areas instead of entering into a

written agreement or MOU with the local SFA. Lastly, sponsors were required to protect the confidentiality of participants and their households throughout the process in accordance with confidentiality and disclosure provisions in the NSLA and Program regulations at § 225.15(f) through (l). These home delivery requirements were also implemented during non-congregate meal service during COVID–19 operations.

In the listening sessions held to inform this rule, stakeholders shared challenges with the home delivery model when providing non-congregate meal service, particularly, concerns with delivering Program meals when participants are not home. USDA heard from stakeholders that communication with participating families was imperative to home delivery operations. Several stakeholders explained that obtaining delivery signatures or asking parents to provide delivery instructions worked well in their State. Another stakeholder suggested text notifications or reminders to participating families about meal deliveries would be helpful to confirm someone was home to receive the meals, and thus ensure a smoother delivery and reduced food waste. In addition, several stakeholders reported the importance of protecting student data by requiring a MOU to receive student eligibility data from a local SFA. One stakeholder requested USDA allow non-profit sponsors to provide home delivery without requiring an MOU with an SFA, and that limiting home delivery to students identified through an MOU with an SFA excludes students who are homeschooled or in virtual school as well as families with children not yet in school. Finally, stakeholders also reported concerns with overt identification of those children who are eligible to receive free and reduced price meals when providing home delivered meals in non-area eligible areas.

USDA agrees with stakeholders that communication with participating families and protecting participants' right to confidentiality is imperative to Program integrity and operations. Therefore, through this rulemaking, USDA is codifying summer 2023 guidance for obtaining written parental consent for home delivery. This rule requires sponsors that provide meals directly to children's homes to obtain written parental consent prior to providing home delivered meals to children. While USDA sought to minimize burden on program operators and participants wherever feasible, the Agency determined that obtaining written consent prior to delivering meals to private residences is the only reasonable approach for setting up delivery service with basic integrity safeguards. Establishing both the presence of children in each household as well as the household's consent to receive meals is critical to ensuring Program integrity, and preventing any unnecessary financial burden, time burden, and potential for food waste, as well as possible convenience for households. However, USDA appreciates that up-front time and resource investment associated with obtaining consent and up-to-date information from households, and seeks comments on effective strategies to streamline this process and ensure validity of household information.

USDA is also codifying the requirement that non-SFA sponsors must enter into a written agreement or MOU with the State agency or local SFA to receive student data for identification and eligibility determinations. Program regulations at § 225.15(k) require that the State agency or sponsor, as appropriate, should have a written agreement or MOU with programs or individuals receiving eligibility information, prior to disclosing children's free and reduced price meal eligibility information. The agreement or MOU should include information like that required for disclosures to Medicaid and the Children's Health Insurance Program (CHIP) specified in Program regulations at § 225.15(k)(2). Sponsors are responsible for the proper handling and storage of student data with applicable SFAs in accordance with confidentiality and disclosure provisions in the NSLA and SFSP regulations (§ 225.15(f) through (l)). Program sponsors should consider safeguards to protect participant confidentiality prior to implementation of the non-congregate meal service option. USDA reiterates that sponsors are not limited to using school data or providing meals to students identified through school data. Both congregate and non-congregate Program sponsors may use household applications or other means, such as household's receipt of SNAP, TANIF, and FDPIR benefits (as described in 7 CFR 225.15(f)(3)) to identify and notify children in the area of the option to receive meal deliveries, including students who are homeschooled or in virtual school as well as families with children not yet in school. Requirements regarding applications for free Program meals outlined at § 225.15(f) must be followed when using household applications to determine the eligibility of children.

Accordingly, this rule adds new §§ 225.14(d)(6) and 225.16(b)(5)(i) to require sponsors operating a non-congregate meal service which delivers meals directly to children's homes to obtain written parental consent prior to providing meals to the children. In addition, this rule adds a new § 225.14(d)(8) to establish the requirement that non-SFA sponsors must enter into a written agreement or MOU with the State agency or local SFA if they wish to receive student data for identification and eligibility determination purposes.

i. Meal Ordering and Second Meals

Program regulations at § 225.15(b)(4) allow sponsors to claim reimbursement for several second meals which does not exceed 2 percent of the number of first meals served to children for each meal type (*i.e.,* breakfasts, lunches, snacks, or suppers) during the claiming period. This option is provided in recognition of the fluctuation in participation during summer operations which makes forecasting difficult. The State agency must disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals must be served only after all participating children at the site's meal service have been served a meal. Summer 2023 Program policy only allowed second meals to be claimed at congregate meal sites. In this rule, USDA maintains its determination that the purpose and design of the non-congregate meal service option does not support the basis for claiming second meals at non-congregate meal service sites.

Accordingly, this rule amends Program regulations at § 225.15(b)(4) to limit reimbursement of second meals to congregate meal service. State agencies must disallow claims if it determines sponsors served second meals as part of a non-congregate meal service.

i. Requirements Specific to Sponsors Operating Conditional Non-Congregate Sites

As stated in the section II. A. of this rule, USDA is defining conditional non-congregate sites under this rulemaking and clarifying applicable program requirements. This section describes the changes and clarifications USDA is making for this new site type as it relates to Sponsor responsibilities.

1. Certification To Collect Information on Participant Eligibility

As is discussed throughout this section of the rule, sponsors of conditional non-congregate sites may only claim meals served to children who meet the Program's income standards. Program regulations at § 225.14(d) provide requirements for specific sponsor types, such as sponsors that operate camp sites, and States that those sponsor types must certify that they will collect information on children's Program eligibility to support their claim for reimbursement. Accordingly, this IFR adds a new § 225.14(d)(7) to clarify that if the sponsor operates a conditional non-congregate site, it must certify that it will collect information on participants' eligibility to support its claim for reimbursement.

2. Notification to the Community

Summer 2023 guidance required sponsors of non-congregate meal service sites to announce the availability of free meals in the local media as outlined in Program regulations at § 225.15(e). Program regulations at § 225.15(e) require sponsors operating the SFSP, including sponsors of open sites, camps, and closed enrolled sites, to annually announce the availability of free meals in the media serving the area from which the sponsor draws its attendance. Sponsors of camps and closed enrolled sites must notify participants of the availability of free meals and if a free meal application is needed. The regulations specify that for sites that use free meal applications to determine individual eligibility, the notification to the community must include the Program's income eligibility standards, a statement explaining that certain children (such as children in households that receive SNAP) are automatically eligible to receive free meal benefits at eligible Program sites, and a statement that meals are available without regard to race, color, national origin, sex, age, or disability. USDA reminds State agencies and program operators that, despite the introduction of new SFSP regulations in this IFR, the requirement to provide reasonable modifications to accommodate participants with disabilities remains unchanged. With the addition of the new conditional non-congregate site type to Program regulations, USDA is amending Program requirements at § 225.15(e) to clarify that sponsors of conditional non-congregate sites must notify participants of the availability of free meals and if a free meal application is needed, as with sponsors of camps and closed enrolled sites. Program regulations at § 225.15(e) continue to apply to sponsors regardless of the meal service type provided.

Accordingly, this rule amends § 225.15(e) to clarify notification requirements for sponsors of conditional non-congregate sites. This IFR also revises the language at § 225.15(e) to reflect the current federally protected bases for the CNPs, as discussed in section II. H. of this rule.

E. Non-Congregate Meal Service

i. Non-Congregate Meal Service Requirements

Under the SFSP, meals which may be served to children are breakfast, lunch, supper, and snacks. A sponsor may claim reimbursement only for the types of meals the sponsor is approved to serve under its agreement with the State agency. Sponsors' food service sites may be approved to serve any combination of two meals or one meal and one snack during each day of operation, except that lunch and supper cannot be served on the same day. In addition, sites that serve meals primarily to migrant children (commonly referred to as ''migrant sites'' under the Program) or camps may serve up to three meals (breakfast, lunch, and supper), or two meals and one snack, during each day of operation. A sponsor may only be reimbursed for meals that meet the meal pattern requirements, adhere to State and local health, safety, and sanitation requirements, and which are served during the approved meal service times, among other meal service requirements at § 225.16. The Act added additional provisions specific to non-congregate feeding, which USDA is codifying into regulations through this rulemaking.

The NSLA was amended to allow States to provide program meals under the SFSP for non-congregate consumption in a rural area with no congregate meal service, as determined by the Secretary. In addition, under the new non-congregate provision, meals may only be claimed when served to children in an area in which poor economic conditions exist, or, in an area that is not an area in which poor economic conditions exist, if the child is determined to be eligible for free or reduced price school meals under the NSLP or the SBP. Finally, as with any meal served for congregate consumption, non-congregate meals must be served according to the number and type of meals allowed for the site type, and must meet all applicable State, Tribal, and local health, safety, and sanitation standards, and the nutritional standards prescribed under the Program meal pattern.

Accordingly, this rule adds a new § 225.16(b)(5) to codify the additional meal service requirements for non-congregate meals, in accordance with the statute. In addition, the rule reiterates pertinent existing requirements that continue to apply to non-congregate meal service, including restrictions on the number and type of meals served per operational day, and provisions that sponsors must only be approved to operate if they have the administrative and operational capability to do so. This rule makes further changes to the meal service requirements in § 225.16, which are described in this section of the preamble.

ii. Non-Congregate Meal Service Options

Under summer 2023 guidance, USDA allowed meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components. Based on stakeholder feedback, experience gained under COVID–19 operations, and summer 2023 implementation, USDA is codifying the use of these three specified options. The rule also includes several integrity safeguards, as well as parameters around State agency approval to use these options through this rulemaking. First, these meal service options may only be used by sponsors in good standing (good standing is discussed in section II. A. vi. of this rule), as determined by the State agency. Furthermore, a State agency may prohibit sponsors from using these options only on a case-by-case basis and without regard to sponsor type if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites. Finally, a State agency's decision to prohibit a sponsor from using an option is not an appealable action.

This flexible approach promotes integrity while ensuring that sponsors who have demonstrated the administrative capability to carry out these options, are able to use these options as part of a non-congregate meal service to meet the needs of the children in their area. Maintaining such access is critical for rural areas which may benefit from the use of these options where children would otherwise have to travel long distances to receive a meal.

USDA understands that State agencies are best positioned to determine how sponsors may conduct non-congregate meal service to provide Program access

for eligible children while maintaining Program accountability. USDA encourages State agencies and sponsors to implement safeguards to ensure food safety and Program integrity. State agencies should include any additional statewide requirements and operational safeguards as part of the State's plan to use non-congregate meal service, as required for MAPs under this rulemaking (see section II. B. ii. of this rule).

Accordingly, this IFR adds a new § 225.16(i) to establish the use of these options for non-congregate meal service. A discussion of each of the provisions, stakeholder feedback, and USDA's actions and rationale for each of these options is included below.

1. Multi-Day Meal Issuance

Program regulations under part 225 reflect the long-standing congregate meal service requirements of the NSLA. Provisions of the NSLA at 42 U.S.C. 1753(b)(1)(A) and 1761(a)(1)(D) and Program regulations at § 225.6(i)(15) require Program meals to be served in a congregate setting and consumed by participants on site in order to be eligible for reimbursement. The NSLA further requires at 42 U.S.C. 1761(b)(2) that a service institution may only serve up to two meals (or one snack and one meal) per day, per child (except for camps and migrant sites which may serve up to three meals (or two meals and one snack) per day, per child). However, the Act added section 13(a)(13)(E) [42 U.S.C. 1761(a)(13)(E)] to the NSLA which provides the option to provide multi-day meal distribution at rural non-congregate sites. Specifically, it allows that over a 10-calendar day period, the number of reimbursable non-congregate meals provided to a child does not exceed the number of meals that could be provided over a 10-calendar day period under congregate feeding. Under summer 2023 guidance, USDA did not establish further Federal limitations and allowed State agencies, at their discretion, to approve sponsors for multi-day distribution of meals that could be provided over a 10-calendar day period, consistent with the statute.

During COVID–19 operations, about 30 percent of State agencies reported that more than half of Program sponsors provided 2 to 3 days' worth of meals at one time. In addition, about one fourth of State agencies reported that more than half of these local Program sponsors provided a full week of meals at one time.[6] Through the listening sessions, USDA received varied feedback from stakeholders regarding the multi-day meal issuance option when used for non-congregate meal service during the COVID–19 pandemic. Many of the comments focused on the difficulty of balancing Program integrity with Program access. Some stakeholders, including a few State agencies, stated that multi-day meal issuance is an essential method of providing non-congregate meals in rural areas and praised the benefits to the community, such as the ability to provide children meals for the weekend. Though, stakeholders expressed concerns about food safety or food quality when multiple days of meals are provided at one time, as well as providers' and households' storage capabilities. Many State agencies reported limiting multi-day meal issuance to no more than 5- or 7-days during summer 2023, while other State agencies reported prohibiting multi-day meal issuance for all sponsors due to operational challenges experienced during the COVID–19 pandemic. Some State agencies noted that they permitted the maximum number of days' worth of meals allowed (*i.e.,* 10 calendar days) when sponsors provided a valid rationale or a food safety plan. Acknowledging some State agencies' concerns with multi-day meal issuance, one stakeholder suggested USDA provide State agencies a tiered system based on a risk assessment to determine the number of days' worth of meals that a sponsor or site can distribute at one time. This tiered system could include years of operation (total and utilizing non-congregate service), prior review findings, degree of remoteness of the service area, and presence of other sites in the vicinity.

This rule codifies into regulations the provision at section 13(a)(13)(E) of the NSLA, as amended by the Act, which requires that the number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 10-calendar day period. However, the State agency may establish a shorter calendar day period on a case-by-case basis for an individual sponsor, considering possible concerns regarding a sponsor's ability to ensure Program integrity, food safety, and meal quality. For State agency approval to operate sites that provide multi-day meal service, sponsors opting to distribute multi-day meals must have procedures in place that document, to a reasonable extent, that the proper number of meals are distributed to each eligible child, these procedures must be included in the sponsor's application to participate in the Program (as discussed in section II.B.iv.) and may also impose additional requirements, at the State's discretion. As noted above, this rule further requires that multi-day meal issuance may only be used by Program sponsors in good standing, and that State agencies may only prohibit sponsors from using these options on a case-by-case basis without regard to sponsor type, if the State agency determines that a sponsor does not have the capability to effectively operate or oversee non-congregate meal services at their sites. USDA encourages State agencies, when considering the imposition of additional multi-day meal issuance requirements, to also consider the potential challenges for participants to access sites (which could include the effort required for families who reside in remote areas to travel to pick-up sites more than once per week).

Accordingly, this rule codifies the option for multi-day meal issuance by adding a new § 225.16(i)(1) to allow State agency approved sponsors to operate multi-day meal service. Sponsors opting to distribute multi-day meals must ensure through documented procedures, approved by their State agency, that the proper number of meals are distributed to each eligible child.

2. Parent or Guardian Meal Pick-Up

Prior to the Act, provisions under the NSLA at 42 U.S.C. 1761(f)(3) and Program regulations at § 225.9(d)(7) required that meals must be served to eligible children. These requirements ensured that Program sponsors provided meals directly to children who participate in the SFSP. As previously mentioned, the Act authorized USDA to issue guidance for summer 2023 rural non-congregate meal service. Through that guidance, USDA allowed the option for Program meals to be distributed to parents or guardians to take home to children and for non-congregate meals to be delivered to participants' homes. During the COVID–19 PHE, USDA used temporary legislative authority to grant a nationwide waiver, allowing sponsors to set up meal service in which parents or guardians could pick up meals for their children, without requiring the child to be present. This option proved to be a useful tool for ensuring children's access to Program meals in a non-congregate setting. USDA established guidance that required Program sponsors opting to distribute

[6] Severn, Veronica, Liana Washburn, Rachel Frisk, and Kevin Conway. (2023). Child Nutrition Program Operations During the COVID–19 Pandemic, March through September 2020: School Meals Operations Study (SMO) Year 1 Report. Prepared by Mathematica, Contract No. 12319819A0009/12319819F0162. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support.

meals to parents or guardians to maintain accountability and Program integrity through processes that ensured meals were only distributed to parents or guardians of eligible children and that duplicate meals were not provided.

During COVID–19 meal service operations, Program sponsors that used the parent and guardian pick-up waiver were required to ensure that duplicate meals were not provided to any child and that meals were distributed only to parents and guardians of children. To ensure this requirement was met, Program sponsors requested that parents and guardians provide their children's names or other identifying information when picking up meals.[2] Similar to multi-day meal issuance, during the listening sessions, stakeholders provided mixed feedback on this aspect of operations. While some stakeholders raised integrity concerns with the possibility of serving meals to non-participants and cited operational challenges during the pandemic, others expressed strong support for the option to allow a parent or guardian to pick up meals without children present. These respondents in support of the provision stated that the flexibility to provide or deliver a meal when children are not present is essential to both the purpose and efficacy of non-congregate service and found that this option was successfully implemented during the COVID–19 PHE. For example, multiple stakeholders reported the difficulty that many families in rural communities experience when required to commute long distances between work and home, noting that it is often more convenient for parents to pick up meals on their commute. On the other hand, some stakeholders reported concerns with oversight of unallowable or duplicate meal distribution to individuals on behalf of children. However, 13 non-State agency stakeholders suggested that sponsors know their rural communities (*e.g.,* who has children and who does not) well enough to prevent individuals with the intent to defraud from receiving Program meals. USDA appreciates the attention paid by Program operators to this aspect of operations during the implementation of non-congregate meal service and recognizes the importance of ensuring Program integrity while providing Program access to children who reside in rural areas.

This rule codifies the option for sponsors in good standing to allow parents or guardians to pick up Program meals on behalf of eligible children. As noted above, State agencies have the discretion on a case-by-case basis to prohibit sponsors, regardless of sponsor type, from using this option if the State agency determines that the sponsor cannot adequately ensure these requirements are met. Program integrity is vital to the success of non-congregate meal service; therefore, for State agency approval to operate sites that provide meal pick-up, sponsors opting to distribute meals to parents or guardians must have procedures in place that document, to a reasonable extent, that meals are only distributed to parents or guardians of eligible children, and that duplicate meals are not distributed to any child. These procedures must be included in the sponsor's application to participate in the Program. Examples of documented procedures may include, but are not limited to, using sign-in sheets (including the use of technology-based solutions which may streamline program participation and monitoring), or with State agency approval, other methods which result in accurate recording completed by Program sponsors that want to implement parent or guardian meal pick-up for children. State agencies may establish specific criteria or standards for what should be included in these procedures.

Although State agencies reported the prior use of these integrity measures among some sponsors during COVID–19 operations, USDA acknowledges that this type of meal duplication prevention effort may be new to some Program operators with the addition of the permanent non-congregate meal service option. USDA seeks to ensure that non-congregate meals are accessible to all eligible children while maintaining Program accountability and integrity. Permanent non-congregate meal service is a distinct approach to providing summer meals to children compared to the congregate meal service model, and thus, presents its own set of risks that Program sponsors must take reasonable steps to mitigate in order to maintain Program accountability and integrity.

USDA seeks public comments on effective approaches for balancing integrity and access priorities, while offering parent or guardian meal pick-up flexibility during summer non-congregate service. Commenters are specifically encouraged to provide input on:

- Successful and recommended procedures (ideally those informed by pandemic or summer 2023 implementation experience), for ensuring to a reasonable extent that meals are only distributed to parents or guardians of eligible children;
- Criteria, standards, or other requirements that may be established by State agencies to ensure consistency in the approval of documented procedures to be implemented by sponsors;
- Minimizing burden on States, sponsors, and families while maintaining the integrity standards of the Program;
- The frequency and type of program integrity incidents witnessed during unannounced reviews, technical assistance visits, and scheduled reviews; and
- The desirability or appropriateness of USDA to establish further integrity controls in relation to parent or guardian meal pick-up through future guidance and/or rulemaking (including but not limited to restrictions based on sponsor experience, sponsor type, or site type).

Accordingly, this rule adds § 225.16(i)(2) to allow State agency approved sponsors to distribute meals to parents or guardians to provide to their children. Sponsors opting to distribute meals to parents or guardians must ensure through documented procedures, approved by their State agency, that meals are only distributed to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

3. Bulk Meal Items

Summer 2023 implementation guidance permitted State agencies to approve self-preparation sites to distribute bulk foods to eligible children to provide multiple days' worth of meals for multi-day meal issuance, if the foods provided met the component and quantity requirements for each meal service type (*i.e.,* breakfast, lunch/supper, snack). Additionally, the guidance required:

- Foods to be in the proper amounts for each reimbursable meal being served;
- Foods to be clearly identifiable as making up reimbursable meals;
- Menus to be provided with directions indicating which items are to be used for each meal as well as the correct portion sizes; and
- Minimal preparation is needed, including a prohibition on foods provided as ingredients for recipes that require chopping, mixing, or baking.

Through additional guidance, USDA also encouraged sponsors to consider several factors such as food safety risks, access to kitchen appliances and cooking tools, and availability of the parent or guardian to assist with meal preparation. USDA received varied feedback from stakeholders regarding bulk meal item issuance during the listening sessions. Similar to multi-day meal issuance, many comments focused on the difficulty of balancing Program

integrity with Program access. Stakeholders also expressed concerns about food safety or food quality, providers' and households' storage capabilities, the usability of bulk food items, and the challenges families experience putting the items together to make the meal. Many State agencies reported limiting the use of bulk meal items, while some State agencies reported prohibiting bulk foods entirely due to operational challenges experienced during the COVID–19 pandemic, such as the difficulty of food usage before spoilage when multiple days' worth of meals were provided at one time. Some State agencies noted that they allowed bulk meal item distribution only when provided with a food safety plan. Though several stakeholders expressed support for this flexibility, citing reasons including that it gives parents an opportunity to prepare and serve meals directly to their children, reduces packing waste, and potentially supports local economies and farmers.

This rule codifies the option for self-preparation sponsors approved to operate non-congregate meal service to provide bulk foods that meet the meal pattern requirements for each meal service type with added safeguards to ensure Program integrity and the health and safety of children while promoting access for rural areas. As discussed in section II. E. ii. 1. of this rulemaking, about 30 percent of State agencies reported that more than half of Program sponsors provided 2 to 3 days' worth of meals at one time. In addition, about one fourth of State agencies reported that more than half of these local Program sponsors provided a full week of meals at a time during COVID–19 operations. Since multi-day meal issuance and bulk food distribution flexibilities work collectively additional restrictions around this pairing will be codified through this rulemaking. State agencies must determine whether a sponsor's proposed distribution of bulk food items meets State and local health, safety, and sanitation standards. In addition, when a sponsor is approved to use this option, the sponsor must ensure that:

- Required food components for each reimbursable meal served meet the meal pattern requirements at § 225.16(d);
- All food items that contribute to a reimbursable meal are clearly identifiable;
- Menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal;
- Food preparation, such as heating or warming, is minimal. With State agency and FNSRO approval, sponsors may offer food items that would require further preparation in circumstances where distribution of such food items is justified and appropriate; and
- The maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period (or less if the State agency established a shorter calendar day period on a case-by-case basis). However, a State agency can approve sponsors to provide up to 10 days' worth of bulk meals, also on a case-by-case basis, in appropriate circumstances such as extremely remote areas where more frequent distribution is impracticable. The approved time period may not exceed the time period for which the sponsor is approved for multi-day meal issuance.

As noted above, under this rule, USDA further codifies that bulk meal service may only be used by sponsors in good standing. State agencies have the discretion to limit bulk meal service for Program sponsors on a case-by-case basis. Additionally, State agencies can prohibit Program sponsors from using this flexibility, on a case-by-case basis without regard to sponsor type, if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites, such as if the State agency determines that the Program sponsor cannot adequately ensure the proper number of meals are distributed to each eligible child.

USDA encourages State agencies to place reasonable limits on the food items provided or types of food items provided as part of bulk meal service, dependent on sponsor experience. For this reason, USDA is seeking comments on best practices for providing bulk food menu items to inform future rulemaking.

Accordingly, this rule codifies the option to provide bulk meal items by adding a new § 225.16(i)(3).

iii. Offer Versus Serve

The NSLA in section 13(f)(7) [42 U.S.C. 1761(f)(7)] and Program regulations at § 225.16(f)(1)(ii) provide that an SFA participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to eat, under rules that the school uses for school meals under Program regulations in parts 210 and 220 (7 CFR 210.10(e) and 220.8(e), respectively). Since section 13(f)(7) of the NSLA only authorizes SFAs to use OVS, non-SFA sponsoring organizations are not permitted to use OVS.

For summer 2023, USDA issued guidance that allowed SFA sponsors operating non-congregate meal service to utilize OVS with State agency approval, as long as all meal components or food items were offered, and all participants had the opportunity to select a complete reimbursable meal. While OVS is potentially a useful tool for reducing food waste, many stakeholders expressed concerns about program integrity and meal quality associated with OVS when meals were mostly pre-packaged. Several State agencies reported observing improper implementation of OVS during COVID, stating that some Program sponsors used OVS exclusively for the milk component instead of offering any meal components or items as required in SFSP regulations § 225.16(f)(1)(ii). However, the goals of OVS are to simplify Program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meal that is served. Therefore, USDA reminds State agencies and SFA sponsors that when implementing OVS, a child or parent must be able to decline to accept any component offered.

Therefore, under this rulemaking, State agencies may only permit SFAs to operate OVS for non-congregate meal service as outlined in section 13(f)(7) of the NSLA and at Program regulations § 225.16(f)(1(ii). USDA continues to limit OVS to SFA sponsors, who are experienced with OVS in the NSLP, to remain consistent with the statutory requirements of the NSLA and to promote Program integrity. USDA encourages SFAs that intend to use OVS to carefully consider how to best implement this flexibility while ensuring that all meal service requirements are met as outlined in § 225.16(f)(1)(2), and under parts 210 and 220 at §§ 210.10(e) and 220.8(e), respectively. Some possible strategies for ensuring Program integrity include providing a buffet style meal pick-up service or utilizing an online ordering system where children can choose their SFSP meal items prior to meal pick-up or delivery.

Accordingly, this rule does not make further changes to existing regulations § 225.16(f)(1)(ii), effectively allowing SFAs to use OVS when providing non-congregate meal service.

iv. Clarifications To Existing Meal Service Requirements—Meal Service Times and Offsite Consumption of Food Items

Meal Service Times

Program regulations at § 225.16(c) require meals served in the SFSP to

follow specific time requirements. Meal service times must be established by sponsors for each site, included in the sponsor's application, and approved by the State agency. Meal service time requirements also specify that breakfast meals be served at or close to the beginning of a child's day; all sites except residential camps must start the next meal service at least one hour after the end of the previous meal or snack; and meals served outside of the approved meal service times are not eligible for reimbursement. In addition, meal service requirements at § 225.16(c) provide instructions for meals not prepared on site. Specifically, meal deliveries must arrive before the approved meal service time and meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

USDA determined that some meal service time requirements continued to apply under the summer 2023 guidance. The guidance instructed that meal service times must be:

- Established for each site;
- Included in the sponsor's application and approved by the State agency; and
- Supported through State agency approved pick-up schedules or delivery plans with designated times for distribution.

The guidance also required that the State agency must approve any changes in meal service times. Finally, sponsors offering a non-congregate meal service were not required to serve breakfast in the morning or provide one hour between the end of one meal service and the start of the next.

Stakeholders did not provide feedback on meal service time requirements during listening sessions. However, USDA maintains that some meal service time requirements are necessary to provide sufficient control at the State agency and sponsor levels to allow for planned meal services that meet the needs of the community, consistent with the summer 2023 guidance. Therefore, through this rulemaking, USDA is codifying the summer 2023 guidance on meal service time restrictions for non-congregate meal service.

Accordingly, this rule adds a new § 225.16(b)(5)(iii) to establish that non-congregate meal service is subject to the time restrictions for meal service at § 225.16(c)(1), (4), and (5). This rule also amends § 225.16(c)(2), (3) and (6) to clarify that non-congregate meal service is exempt from requiring that breakfast must be served at or close to the beginning of the child's day, that one hour must elapse between meal services, and that meals not prepared on site must be delivered within one hour of the approved meal service time for congregate meal service. Lastly, the rule makes further changes to the requirements under meal service times in accordance with monitoring requirements, as discussed in section II.F.i.b. of this rulemaking.

Offsite Consumption of Food Items

Program regulations at § 225.16(h) allow sponsors to permit a child to take one fruit, vegetable, or grain item off-site for later consumption without prior State agency approval if all applicable State and local health, safety, and sanitation standards are met. Sponsors should only allow an item to be taken off-site if the site has adequate staffing to properly administer and monitor the site. A State agency may prohibit individual sponsors on a case-by-case basis from using this option if the State agency determines that the sponsor's ability to provide adequate oversight is in question. The State agency's decision to prohibit a sponsor from utilizing this option is not an appealable action. With the establishment of the non-congregate option in eligible rural areas and for meals served to eligible children in non-rural areas, this option only applies for congregate meal service.

Accordingly, this rule amends § 225.16(h) to clarify that the provisional flexibility to allow children to take specific food items for off-site consumption only applies to congregate meal service.

F. Monitoring

Under the Act, the authorization of rural non-congregate meal service in SFSP expanded meal service options for participating sponsors and sites. This action changes meal service operations at sites that will provide non-congregate meals and thus requires compliance with new regulatory requirements. By conducting reviews of sponsors and sites, State agencies maintain oversight of Program compliance; sponsors are also responsible for ensuring that their sites correctly adhere to Program requirements.

Summer 2023 guidance provided that all existing monitoring requirements for State agencies and sponsors apply to non-congregate sponsors and sites. This included pre-approval visits, sponsor and site reviews, follow-up reviews, meal preparation facility review by State agencies as required in Program regulations at § 225.7, and site visits and reviews conducted by sponsors as required in Program regulations at § 225.15.

USDA received significant feedback from stakeholders regarding monitoring and general Program integrity related to non-congregate meal service operations. Stakeholders reported isolated incidents of improper benefit distribution that occurred during the COVID–19 pandemic at non-congregate meal service operations, which were in place under temporary waiver authority. States reported incidents of meal duplication and inaccurate use of meal service flexibilities that resulted in improper benefit distribution during the pandemic. Additionally, a few stakeholders noted the delicate balance between ensuring Program integrity and ensuring Program access.

USDA understands that State agencies are best positioned to evaluate applicant sponsors and sites for non-congregate meal service operations. Under this rule, with two exceptions discussed below in section i. 2., the basic monitoring requirements for type, number, and frequency of reviews will not change. However, to ensure all Program operations, both congregate and non-congregate, are properly adhering to Program requirements, USDA is amending the regulations to incorporate operational changes concerning pre-approval visits and sponsor and site review that reflect the introduction of non-congregate meal service.

USDA seeks to improve Program integrity by assessing how State agencies, sponsors and sites can use data analysis to detect potential Program mismanagement in the SFSP. USDA will create guidance materials and technical assistance tools to leverage Program data to detect potential Program mismanagement. USDA is seeking comments on best practices for utilizing data analysis and trends to ascertain Program irregularities which may be indicative of potential Program mismanagement to inform future rulemaking.

i. State Agency Responsibilities

1. Pre-Approval Visits

Program regulations at § 225.7(d) require State agencies to conduct pre-approval visits of sponsors and sites to assess the applicant sponsor's or site's potential for successful Program operations. That includes all applicant sponsors that did not participate in the Program in the prior year, those that had operational problems noted in the prior year, and any sites that the State agency has determined need a pre-approval visit. Current regulations allow pre-

approval visits of SFA sponsors that had a review with no significant deficiencies in the preceding 12 months to be conducted at the discretion of the State agency. Under this rule, that regulation will be amended to include CACFP institutions. The addition of this flexibility will ease administrative burden at the State agency while allowing the State to provide oversight on sponsors with operational problems and those needing additional technical assistance.

Additionally, this rule will add a requirement that State agencies must establish a process to determine which sites need pre-approval visits. This process must consider characteristics of sites including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service, and existing sites that exhibited operational problems. This requirement will ensure that applicant sites have the capacity to operate the Program, including existing sites new to non-congregate meal service and existing sites that exhibited operational problems in the prior year. The importance of pre-approval visits was highlighted in the USDA Summer Food Service Program Integrity Study, which found that a majority of State directors believed the pre-approval visits were effective in spotting potential problems.[7]

Accordingly, this rule amends § 225.7(d) to allow pre-approval visits of sponsors which are a CACFP institution that had a review within the preceding 12 months and had no significant deficiencies to be conducted by the State agency at their discretion at paragraph (d)(2). Furthermore, this rule amends the State agency pre-approval site visit requirement at § 225.7(d) to include that State agencies must develop a site selection process that considers site characteristics, including whether an existing site is new to non-congregate meal service operations, by adding a new regulation at § 225.7(d)(4) and listing site characteristics at paragraph (d)(4)(i), (d)(4)(ii), and (d)(4)(iii). Lastly, the rule revises the paragraph structure at § 225.7(d) to improve the clarity of the regulations.

[7] Giesen, L., Gola, A.A, Gearing, M., Gabay, M., Baier, K., Bozzolo, C., and Mwombela, B. (2023). Summer Food Service Program Integrity Study Final Report. Prepared by Westat, Contract No. 12319818A0021; Order No. 12319818F0134. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Chan Chanhatasilpa. Available online at: *www.fns.usda.gov/research-and-analysis.*

2. Sponsor and Site Reviews

Program regulations at § 225.7(e) require State agencies to review SFSP sponsors and sites to ensure compliance with Program regulations by determining an appropriate sample selection of sponsors and sites to review. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews. Additionally, Program regulations at § 210.18(e)(3)(ii) require State agencies during a school meals administrative review to review a minimum of one site if the SFA selected for review operates the SSO. Under this rule, USDA is requiring State agencies to include in the sample selection SFSP sponsors who operate either congregate or non-congregate sites, or both, per § 225.7(e)(2). This is to ensure that all meal service options are included in the sample selection. USDA is also requiring State agencies to review a minimum of one congregate and one non-congregate site during a school meals administrative review if the SFA operates both meal service models. If the SFA has one site that operates both congregate and non-congregate meal services, the State agency may review a minimum of one site and must observe both a congregate and non-congregate meal service at that one site.

Furthermore, regulations at § 225.7(e)(4) require State agencies to conduct a review of every new sponsor at least once during the first year of operations, annually review every sponsor that experienced operational problems in the prior year, review each sponsor at least once every 3 years, and conduct reviews of at least 10 percent of each reviewed sponsor's sites. This rule does not change any of these requirements, which require State agencies to provide adequate oversight of all SFSP sponsors, including those that are new or exhibit problems, and conduct site level reviews.

In addition to the above requirements, per current § 225.7(e)(4)(ii), State agencies must also ensure that they annually review several sponsors whose Program reimbursements, in the aggregate, account for at least one half of the total Program meal reimbursements in the State in the prior year. This provision requires States to review larger sponsors to meet the total reimbursement threshold. These sponsors are solely selected based on size, which means, in many States, that larger sponsors must be reviewed every year to meet this requirement. These large sponsors, such as SFAs who operate CNPs on a year-round basis, are typically more familiar with Program requirements. Focusing critical oversight resources on these experienced sponsors limits the number of reviews that State agencies can conduct of sponsors who are small to mid-size and may be at risk for more serious operational challenges.

To provide State agencies the ability to target their resources on sponsors of all sizes and operational capacity, this IFR removes the requirement at § 225.7(e)(4)(ii). This will allow State agencies to adjust to any potential changes in the number of meals served due to new and existing sponsors operating the non-congregate meal service option. It will also facilitate the timely identification of issues that pose a risk to Program integrity. The elimination of this requirement provides State agencies the ability to review sponsors of various operational capacities who are not currently being reviewed with the same frequency as larger sponsors. This will allow State agencies to target resources on sponsors of all sizes who may pose a greater risk to Program integrity or need additional monitoring and technical assistance, by identifying a wider variety of issues based on criteria such as spikes and anomalies in meal claiming. This will ensure Program integrity across all SFSP Program operators.

In addition to providing State agencies the ability to focus resources on sponsor reviews that are not just related to the amount of Program reimbursements, USDA is also adding under § 225.7(e)(4) a provision that allows State agencies to more frequently review sponsors who require additional technical assistance. The addition of this provision at § 225.7(e)(4)(iv) further ensures integrity in the Program by allowing State agencies to review sponsors of all sizes more frequently than the current 3-year review cycle, if the State agency determines the sponsor needs additional oversight and technical assistance.

Additionally, USDA is including meal service models, both congregate and non-congregate, and meal distribution methods in the review sample under § 225.7(e)(4). The addition of this provision at § 225.7(e)(4)(v) ensures all types of meal service models and meal distribution methods are included in the 10 percent of sponsor's sites required to be reviewed. In terms of the number of sites each sponsor can be approved to operate, the State agency, per § 225.6(b)(6), must not approve any sponsor to operate more than 200 sites

or to serve more than an average of 50,000 children per day. However, if the sponsor can demonstrate that it has the capacity to manage and operate the Program larger than these limits, the State agency may approve exceptions. Regardless of the size of the sponsor's operation, the State agency must have the capacity to conduct reviews of at least 10 percent of the sponsor's sites per § 225.6(b)(6).

Accordingly, this rule amends § 225.7(e)(4) to remove § 225.7(e)(4)(ii), the one-half aggregate review requirement. The rule will also add a new § 225.7(e)(4)(iv) to include review of additional sponsors at the State agencies discretion and amend § 225.7(e)(4)(v) for the inclusion of all meal types in the 10 percent review sample. Additionally, this rule amends § 225.6(b)(6) to include the requirement that the State agency must have the capacity to conduct reviews of at least 10 percent of the sponsor's sites when the State agency approves a sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. The rule also revises the paragraph structure at § 225.6(b)(6) to improve the readability of the regulations. Lastly, this rule amends § 210.18(e)(3)(ii) to include the review of a non-congregate site for SFAs operating non-congregate meal service in the SSO.

Program regulations at § 225.7(e)(5) direct State agencies to develop criteria for site selection when selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v). This rule will include at § 225.7(e)(5)(i)(G) and (H) the type of meal service (*e.g.,* congregate or non-congregate); if non-congregate, the type of meal distribution method, in the characteristics used to determine sites selected as part of the sponsor's review. This provision will ensure the new meal service model type and meal distribution method is considered when selecting sites for review.

Accordingly, this rule amends § 225.7(e)(5) to include new non-congregate meal services at paragraph (e)(5)(i)(G) and (H).

Program regulations at § 225.7(j) require State agencies to develop and provide monitor review forms to all approved sponsors. The monitor review form must include, at a minimum, the time of the reviewer's arrival and departure, the site supervisor's printed name and signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions. This rule will include whether the meal service is congregate or non-congregate on the monitor review form, which must be completed by sponsor monitors per § 225.7(j). This ensures that there is a differentiation between the congregate and non-congregate meal service at each site for each review.

Accordingly, this rule amends § 225.7(j) to include whether the meal service is congregate or non-congregate on the monitoring review form.

Program regulations at § 225.16(c)(1)(iii) require meal service times to be approved by the State agency. Under this rule, all meal service times approved by the State agency must be in accordance with the State agency or sponsor's capacity to monitor the full meal service during a review. This provision will ensure that the sponsor and State agency have enough resources and the capacity to review the full meal service.

Accordingly, this rule amends § 225.16(c)(1)(iii) to clarify that the approval of meal service times must be in accordance with the State agency or sponsor's capacity to monitor the full meal service during a review.

i. Sponsor Responsibilities

1. Training

Program regulations at § 225.15(d)(1) require sponsors to hold Program training sessions for its administrative and site personnel. These trainings must, at a minimum, include: the purpose of the Program, site eligibility, recordkeeping, site operations, meal pattern requirements, and the duties of a monitor. This rule will include both congregate and non-congregate meal service in the required training conducted by the sponsor. This is to ensure that the proper meal service is operated and monitored by the sponsor's administrative and site personnel at each site.

Accordingly, this rule amends § 225.15(d)(1) to include the addition of congregate and non-congregate meal service in the sponsor Program training sessions for its administrative and site personnel prior to the operation of a site's first meal service.

2. Site Reviews

Through guidance, sponsors were required to conduct pre-operational visits for new sites and those that experienced operational problems in the previous year before a site operates the SFSP. This rule codifies the requirement for sponsors to conduct pre-operational visits for new sites and those that experienced operational problems in the previous year before a site operates the Program per § 225.15(d). Similar to pre-approval visits conducted by the State agency, pre-operational visits conducted by the sponsor assist the sponsor in detecting potential operational issues prior to operation of the Program. USDA also supports the use of virtual monitoring as a tool to supplement the required on-site monitoring reviews. Providing technical assistance and training through virtual technologies may also allow them to be offered more frequently and increase access to trainings, thereby supporting Program integrity. In addition, this rule will codify that existing sites that are new to non-congregate meal service are considered new sites; and as such are also required to have a pre-operational visit. This is to ensure that a site has the facilities to provide meal service for the anticipated number of children that will receive non-congregate meals and the capability to conduct the proposed meal service.

Accordingly, this rule amends § 225.15(d) to include pre-operational site visits for new sites and those that experienced operational problems in the previous year, including existing sites switching to non-congregate meal service, to be conducted by the sponsor prior to a site operating the Program at paragraph (d)(2).

In this rule, current regulations at § 225.15(d)(2), which require sponsors to visit each of their sites at least once during the first two weeks of Program operations for all new sites and sites determined by the sponsor to need a visit based on criteria established by the State agency, is now moved to paragraph (d)(3); additionally, paragraph (d)(3) will include the requirement for sponsors to conduct site visits for all existing sites that are new to non-congregate meal service within the first two weeks of operation. This ensures that the food service operation is operating smoothly and to verify information such as the site address, storage, holding and preparation facilities, meal distribution method, and service capacity of non-congregate meal services.

Accordingly, this rule amends § 225.15(d) to include all existing sites that are new to non-congregate meal service as sites needing a site visit conducted by the sponsor within the first two weeks of Program operations at paragraph (d)(3).

Current regulations at § 225.15(d)(3) require sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations. This rule will move this provision from

paragraph (d)(3) to paragraph (d)(4). There are no changes to this provision; however, a full review of food service operations at each site includes non-congregate rural meal services.

Accordingly, this rule amends the requirement at § 225.15(d) that sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations and will be located at paragraph (d)(4).

G. Miscellaneous

i. Collection of Summer Meal Site Location Data

Section 26(d) of the NSLA (42 U.S.C. 1769g(d)) mandates that the USDA enter into a contract with a non-governmental organization to establish and maintain an information clearinghouse (named ''USDA National Hunger Clearinghouse'' or ''Clearinghouse'') of groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. The Clearinghouse includes a database of non-governmental, grassroots organizations in the areas of hunger and nutrition, along with a mailing list to communicate with these organizations. The Clearinghouse also operates the USDA National Hunger Hotline, through which assistance is provided via phone or text message. Local level antihunger organizations enter their information into the database, and Clearinghouse staff use that information to provide the public with information about where they can get food assistance. SFSP and SSO meal sites are a component of this assistance.

USDA works closely with State agencies to ensure that children who receive free or reduced price school meals continue to receive the nutrition they need when schools are closed—whether during summer break or unexpected closures during the school year. Through USDA's summer meal programs, approved sites in communities across the country can serve meals to children up to age 18 at no cost. During the summer operational period (May through September), USDA collects summer meal site information from State agencies via the Summer Food Site Locator form (FNS–905). Unlike other resources in the Clearinghouse, this form is specific to the summer meals programs and may only be completed by State agencies. The data collected populates the Clearinghouse database with summer meals site information and locations. Data are also integrated into public-facing web tools. One such tool is the Summer Meals Site Finder (Site Finder). This mapping tool was developed by USDA to help children, parents, and others quickly and easily find summer meal sites near them. The Site Finder, available for use at no charge, is a web-based application that also works on tablets, smartphones, and other mobile devices without the need to download software or other data. The mapping tool allows users to enter an address, city, State, or zip code to find up to 50 nearby site locations, along with their addresses, hours of operation, and contact information, and directions. State agencies provide data to FNS to be mapped on the tool and update the data throughout the summer to include operational changes and new site locations.

The form FNS–905, which may only be completed by State agencies, collects details about each site such as times, days, and dates of operation, location, types of meals served, contact information, and if the site is open to the public. Sponsors provide this information to their State agencies during the sponsor and site application process as required by Program regulations at § 225.6. Currently, completing the FNS–905 is voluntary, though USDA requests those State agencies that choose to participate to complete the form at least once per the summer operational period, and submit weekly updates, as needed, during summer operations. As of summer 2022, most State agencies submitted FNS–905 forms at least once per summer.

Other interested parties have used the data collected on the FNS–905 in the creation of mobile applications and texting services. The data has also been used by State agencies to plan summer site visits, by Program sponsors to strategically plan for future years' summer feeding operations, and by researchers in academic institutions. In addition to members of the general public, other interested parties may include nutrition or health education professionals, State or local government health officials, nutrition councils, public interest advocates, private foundations, and corporate officials.

USDA has also used these data collected from the FNS–905 to improve integrity and to analyze policy proposals, as well as to report to executive agency officials and Congress real-time results that cannot be ascertained through other reporting methods. The Clearinghouse also supports the USDA National Hunger Hotline and texting service, which refers people in need anywhere in the U.S. to food pantries, soup kitchens, grassroots organizations and, in this case specifically, approved open summer meal sites. The data collected using the FNS–905 is updated by USDA once per week during the summer meal programs' operating period and posted on an open data platform that is always accessible to the public.

The introduction of the rural non-congregate meal service option provides USDA and Program operators with a new opportunity to expand access to the summer meal programs. The value and far-ranging use of summer meal site data demonstrates the need for timely, accurate, and complete data to be available for the public. In addition, this is the only public resource that provides detailed meal site information across all States and territories, which emphasizes the need to collect this data and share it with families searching for summer meal sites in their area. In line with these changes, USDA will require State agencies to submit summer meal site data to FNS via the FNS–905.

As stated previously, nearly all States and territories already provide this data to USDA on a voluntary basis during the summer season, though USDA recognizes the potential administrative burden and systems changes associated with introducing a new, mandatory reporting requirement for State agencies. Further, USDA understands the need to provide sufficient time to update current systems to accommodate this change. Therefore, USDA will delay implementation of the reporting requirement until one year after the publication of this IFR. USDA is also seeking to modernize data submission and processing, and the Site Finder tool. As such, USDA seeks comments from State agencies on the implementation of mandatory reporting requirements, including form and procedural changes:

- When is the earliest that your State submits the initial site information to USDA? Are there factors that impact when you are ready to submit this information to USDA, such as application deadline and processing?
- How frequently does your State submit to USDA updates on summer meal sites during the Site Finder operational period?
- How often do operations (*e.g.,* hours/locations, type of site) of existing sites change, or how often during the summer are new sites added?
- What would be the optimal reporting schedule for summer meal site data submissions?
- How does your State agency assess the accuracy of summer meal site data at the State level, and ensure accuracy of site information at the sponsor and site level?
- What are best practices to solicit from sponsors timely and accurate

updates to site information such as meal service type, times, days, and meal types, and to ensure operational changes are reflected in the State's system and the site data that is reported to FNS?

USDA also welcomes comments from stakeholders and the general public on how summer meal site data and USDA's Site Finder mapping tool can be made more usable and useful.

Accordingly, this rule adds a new § 225.8(e) to require States agencies submit to FNS a list of open site locations and their operational details via the Summer Food Site Locator form (FNS–905) by June 30 of each year, or a later date approved by the FNSRO, and provide a minimum of two updates during the summer operational period. However, State agencies are encouraged to submit weekly updates if there are any changes to the State agency's data, to ensure families have the most up-to-date site information. These amendments are effective December 30, 2024.

ii. Reimbursements

The NSLA was amended to establish the non-congregate meal service option for rural areas with no congregate meal service for sites that are located in areas in which poor economic conditions exist. It also establishes an option for meals served to children certified as being eligible for free or reduced price meals under the NSLP and the SBP who reside in rural areas that are not documented as areas in which poor economic conditions exist, which is codified as a ''conditional non-congregate site'' under this rule at § 225.2. For this reason, all meals served at an approved rural site implementing non-congregate service are eligible for SFSP or SSO reimbursement. SFSP sponsors are eligible to receive the rural or self-preparation site reimbursement rate for each meal served to participating children at rural sites (7 CFR 225.9(d)(7)). However, as previously discussed in this rulemaking, sponsors of conditional non-congregate sites may only claim meals served to children who meet the Program's income standards. Section II.D.iii. (*Responsibilities of Sponsors*) of this IFR also discusses a change to § 225.14(d)(7) clarifying that if the sponsor operates a conditional non-congregate site, it must certify that it will collect information to determine children's Program eligibility to support its claim for reimbursement. Furthermore, section II.D.ii. (*Responsibilities of Sponsors*) of this IFR discusses the change at § 225.15(b)(4) to limit reimbursement of second meals to congregate meal service. Therefore, this rule also makes changes in § 225.9 regarding Program assistance to sponsors reflecting these clarifications.

Accordingly, this rule adds a new § 225.9(d)(11) to require that sponsors of conditional non-congregate sites are reimbursed only for meals served to children whose eligibility for Program meals is documented. In addition, this rule amends § 225.9(f) to clarify the State agency must ensure that reimbursements for second meals are limited to the percentage tolerance established when reviewing a sponsor's claim for congregate meals served.

iii. SSO Non-Congregate Provisions

The Act amends the NSLA and instructs USDA to promulgate regulations to carry out the new provisions under section 13 of the NSLA, establishing an option to provide non-congregate summer meal service in rural areas with no congregate meal service. Consistent with long-standing summer meal service program administration, USDA interpreted this statutory authority as extending to the SSO, which is similarly authorized under section 13 of the NSLA. Therefore, through this IFR, USDA is codifying the availability of rural non-congregate meal service through the SSO. Under this rulemaking, an SSO site in a rural area may be approved to offer a non-congregate meal service consistent with the requirements under part 225. SFAs approved to offer a non-congregate meal service must comply with the non-congregate meal service provisions set forth at § 225.16(b)(5)(i) and (iv) by this IFR (section II.E.*i.*) and may use the non-congregate meal service options described in § 225.16(i) under this IFR (section II.E.*ii.*). In addition, this rule defines the SSO under parts 210 and 220 to mean that the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

As part of this IFR, USDA invites public comments on these new provisions affecting SSO, specifically whether additional requirements should be codified to facilitate and provide clarity on the provision of rural non-congregate service through the SSO.

Accordingly, this IFR adds a new definition of the SSO in §§ 210.2 and 220.2 and adds new §§ 210.34 and 220.23 which will set forth the rural non-congregate provisions for the SSO.

iv. Annual Update To Approved Rural Data Sources

As discussed in section II. A. ii., under this IFR, USDA is expanding the definition of ''rural'' in § 225.2 to allow the use of multiple recognized Federal classification schemes to designate areas as rural. The amended definition of ''rural'' will also provide discretion to USDA for any potential updates or changes to classification schemes at a future date. Although these recognized Federal classification schemes are updated with each decennial census and periodically based on annual census surveys, though this rulemaking, USDA is making a commitment to issue updates by January 1 of each year, or as soon as is practicable, in order to have an established effective date for new data or updates to be used by State agencies and program operators for rural designations in that Program year. USDA will also make this data available and update the FNS Rural Designation Map to provide this information in a simplified format. Accordingly, this IFR adds a new § 225.18(l) to establish an annual effective date by which USDA will issue updates to the approved rural data sources to be used for designations in that program year. USDA will make this information available and referenceable in a simplified format.

H. Technical Amendments

USDA is removing obsolete provisions from the Code of Federal Regulations (CFR) in 7 CFR part 225. Section 225.14(d)(4) references requirements specific to sponsors that administer homeless feeding sites. The Child Nutrition Reauthorization Act of 1998 eliminated homeless sites in SFSP. Accordingly, these requirements are removed from the regulations.

This rule also includes amendments to correct several technical errors found in 7 CFR part 225. USDA will make technical changes to the designation of paragraphs to comply with current paragraph structure requirements for the CFR, where errors appear in the subsections of part 225 that are amended by this rule. This rule also makes several additional technical changes to fix a small number of obsolete terms of usage and punctuation. Finally, the Department will also make non-substantive technical changes to existing language to provide consistency and improve readability of regulations in subsections of part 225 that are amended by this rule. None of the technical changes will effect a substantive change in the Program.

Accordingly, this rule amends Program regulations to:

- Replace the term ''handicapped'' with the term ''disabled'' in the definition of ''children'' at § 225.2;
- Correct the numbering of the subordinate paragraphs in the definitions of ''Children,'' ''Operating Costs,'' and ''Rural,'' and in paragraphs (d) and (j) in § 225.7, and paragraph (d) in § 225.11;
- Correct the punctuation in §§ 225.6(i) and 225.7(j);
- Replace reference to the Food Stamp benefit, renamed the Supplemental Nutrition Assistance Program (SNAP) benefit, that appears under § 225.15(f)(3);
- Improve the readability of regulations at §§ 225.6(a)(2), (b)(6), 225.9(d)(9), and 225.15(b)(3);
- Replace the word ''believes'' with the word ''determines'' in §§ 225.6(g)(1)(vii)(C), (g)(1)(ix)(C), (g)(2)(iv)(C), (g)(2)(v)(C), and 225.16(e)(4);
- Replace the term ''shall'' with the term ''must'' where it appears in the subsections of part 225 that are amended by this rule; and
- Revise the language that appears under §§ 225.6(f)(1)(iii)(F), 225.7(n)(1), and 225.15(e) to reflect the current federally protected bases for the CNPs.

I. Severability

The statutory enhancement of the USDA SFSP and SSO to include the option for rural operators to use alternate service models, including the non-congregate rural option, that are tailored to the needs of the communities they serve is essential for ensuring that all children receive nutritious meals during the summer months when school is not in session. As directed by statute, USDA implemented the SFSP and SSO rural non-congregate option in Summer 2023, with careful attention to meeting the needs of rural communities, while protecting program integrity. Based on the statutory requirement to expand the SFSP and SSO for Summer 2024, USDA has determined that its authority to implement the regulation through this interim final rule is well-supported in law and practice and should be upheld in any legal challenge. Further, USDA has determined that its exercise of its authority reflects sound policy. However, in the event that any portion of the rule is declared invalid, USDA intends that the various aspects of the use of alternate service models be severable. For example, if a court were to find any provision unlawful, such as (1) the definition of ''rural'' for program purposes, (2) the State agency's authority to approve a sponsor's request for a rural designation, (3) the provision of both congregate and non-congregate meals at a single site, or (4) some other aspect of this rule, USDA intends that all other provisions in the rule will remain in effect to ensure effective implementation of the rural non-congregate option. USDA has concluded that it is in the interests of both rural communities and the children who reside in them for nutritious meals to be provided using alternate service models during the summer months when school is not in session. Furthermore, in the event any part or the entirety of the non-congregate rural option established by this rulemaking were declared invalid, such option is severable and does not prevent the Summer EBT program, discussed below, from proceeding since the non-congregate rural option and Summer EBT program function independently.

III. Discussion of the Interim Final Rule—Summer EBT

Subpart A—General

i. General Purpose and Scope

This rulemaking establishes the regulations through which the Secretary of Agriculture will administer the Summer EBT Program. Section 13A of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1762, authorizes the Secretary to establish a program under which States, as well as Indian Tribal Organizations that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program must, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits. As provided for in section 13A(a), the Summer EBT Program was established ''for the purpose of providing nutrition assistance. . .during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.''

Accordingly, this program's purpose and scope are codified in a new 7 CFR 292.1.

i. Definitions

Implementation of the Summer EBT Program will necessitate new systems and processes, and with them, new definitions. Some of the definitions in this rulemaking are identical to, or adapted from, definitions in Child Nutrition Program, SNAP, or WIC regulations. Other definitions have been created in this rulemaking to clarify specific functions and terms essential to the Summer EBT Program and are entirely new.

1. Existing Definitions

The following existing definitions from elsewhere in USDA regulations are codified in this rule without change:

Act; Acquisition; Advance Planning Document for project planning or Planning APD (APD or PAPD) Advance Planning Document Update (APDU); Commercial Off-the-Shelf (COTS); Continuous school calendar; Current income; Department; Electronic Benefit Transfer (EBT) account; Electronic Benefit Transfer (EBT) card; Electronic Benefit Transfer (EBT) contractor or vendor; Electronic Benefit Transfer (EBT) system; Enhancement; FNS; FNSRO; Firm; Information System (IS); LEA;OIG; Project; Request for Proposal (RFP); SNAP; Secretary; State; Territories; and *WIC.*

2. Modified Definitions

The following definitions from elsewhere in USDA regulations were adapted to reflect the unique needs of the Summer EBT Program.

2 CFR part 200. Minor modification from 7 CFR part 210, which includes the following: (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) does not apply to the NSLP).

Administrative costs. This definition was modified from 7 CFR 225.2 to refer to the Summer EBT program instead of the Summer Food Service Program.

Adult. Modified from 7 CFR 245.2 to clarify that the need for the definition itself is for application purposes, and to change from 21 to 18.

Categorically eligible. Modified from 7 CFR 245.2 to refer to Summer EBT rather than free meals or milk.

Disclosure. Modified from 7 CFR 245.2 to refer to Summer EBT eligibility rather than free and reduced price meal eligibility.

Enrolled students. Modified from 7 CFR 245.9 to refer to students who are enrolled in and attending NSLP/SBP schools who have access to a meal service (breakfast or lunch) on a regular basis.

Household. At 7 CFR 245.2 ''Household'' means ''family.'' And at 7 CFR 245.2 ''Family'' means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.'' Summer EBT does not use the term family, so household is defined and used throughout.

Implementation Advance Planning Document or Implementation APD (IAPD). Modified from 7 CFR 277.18 to

conform with Summer EBT requirements and processes.

Income eligibility guidelines. Modified to specify the programs for which the Income Eligibility Guidelines apply.

Indian Tribal Organization (ITO). Adapted from other definitions of ITO used by USDA programs and modified to reflect that only ITOs that administer WIC are eligible to administer Summer EBT.

SNAP Eligible foods. This definition is the same as the definition of ''Eligible foods'' at 7 CFR 271.2. It is modified here to specify that these are SNAP eligible foods.

SNAP Retail food store. This definition is the same as the definition of ''Retail food store'' at 7 CFR 271.2. It is modified here to specify that these are SNAP retail food stores.

Vendor. Modified from 7 CFR 271.2 to reference Summer EBT instead of SNAP.

Verification. Modified from 7 CFR 245.2 to reference Summer EBT instead of NSLP/SBP and to state that direct verification is required rather than optional.

Verification for cause. Modified from 7 CFR 245.6a(c)(7) to reference Summer EBT agencies.

3. New Definitions

The following new definitions were developed specifically for the Summer EBT Program.

Cash-Value Benefit (CVB) this term relates to the type of benefit that is a fixed-dollar amount used to obtain supplemental foods by participants served by an ITO for purposes of the Summer EBT program. It is an option for ITO benefit delivery.

Dual participation. This term was developed to describe a prohibited situation in which a child is receiving multiple Summer EBT benefits simultaneously.

Eligible child. This definition was developed to describe the unique population of children who are eligible for the newly created Summer EBT Program.

Eligible household. This definition was created in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) for the purposes of Summer EBT.

Expungement. This term describes removal of Summer-EBT benefits and was not previously defined in regulations at 7 CFR 274.2 or other USDA regulations.

Direct verification. Direct verification is conducted in the NSLP/SBP; however, this term was not previously defined in regulations at 7 CFR 245.6a.

Food instrument. This term is applicable to ITOs administering the Summer EBT program, with the same meaning as the definition set forth in regulations at 7 CFR 246.2.

Instructional year. This definition is included to reflect language introduced in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

ITO Service Area. This definition was developed to describe the geographic area served by an ITO Summer EBT agency.

NSLP/SBP. This term was not previously defined in 7 CFR 245.2 or other USDA regulations.

NSLP/SBP application. Distinct from the definition at 7 CFR 245.2 for ''Household application,'' this term specifically refers to NSLP/SBP household income applications.

Period of eligibility. This definition was created to describe the time period in which a child may be deemed eligible for Summer EBT benefits.

Program. This definition was created to reference the new Summer EBT program that is codified in 7 CFR part 292.

Rolling verification. This definition was created to describe the process by which verification may be conducted for Summer EBT applications on a rolling basis.

School aged. This definition was created to describe a subset of the population which is the appropriate age to be in school in a State or ITO.

Special Provision school. This definition was created to efficiently describe a school that elects Provision 1, Provision 2, Provision 3, or the Community Eligibility Provision to operate the National School Lunch and/or School Breakfast Programs and that does not conduct annual, individual eligibility determinations for all students.

Streamlined certification. This definition describes a process specific to the Summer EBT program where eligible children may be issued benefits without needing to submit a Summer EBT application, and benefits may be issued without confirmation of school enrollment data.

Summer EBT application. This definition describes an application that can be used to establish eligibility for Summer EBT benefits.

Summer EBT agency. This definition describes the entities which enter into a written agreement with FNS to administer Summer EBT including State agencies and ITOs.

Summer operational period. This definition was created to describe the period for which Summer EBT benefits will be issued.

Supplemental foods. This definition was created in section 13A(h)(4) of the NSLA. The definition is applicable to ITOs administering the Summer EBT program.

Accordingly, these definitions are codified in a new 7 CFR 292.2.

i. Administration

1. Delegation of Responsibilities

Since 2010, USDA, States, and ITOs have worked together to implement and evaluate the provision of EBT benefits in the summer to ensure kids can get the nutrition they need when school is not in session, including through SEBTC demonstration projects and, more recently, P–EBT. Thanks to the dedication and perseverance of our State and ITO partners, USDA has been able to overcome many obstacles and challenges to standing up these programs and have also learned valuable lessons about successful Program implementation. In establishing P–EBT, Child Nutrition and SNAP State agencies collaborated and committed to helping children and their families in times of need. This same level of commitment and collaboration will be critical to the success of the Summer EBT Program as well. It is important for State agencies administering SNAP and/or Child Nutrition Programs to work together in a collaborative way to determine the appropriate roles and responsibilities of each to ensure successful program implementation and a positive customer experience. While USDA expects that most ITOs administering WIC will administer Summer EBT through just the WIC agency, ITOs might also find that an agency partnership is appropriate. USDA also urges States and ITOs to work with their legislatures and/or Tribal leadership to determine any changes in State or Tribal law needed to support effective Program implementation, and to identify State or Tribal funds to cover the State or ITO portion of Summer EBT administrative costs.

USDA has delegated administration of the Summer EBT Program to FNS and FNS will act on behalf of the Department to administer the Program. *See* 7 CFR part 2, subpart I (Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services). In turn, FNS will delegate administration of Summer EBT to States and ITOs approved to operate the Program pursuant to a written agreement. The Governor or other appropriate executive or legislative authority of each State or ITO will designate one or more Summer EBT agencies to be responsible for the administration of the Summer EBT

program within the State or ITO. Each administering agency will enter into a written Federal-State agreement with USDA for the administration of the Program and will be known as a ''Summer EBT agency.'' If more than one Summer EBT agency is named within a State or ITO, a *coordinating* Summer EBT agency must also be named and all other agencies with an agreement with USDA will be *partnering* Summer EBT agencies. Although USDA expects that agencies within a State or ITO will partner effectively in the administration of the Program, USDA has determined that it will be beneficial for each State or ITO with more than one Summer EBT agency to designate a coordinating agency. If only one agency within the State or ITO will be responsible for administering the Program, designation of partnering agencies is not applicable. USDA will work with States to ensure it is appropriate to designate only one agency while still meeting all Summer EBT regulations and requirements. Each State or ITO will decide how Summer EBT responsibilities will be delegated across their administering agencies. To ensure clear roles and responsibilities, the Summer EBT agencies within a State or ITO must enter into an inter-agency written agreement that defines the roles and responsibilities of each, as well as the administrative structure and lines of authority. USDA suggests that States and ITOs evaluate their resources and capabilities, and consider administrative and cost efficiency, the customer experience, program integrity, and their previous Summer EBT and/or P–EBT experiences when determining how to structure their program's administration. For the purpose of this interim final rule and Summer EBT regulations codified at 7 CFR part 292, the term 'Summer EBT agency' refers to all agencies within the State or ITO that have an agreement with USDA to administer the program unless the coordinating or partnering agency is specified. For example, § 292.13(a) requires the Summer EBT agency to make a Summer EBT application available to households with children enrolled in NSLP or SBP-participating schools. The regulations require that this activity is completed, and the coordinating and partnering Summer EBT agencies will determine how the responsibility is delegated within the State or ITO.

Coordinating Summer EBT agencies will be the primary point of contact for the State or ITO's Summer EBT program. There may be situations in which USDA communicates directly with designated contacts at the partnering agency on issues more relevant to that agency. Nevertheless, the coordinating agency will be USDA's first point of contact for most issues and should be included on all communications between USDA and the partnering agency. It is the State or ITO's discretion whether the partnering agency must be included on communications between USDA and the coordinating agency. The coordinating agency will also be responsible for the complete and timely submission of any required plans, forms, or reports for the Program as a whole including, but not limited to, interim and final plans for operations and management, notices of intent, and routine reporting to FNS. The coordinating agency does not need to complete or submit all required submissions directly to USDA. In some cases, it may be more efficient for the partnering agency to send a report it generates directly to USDA, and such an arrangement would be acceptable. The role of the coordinating agency with regard to reporting is to track the State or ITO's progress to ensure plans, forms, and reports are submitted timely and accurately, or communicate with USDA to request technical assistance or negotiate an alternative timeline for submission. The coordinating and partnering Summer EBT agency are each responsible for their respective activities as outlined in the written agreement with FNS, as well as the effective and efficient administration of the Program in accordance with all program requirements.

Accordingly, this delegation of responsibilities is codified at 7 CFR 292.3

2. Authority To Waive Statute and Regulations

Section 12(l) of the NSLA, 42 U.S.C 1760(l), provides the Secretary with the authority to waive program requirements for States or eligible service providers if it is determined that the waiver would facilitate the ability of the States or eligible service provider to carry out the purpose of the Program, and the waiver will not increase the overall cost of the Program to the Federal Government. This waiver authority applies to statutory requirements under the NSLA or the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) and any regulations issued under either Act. The Secretary does not have the authority to waive certain requirements including, but not limited to, the nutritional content of the meals served, Federal reimbursement rates, or the enforcement of any statutory right of any individual. In addition, the Secretary may not waive program requirements that originate in other laws such as the Civil Rights Act of 1964.

The waiver authority at section 12(l) of the NSLA, 42 U.S.C 1760(l), does not provide the Secretary with the authority to waive program requirements for ITOs. To provide flexibility for ITO Summer EBT Agencies, this rule establishes that the Secretary may waive or modify specific regulatory provisions for the ITO Summer EBT Agency.

Accordingly, this rulemaking codifies USDA's authority to waive statutory and regulatory requirements for State Summer EBT Agencies at 7 CFR 292.3(f) and regulatory requirements for ITO Summer EBT Agencies at 7 CFR 292.3(g).

Subpart B—Participant Eligibility

i. General Purpose and Scope

Summer EBT is intended to reduce hunger and food insecurity among eligible children who lose access to meals during the summer when school is not in session. Eligibility is addressed in the NSLA at sections 13A(c)(1), 13A(h)(2), and 13A(f)(4), but in general, children are eligible for Summer EBT benefits if they are determined to be income-eligible for free or reduced price meals based on annual income eligibility guidelines for school meal programs published in the **Federal Register** and are enrolled at an NSLP/SBP school, or if they are categorically eligible, as defined in this IFR, and school aged, as defined by State law.

This IFR establishes a new subpart B in 7 CFR part 292 that codifies eligibility requirements for participants. The provisions in this subpart apply to States and ITOs unless otherwise noted.

ii. Eligibility

Children eligible for Summer EBT include those who, at any point during the *period of eligibility,* are:

- School aged as defined by State or ITO law and *categorically eligible;* or
- Enrolled in an NSLP/SBP-participating school, other than a special provision school, and
  - *Categorically eligible;*
  - Meet the requirements to receive free or reduced price meals, as determined through an NSLP/SBP application;
  - Otherwise determined eligible to receive a free or reduced price meal; or
  - Determined eligible through a Summer EBT application.
- Enrolled in a special provision school, and
  - *Categorically eligible;*
  - Meet the requirements to receive free or reduced price meals, as

determined through an NSLP/SBP application; or

○ Determined eligible through a Summer EBT application.

Accordingly, this rulemaking codifies 7 CFR 292.6 which establishes the requirements for eligibility for children for Summer EBT.

iii. Period To Establish Eligibility

Broadly, eligibility for Summer EBT is based on the income eligibility guidelines for free or reduced price meals. Local education agency (LEAs) that operate the NSLP/SBP can begin the process of certifying student eligibility for free or reduced price school meals on or after July 1 of each school year. Therefore, Summer EBT eligibility can also be established from July 1 of the prior instructional year through the last day of the summer operational period. The income eligibility guidelines are updated annually on July 1 and income guidelines applicable at the time the application is submitted will be used to determine eligibility. NSLP and SBP regulations also stipulate that eligibility determinations for free or reduced price school meals are effective from the date the eligibility is established through the last day of the school year. Once a child is deemed eligible for school meals through direct certification or an application, they may receive free or reduced price meals for the entire school year. Children that had an individual eligibility determination for school meal benefits during the immediately preceding instructional year will have their eligibility automatically carried forward into the summer operational period and no further action is required for families to receive Summer EBT benefits. In other words, for Summer 2024, a child who meets the eligibility criteria anytime from July 1, 2023, through the end of a State or ITO's Summer operational period in 2024, is eligible for benefits. For example, if a child was enrolled in SNAP early in the instructional year (*e.g.,* in October 2023), that child would be eligible for Summer EBT during the summer of 2024. Another example is if a household is deemed eligible by application in August, the child may receive full benefits for that summer. This reduces paperwork for families and ensures children are offered critical nutrition assistance year-round.

Eligibility determinations made during the immediately preceding instructional year for school meals result in Summer EBT eligibility and no further action is required for families. This reduces paperwork for families and ensures children are offered critical nutrition assistance year-round. Consistent with policy for the NSLP and SBP, households are not required to report changes in circumstances during the instructional year or summer operational period, but a household may voluntarily contact the Summer EBT agency or LEA to report any changes in income, household composition, or program participation that would change eligibility for Summer EBT.

Accordingly, this rulemaking codifies 7 CFR 292.7 which establishes the period to establish eligibility for the Summer EBT Program.

Subpart C—Requirements of Summer EBT Agencies

This IFR establishes a new subpart C in 7 CFR part 292 that codifies requirements for Summer EBT agencies. These requirements apply to State and ITO Summer EBT agencies unless otherwise specified.

i. Program Plan for Operations and Management

The NSLA requires each State or ITO desiring to participate in Summer EBT to notify USDA through the appropriate regional office by January 1 of each year of its intent to administer the Program and, by February 15, to submit for approval a management and administration plan for Summer EBT. ITOs will follow the same requirements as States, except when differences in program administration require different planning for operations and management. For example, as explained below, ITO Summer EBT agencies will need to include information about supplemental foods in their plans.

The statute requiring management and administration plans applies to Summer EBT and the SFSP. In the SFSP, this plan is commonly referred to by the acronym MAP. For the purposes of Summer EBT, this plan will be called a Plan for Operations and Management (POM). The POM must address the State or ITO's Summer EBT Program as a whole, even if more than one agency participates in program administration. Although POM requirements for Summer EBT are codified in the same provision of the NSLA as SFSP MAP requirements, Summer EBT plans require coordination between administering agencies, which could make it difficult to also coordinate development of a single plan with the SFSP-administering agency. To ease plan development, States are not obligated to coordinate their POM and MAP submissions and may submit a POM that is specific to Summer EBT.

A POM is a planning tool that provides the opportunity for USDA to work with Summer EBT agencies on planning, funding training, technical assistance, and monitoring. The POM is also an opportunity for State Summer EBT agencies and ITO Summer EBT agencies to solidify their plans for coordination regarding benefit issuance and the detection and prevention of dual participation, as further described in 7 CFR 292.9 and 292.15(d). POMs detail how the State or ITO will structure its program to make the best use of State, ITO, or local-level resources. The POM also broadly describes a State or ITO's administration of the program including: an administrative budget; a copy of the written agreement detailing the roles and responsibilities of each partnering agency, if applicable; plans for cooperation between State-administered and ITO-administered programs, if applicable; participation estimates; details on enrollment processes and the issuance process and cycle; program integrity controls; and plans for customer service support. For both States and ITOs, the POM will serve as an essential tool to lay out plans and procedures to enroll eligible children and to detect and prevent dual participation, including children receiving multiple allotments from the same State or ITO-administered program, and children receiving benefits from more than one State or ITO-administered program.

Some States and ITOs have indicated that January 1 and February 15 are too late in the Summer EBT planning and implementation process for these activities to occur without negatively impacting Program operations. Summer EBT agencies may need to begin planning for Summer EBT as early as the preceding summer and would benefit from early POM approval. In addition, USDA will use POMs to forecast the amount of funding needed to cover benefit and administrative costs for the program year. Accordingly, USDA is modifying the timing of plan submissions to facilitate the Summer EBT agency's ability to enact its plans in a timely manner and support USDA's budgeting process. Therefore, this rule requires Summer EBT agencies, working cooperatively when more than one agency will administer the Program within a State, to provide notification and submit an interim POM to their respective regional office by August 15 of each year for the following program year. The interim POM must include the Summer EBT agency's forecasted program participation, anticipated administrative funding needs as part of an expenditure plan and other

programmatic information required in the POM to the extent that such information has been determined at the time of submission. USDA is aware that Summer EBT agencies may not yet have final participation numbers or budget estimates at that time; therefore, the information included in the interim POM should be the Summer EBT agency's best estimates and are subject to revision as more information becomes available. Approval of an interim POM is prerequisite for a Summer EBT agency to draw down Federal funds to cover USDA's fifty percent share of administrative costs. An approved interim POM also provides information to aid USDA's budget process and offers an opportunity for the regional office to provide technical assistance on the development of a final POM, if needed.

Summer EBT agencies must submit a final POM to their respective regional offices by February 15 of each year. The final POM must address all POM requirements, as detailed in § 292.8(e) and (f), if applicable, and described above, and should reflect the State or ITO's final plans for that summer's operations. Approval of a final POM is prerequisite for a Summer EBT agency to draw down Federal food benefit funds. USDA understands that some Summer EBT agencies may want to submit and receive approval for their final POM earlier than February 15. A final POM may be submitted in lieu of an interim POM by the August 15 deadline for interim POM submissions.

USDA will provide a response to each interim or final POM within 30 calendar days of receipt. If the POM submitted is not approved, the Summer EBT agency and USDA will collaborate to ensure changes to the POM, in the form of revisions or amendments, are submitted so the interim or final POM can be approved as expeditiously as possible following the initial submission. At any time after approval, the Summer EBT agency may amend an initial or final POM to reflect changes in its program operations. To do this, the Summer EBT agency must submit to USDA for approval revisions or amendments signed by the State or ITO-designated official responsible for ensuring the Program is operated in accordance with the POM. USDA recognizes that it will take time for States and ITOs to develop and refine their POMs in the initial years of implementation. The Department will work with Summer EBT agencies to develop plans that meet the respective submission dates and finalize those plans after those dates, if necessary.

The POM is the avenue through which Summer EBT agencies will annually submit their administrative budget and information sufficient for USDA to estimate benefit costs for the coming year. This administrative budget will identify all costs that will be allocated among the Summer EBT agencies, as appropriate. The coordinating Summer EBT agency and any partnering Summer EBT agencies may submit separate requests for 50 percent funding for administrative expenses, as described in 7 CFR 292.20, for the convenience of receiving funds without the need to transfer money between Summer EBT agencies. However, the budget submissions must be coordinated and submitted together in a single interim and final POM (with one expenditure plan for each agency that requests administrative funds from USDA) to ensure the budgets are consistent with overall program operations and the required cost allocations are maintained. Summer EBT agencies will submit an expenditure plan along with the POM for State expenditure planning. Once the POM is approved, Summer EBT agencies will report their incurred administrative expenses on a financial status report and draw 50 percent of Federal administrative funding accordingly, on a quarterly basis.

Because Summer EBT benefit funds will be provided as a grant, USDA will need to know the amount each Summer EBT agency expects to spend in order to provide sufficient funds on a letter of credit for the Summer EBT agency that will receive the benefit funds. USDA will use the projected participation included in the interim POM to calculate the amount of benefit funding needed. USDA anticipates that more accurate participation estimates will be included in the final POM. However, participation estimates in the initial years of implementation may differ from actual participation as Summer EBT agencies hone their programs. In the event that participation exceeds estimates, Summer EBT agencies may work with their respective regional offices to request an increase in their grants to cover all benefit expenses.

The POM is also the vehicle for Summer EBT agencies to tell USDA about their plans for benefit issuance. In the POM, Summer EBT agencies must provide the start and end dates of their summer operational periods, the dates on which benefits will be issued and when benefits will be expunged, and other information about the timing and process for providing benefits to eligible households.

Summer EBT agencies will also use the POM to describe their customer service plans. Although Summer EBT Program implementation will be a partnership between agencies in most cases, Summer EBT must be a unified program from the perspective of participants. USDA heard from stakeholders that households participating in P–EBT lacked a clear understanding of how the program was administered and where to turn for assistance, which was frustrating for households and a barrier to access for eligible children. To correct this problem, all Summer EBT customer service plans must include a single point of contact for all customer service information and inquiries, including a telephone hotline and website. In addition, the customer service plan must communicate how households can opt out of participating in the Program.

The Summer EBT demonstration projects provide insight on how States and ITOs may meet this customer service requirement. All grantees that administered the Summer EBT demonstrations provided households with a help desk phone number to call with questions about Summer EBT. Some grantees hired temporary staff for their help desk, whiles others contracted out their help desk services. Grantees often made changes to their help desk operations to better suit the needs of participants. For example, some grantees had Community Based Organizations or familiar local liaisons run their help desks. Other grantees expanded the hours of availability for their help desk.[8]

ITO Summer EBT agencies will be required to provide information in their POMs about program administration that is specific to their model of operating the Program and issuing benefits. Each ITO Summer EBT agency must include their service area, including a map or other visual reference aid in their POM. For purposes of Summer EBT, *ITO Service Area* refers to the geographic area served by an ITO Summer EBT agency. In WIC and the Food Distribution Program on Indian Reservations (FDPIR), ITO service areas have typically included reservations, or specific Tribal lands in Oklahoma. FNS expects that ITOs will continue to use existing Tribal service areas for the purposes of Summer EBT. However, if an ITO wishes to serve children in areas beyond typical WIC or FDPIR service areas, potentially including other Tribal areas, FNS will work with the ITO to modify the service area, as appropriate and only applicable to Summer EBT. The POM will also

[8] Abt Associates, (2020). Summer Electronic Benefit Transfer for Children, 2015–2018 (expected in early 2024).

address the ITO's plans and procedure for identifying and enrolling eligible children.

An ITO Summer EBT agency's POM must also include a description of the benefit delivery model to be used (*i.e.,* a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model) and must also provide the list of supplemental foods which participants can purchase upon enrollment in the Summer EBT Program. Specifications for supplemental foods are included in 7 CFR 292.19(a)(3). Because WIC vendors are authorized by WIC agencies, the POM must also address how the ITO Summer EBT agency will support and monitor WIC vendors, so they are able to support Summer EBT purchases.

USDA's intent is for the POM to be an operational blueprint to secure funding, document programmatic administrative decisions, provide participation and funding projections, and strategize for how to strengthen program integrity. It will also be an opportunity for Summer EBT agencies and USDA to collaborate to identify innovations and address programmatic challenges or improvements. USDA invites comments on the extent to which the POM requirements codified in this rulemaking are meaningful and useful, and if there are other operational aspects that should be addressed in the POM. USDA also requests comments on the deadline for submitting the POM to USDA, recognizing that early POM submission is needed for Federal financial planning, but the submission date must also be practical for Summer EBT agencies.

Accordingly, this rulemaking codifies 7 CFR 292.8 which establishes the requirements for Summer EBT agency submission of the plan for operations and management (POM) for Summer EBT.

ii. Coordination Between State-Administered and ITO-Administered Summer EBT Programs

While State and ITO-operated Summer EBT programs will differ operationally, the programs may operate in close geographic proximity. Accordingly, this IFR details how State and ITO-operated Summer EBT programs must coordinate and communicate to ensure efficient and timely service to eligible individuals, and prevent duplicative issuance of benefits.

The ITO Summer EBT agency must receive priority consideration to serve eligible children within its service area, as identified in its FNS-approved POM. This means that children from the ITO's service area who can be enrolled through streamlined certification (as described in section C iv of this preamble) will automatically be enrolled in the ITO-administered Summer EBT Program, to the maximum extent practicable. However, children from ITO service areas may opt to participate in the State-operated program and opt out of the ITO-operated program if they so choose. This approach ensures that ITO-administered Summer EBT Programs are the default choice for households in their communities. Because the majority of children will be enrolled though streamlined certification as described in 7 CFR 292.12(d) and no action will be required on the part of the household, ITOs would have a significant disadvantage if children in their service areas were automatically enrolled in the State-administered Summer EBT Program. ITOs would need to expend significant time and resources educating households about their benefit and how to opt into the ITO's Program. This burden runs contrary to the simplified implementation achieved through streamlined certification. Providing priority consideration to ITO Summer EBT agencies will allow them to serve their communities with minimal burden while also providing households the choice to opt into the State-administered Program if that is their preference.

An ITO and a State Summer EBT agency serving proximate geographic areas must generally ensure the coordination of Summer EBT program services, and this coordination may include a written agreement between both parties. In the event that the geographic State is not yet operating a Summer EBT Program, the ITO will coordinate with the State's designee. If an ITO's service area crosses geographic State boundaries, the ITO and each applicable Summer EBT agency, or designee of a State covering the geographic area(s) served by the ITO, must coordinate services. A key part of State and ITO coordination relates to the timely transfer of student eligibility information from the State Summer EBT agency to the ITO Summer EBT agency. The State Summer EBT agency must share student data with the ITO, including student eligibility status and contact information of children deemed eligible within the ITO's service area. The State Summer EBT agency must provide this information in a manner and timeframe that will allow the ITO Summer EBT agency to issue benefits timely. The Summer EBT agency must ensure the confidentiality of all student data exchanged that is applicable to Summer EBT program eligibility and dual participation; and data must only be used for program purposes consistent with 7 CFR 292.12(c)(2).

Another key part of State and ITO coordination relates to program choice for eligible children in ITO service areas. While the ITO Summer EBT agency will receive priority consideration to serve eligible children within its service area, eligible households may choose the Summer EBT program (ITO or State-operated) in which they will participate. To facilitate choice, the ITO Summer EBT agency and the State Summer EBT agency must notify eligible children or households that they may choose to receive Summer EBT program benefits from *either* the State or the ITO Summer EBT agency. Both agencies must also provide referral information to the alternative program upon a child or household's request, thereby facilitating household choice. Households in the ITO's service area must be informed of the different ITO and geographic State programs and should be encouraged to fill out a Summer EBT application either through the ITO or geographic State, depending on their choice, or a jointly-offered application that allows the household to indicate which program is preferred. Regardless of which program an eligible household opts into (State-administered or ITO-administered), the household must opt into that program for the *entire* summer operational period and may not switch programs mid-summer.

With individual and household choice in place, children living in or near an ITO service area could erroneously receive benefits from the State and ITO-administered program, which would constitute dual participation and is prohibited. Thus, State and ITO Summer EBT agencies must coordinate to detect and prevent dual participation in the same summer operational period where service areas overlap. Additional information on dual participation is located in 7 CFR 292.15(d).

USDA seeks public comments on how the Department can facilitate the coordination and agreement process with ITOs and State agencies.

iii. State Systems Advance Planning Document Process

The Handbook 901 Advance Planning Document (APD) process is a series of successive steps through which SNAP and WIC State agencies obtain prior Federal approval of and Federal financial participation (FFP) in automation projects supporting FNS programs. This generally includes all

eligibility system and Electronic Benefit Transfer (EBT) projects. FNS' primary focus in its oversight of State systems is to ensure the responsible stewardship of Federal funds used to carry out the mission of increasing food security through its domestic nutrition assistance programs.

For the purposes of Summer EBT, this rulemaking requires States and ITOs to adhere to the APD process for EBT projects. To implement Summer EBT, States and ITOs will likely need to build new or modify existing eligibility systems. Although SNAP agencies and WIC ITOs may need to make some modifications to their eligibility systems to support Summer EBT, it is expected Child Nutrition Program (CNP) agencies will need to make more significant system changes in order to collect and manage data not currently collected at the State level in Child Nutrition Programs. FNS has not historically used the APD process for CNP eligibility systems and the Agency has determined that adding APD requirements for CNP agencies would take more time and planning than is available. Therefore, the APD process for Summer EBT will only apply to EBT systems development, and Summer EBT eligibility systems that are part of existing SNAP or WIC eligibility systems currently subject to the APD process. USDA will consider extending the APD process to CNP systems if it is determined that the APD process will support effective and efficient CNP systems development. USDA invites comments on the APD process for Summer EBT and the benefits and challenges of adding APD requirements for CNP agencies.

As noted in the definitions section of this preamble [subpart A of this rulemaking], this rulemaking codifies several definitions related to the APD process including: Advance Planning Document for project planning or Planning APD (APD or PAPD), Advance Planning Document Update (APDU), Enhancement, and Implementation Advance Planning Document or Implementation APD (IAPD). These definitions largely match how these terms are defined in SNAP regulations with the exception that they are modified to limit the applicability of Summer EBT APD requirements to EBT systems. Recognizing that ITOs are more familiar with the APD process that exists for WIC EBT and Management Information systems (MIS), the APD section includes language for ITOs that is more aligned with the WIC regulations.

In accordance with these new requirements, Summer EBT agencies must adhere to the APD process as prescribed by appropriate FNS directives and guidance (*e.g.,* FNS Handbook 901) and in this Part as a condition for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of Information System (IS) equipment and services used in the administration of the Summer EBT Program. APD requirements for Summer EBT may be included in existing APDs developed for SNAP or WIC EBT services or may be a separate APD specific to Summer EBT services.

Accordingly, this rulemaking establishes 7 CFR 292.11 which extends the APD process to Summer EBT agencies to for the development of EBT and eligibility systems operated by SNAP agencies and WIC ITOs.

iv. Enrolling Eligible Children

Broadly speaking, children eligible for Summer EBT are those who are eligible for free or reduced price school meals. See subpart B of this preamble for the definition and a discussion of Summer EBT eligibility. The statute includes specific requirements related to how State Summer EBT agencies must enroll children who are eligible for Summer EBT benefits, which are codified in subpart C of this rulemaking. Consistent with the statute, USDA can work with ITO Summer EBT agencies to modify enrollment requirements, if needed, to enable an ITO to meet the requirements to the maximum extent practicable, as indicated in 7 CFR 292.12. USDA has identified elements of the enrollment process that could pose challenges for ITOs and, as necessary, USDA will work with ITOs on a case-by-case basis to approve alternative implementation approaches that will achieve the same or similar outcome as the corresponding regulation. These elements are noted in their respective sections below.

The statute specifies that Summer EBT agencies must enroll children automatically, without further application when they are able to be directly certified, are an identified student, or otherwise determined by the SFA to be eligible for free or reduced price meals. This type of automatic enrollment (*i.e.,* enrollment that does not require a household to actively apply for benefits) will reduce burden on households of children who may be identified as eligible using existing administrative data. For the purposes of Summer EBT, means-tested program data for streamlined certification does not need to be matched with school records so long as the child was of school-age during the *period of eligibility,* as defined in 7 CFR 292.2. The result is a simplified process that allows the Summer EBT agency to issue benefits to children based on their individual certification for free or reduced price school meals from the immediately preceding school year, or income eligibility and age, without the need for matching with school records. This process is detailed below in Subsection 2, *Streamlined certification.* The following text of subpart C applies to State and ITO-administered Programs. Eligibility for Programs administered by a Territory is discussed in subpart B.

v. Database for NSLP/SBP Enrollment

During USDA-hosted listening sessions with State SNAP and Child Nutrition agencies, and at the School Nutrition Association's Annual National Conference, agencies and stakeholders provided feedback that a State or ITO-level database with school meal enrollment data would help to facilitate the data sharing and enrollment processes. In addition, a State or ITO-level database could be used to detect and prevent duplicate benefit issuance and increase data integrity across the Summer EBT program. However, without a Federal requirement, Summer EBT agencies may have difficulty implementing such a database on their own. Therefore, by 2025, Summer EBT agencies will be required to establish and maintain a State- or ITO-wide database of children who are enrolled in NSLP- or SBP-participating schools within the State or ITO service area, as applicable, for the purposes of enrolling eligible children for Summer EBT efficiently and with integrity. This delay in implementation until 2025 gives Summer EBT agencies time to acquire the funding and for database development; however, USDA welcomes comments on the implementation timeline. Also, USDA recognizes that many States already have statewide databases that they can repurpose. For States that will need to build one, FNS is exploring possible funding sources to help cover the costs of these initial investments. USDA is also prepared to provide technical assistance and support, as needed, and help States and ITOs develop low-tech and/or low-cost solutions that work within the State or ITO's budget and capabilities. ITOs may have different resources or needs that prevent them from establishing an ITO-wide database or that make a database impracticable or not needed for effective program administration. If an ITO, in consultation with USDA, determines

that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children, the ITO may submit for USDA approval alternate plans for how to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance.

The database will include, at a minimum, a child's name, date of birth, school or district where they are enrolled, mailing address, their individual free or reduced price eligibility status (as applicable),[9] and any other information needed to issue benefits timely. Summer EBT agencies must ensure the confidentiality of all such data, and the data must be used only for the purposes of the Summer EBT Program, or for the purpose of use or disclosure to provide other social service benefits to eligible children. Additionally, State Summer EBT agencies must make the data available to any applicable ITO Summer EBT agencies for children within an ITO's service area in a timeframe that allows the ITO Summer EBT agency to issue timely benefits.

USDA invites comments on the minimum data elements that are necessary to confirm NSLP/SBP enrollment, and to detect and prevent duplicate benefit issuance within and across States and ITOs. Additionally, USDA invites comments on the timing of database updates and file transfer to the EBT processors in order to issue benefits on time.

Accordingly, the requirement for Summer EBT agencies to establish and maintain a State or ITO-wide database is codified in 7 CFR 292.12(c).

vi. Streamlined Certification

To support efficient enrollment of eligible children, the statute establishes a process that requires Summer EBT agencies to provide benefits to children who already have an individual eligibility determination for the school meal programs under the procedures at 7 CFR 245.6 or who can be identified as income-eligible through administrative data at the State level without the need for further data matching. The statute refers to the latter group as children who are ''able to be directly certified.'' In the school meal programs, under 7 CFR 245.2, direct certification means determining a child is eligible for free meals or free milk, as applicable, based on documentation obtained directly from the appropriate State or local agency or individuals authorized to certify that the child is a member of a household receiving assistance under SNAP, as defined in this section; is a member of a household receiving assistance under FDPIR or under the TANF program, as defined in § 245.2 is a Foster child, Homeless child, a Migrant child, a Head Start child and a Runaway child, as defined in § 245.2.

The process used to certify these children as eligible for free or reduced price school meals involves data sharing between State and/or local agencies administering those assistance programs with the State and/or local agencies administering the school meal programs. This information is then matched against NSLP-participating school enrollment lists. Positive matches confer student-level eligibility for free or reduced price school meals.

For Summer EBT, a similar process will be used and will be referred to as ''streamlined certification'' or ''SC''. Each State's SC process will look different based on their unique operations. The following steps describe one possible method by which SC may be implemented.

1. State or local agencies that administer the school meal programs will share a list of all students who have an individual eligibility determination [10] for free or reduced price meals with the Summer EBT agency that will issue the EBT benefits. Sources of this data include applications for free or reduced price meals that were processed by the LEA, direct certification, or categorical eligibility determinations made at the LEA level. The eligibility database discussed in the previous section will help facilitate the sharing of information for purposes of Summer EBT participation only.

2. The EBT issuing agency will then take participation lists from SNAP and other programs used for directly certifying children for school meals, such as TANF and FDPIR, as well as other means-tested programs that are approved by the Secretary for use in Summer EBT,[11] and remove children who are not school aged. School aged is defined as the compulsory age of school attendance in that State and will be discussed further below.

3. Those lists from Step 2, along with the list of students that have an individual eligibility determination for free or reduced price meals from Step 1 will then be merged, and duplicate entries will be removed.

4. This list of streamlined certified children will be issued Summer EBT benefits without the need to apply.

Consistent with the statute, children who are identified through streamlined certification do not need to be matched against an NSLP/SBP enrollment list prior to issuance if they are school age or already certified for free or reduced price meals in the NSLP/SBP. As a result, some children who are school-age and categorically eligible, as defined in this IFR, but are not enrolled in a school that participates in the NSLP or SBP, will be issued Summer EBT benefits. These children are eligible for Summer EBT benefits as long as they are school-aged during the period of eligibility. USDA anticipates that this will be a very small percentage of eligible children.[12]

The compulsory age of school attendance aligns with individual State or ITO requirements for school enrollment. Issuing benefits to all children of compulsory school age who can be streamline certified aims to simplify the identification of students who are school aged. However, eligible children younger or older than the compulsory age of attendance who attend an NSLP/SBP school will still be enrolled in Summer EBT through school-level data or, if their eligibility for Summer EBT has not already been established, using a Summer EBT application. USDA recognizes that there may be other effective methods of identifying eligible children through streamlined certification using means-tested program data available at the State or ITO-level. USDA invites comments on other approaches to define the age range for children who can be streamline certified using State or ITO-level data. Specifically, how many eligible children attend NSLP/SBP schools who are below or above the compulsory age of school attendance? Are there specific technical barriers that prevent these children from being enrolled in Summer EBT using school-level data or Summer EBT applications? What is the actual age range for NSLP/SBP school attendance in a State or ITO? How many children in that range

[9] The free or reduced price status must be for the instructional year immediately preceding the summer operational period.

[10] The free or reduced price status must be for the instructional year immediately preceding the summer operational period.

[11] Summer EBT agencies that would like to use additional programs, such as Medicaid, to identify and issue benefits to eligible children through SC must include them in the POM, along with a detailed justification for how the program's eligibility standards and certification processes provide assurance that participating children also meet the school meal eligibility standards.

[12] Ranalli, Dennis, Templin, Joe, & Applebaum, Maggie, (2021). Direct Certification in the National School Lunch Program, State Implementation Progress Report to Congress, School Year 2017–2018 & School Year 2018–2019.

do not attend an NSLP/SBP school? Do these children attend other institutions operating year-round, such as year-round childcare programs?

In summary, through the SC process, States and ITOs will be able to issue benefits to a significant portion of eligible children using only data that are already available at the LEA, State, or ITO level. USDA anticipates the SC process will reduce burden on States and ITOs and make the process of enrolling children more efficient.

As noted above, ITOs participating in Summer EBT must, to the maximum extent practicable, meet the requirements of this section. If an ITO, in consultation with USDA, determines that any element of automatic enrollment with streamlined certification is not feasible or is unnecessary based on available resources, the ITO may submit for USDA approval alternate plans for how to efficiently enroll children with minimal burden for households.

Accordingly, this subsection codifies requirements for the streamlined certification process at § 292.12(d).

2. Applications

The statute requires Summer EBT agencies to make an application available to children enrolled in NSLP and/or SBP-participating schools who have not been certified through the SC process. In other words, children enrolled in an NSLP/SBP school who do not have individual eligibility determinations during the period of eligibility for Summer EBT must submit a Summer EBT application and be determined eligible in order to participate in the Program.

Summer EBT applications are ultimately the Summer EBT agency's responsibility. Recognizing that Summer EBT agencies may need operational flexibilities as they launch their programs, in Summer 2024 only, Summer EBT agencies may compel LEAs to process Summer EBT applications; however, any costs incurred by LEAs attributable specifically to processing Summer EBT applications must be fully reimbursed by the Summer EBT agency. Starting in 2025, Summer EBT agencies may not delegate to LEAs the responsibility of making a Summer EBT application available. However, a Summer EBT agency may contract with another entity into order to fulfill this requirement, including with LEAs. USDA recognizes that States and ITOs do not currently handle school meal applications and will not immediately have the systems and processes needed to process Summer EBT applications. Therefore, the State or ITO-level application will not be required until 2025, allowing time for States and ITOs to develop an application. To also provide relief in the initial year of Summer EBT implementation, USDA is allowing flexibility in the contents of the application for Summer EBT, which is discussed in detail below. Additionally, the Summer EBT agency may establish a system for executing household applications electronically and using electronic signatures provided that the electronic application meets the same requirements as paper applications. If the application is made available electronically, a paper version must also be available.

Since Summer EBT applications could be accepted and processed by an entity other than the LEA where the child is enrolled, they must be matched against an NSLP/SBP enrollment list prior to benefits being issued to ensure the child is eligible as defined in 7 CFR 292.5 and 292.6. Matching against NSLP/SBP enrollment lists is not required for children who were approved for school meal benefits with an NSLP/SBP application. These children are streamline certified for Summer EBT benefits and do not need to be matched against an NSLP/SBP enrollment list prior to issuance, as their eligibility determination originated from the NSLP/SBP participating school where they are enrolled. In the case of households that move mid-summer, those children may have already been issued benefits in their previous State through streamlined certification. If they are a household that needs to apply through a Summer EBT application, they should apply in the State where they finished the prior school year because Summer EBT agencies are required to match against prior school year NSLP/SBP enrollment lists before issuing benefits. An application submitted in a State where the household recently moved would come up negative in a school enrollment check. SNAP benefits are interoperable, which means they can be used in any SNAP-authorized retailer in the United States regardless of where they were issued, so households can use the benefits issued by their previous State of residence. States must communicate to households in their Program materials informing them that, if they plan to move or have recently moved, they will be issued benefits in the State where their child(ren) completed the most recent school year. In order to minimize duplicate participation, the self-attestation statement on the Summer EBT application must include language affirming that the applicant is not already receiving Summer EBT benefits in another State or ITO. FNS will work with ITOs to determine the best way to convey eligibility and use of benefits for children enrolled in an ITO program who move during the summer.

The statutory requirement to provide an application for children who are not otherwise certified is in reference to children enrolled in an NSLP/SBP school, *e.g.,* children enrolled at standard counting and claiming NSLP/SBP schools who have not completed an NSLP application and are not directly certified, and children enrolled at special provision schools who are not directly certified. Therefore, applications are limited to children enrolled in NSLP/SBP schools. Summer EBT applications cannot be used as a means of establishing Summer EBT eligibility for children not enrolled in an NSLP/SBP school.

Further, Summer EBT applications must be available to households of children enrolled in NSLP/SBP schools during the entire summer operational period. Children enrolled in an NSLP/SBP school who become eligible during the summer or failed to apply before the end of the school year, must have an opportunity to establish their eligibility by completing an application. Summer EBT agencies are permitted to encourage applications to be submitted before the last day of the summer operational period. For example, in communications to households, Summer EBT agencies would be permitted to say, ''In order to receive Summer EBT benefits for this summer, please submit your application no later than August 1st.'' However, eligible households that submit applications on or before the last day of the summer operational period, must be issued Summer EBT benefits no later than 15 operational days after submission. USDA recognizes that, in these limited cases, benefits will be issued after the summer operational period has ended. Households will not be permitted to apply, and therefore will not be approved for benefits, after the last day of the summer operational period.

Given that the income eligibility criteria for Summer EBT is the same as for school meal programs, applications for Summer EBT will largely need to collect the same information as applications for those programs. Summer EBT applications should be clear and simple in design, but must meet a minimum set of standards, as outlined below.

Per 7 CFR 292.13(i), all Summer EBT applications must:

- Be in an understandable and uniform format and to the maximum extent practicable, in a language that parents and guardians can understand;
- Require the income received by each household member identified by source of income;
- Require applicants to provide the names of all household members for whom application is made, including children;
- Contain space for applicants to indicate a categorical eligibility status or provide existing case numbers associated with participation in other Federal programs (SNAP, TANF, FDPIR, etc.):
- Be signed by an adult member of the household;
- Require the name of the school where the child(ren) is/are enrolled;
- Contain space for the household's mailing address;
- Contain the use of information statement, categorical eligibility statement, and information disclosure statement;
- Contain space for the adult household member signing the form to attest that the information is true and accurate;
- Contain the USDA nondiscrimination statement; *and*
- Contain space for optional collection of information on race and ethnicity of applicants.

The requirements above reflect most of the basic requirements for NSLP/SBP applications at 7 CFR 245.6(a)(6), *with the exception of the Social Security Number requirement.* Per section 9(d)(1) of the NSLA, households that complete NSLP/SBP applications are required to provide the last four digits of the Social Security Number of an adult member of the household or an indication that the adult does not have one. However, the statutory provision at 9(d)(1) does not apply to Summer EBT applications. Therefore, it will not be required for Summer EBT applications. An application must also be accepted and processed as complete even if the address field was not completed by the applicant. In the event that no address or an incomplete address is provided, the Summer EBT agency should work with the LEA or other relevant agencies to obtain current contact information for the child and place the card in the mail or arrange another method of delivering the card (*e.g.,* through a school social worker). In addition, Summer EBT agencies are prohibited from requiring documentation from households at the time of application. Documentation of income is only required during the verification process, which is detailed in the next section.

USDA recognizes that many LEAs with special provision schools have identified the need for the type of income information that was formerly collected through NSLP/SBP applications. To meet this need, some LEAs collect alternative income applications. Data collected through alternative income applications serves the same function as NSLP/SBP application data in many special provision schools and is used for purposes not related to the school meal programs, such as determining education funding allocations, and other student benefits. These applications are familiar to households and, in many cases, collect enough information to determine whether the household is at or below the NSLP/SBP reduced price income threshold. States and LEAs that utilize alternative income applications may have already started the application preparation and distribution process for school year 2023–2024, and there may not be sufficient time to modify alternative income applications to accommodate the Summer EBT applications requirements listed above or create a new Summer EBT-compliant application. Therefore, to provide administrative flexibility, in Summer 2024 only, alternative income applications that are currently used in some special provision schools may be used to confer eligibility for Summer EBT if the application allows a Summer EBT agency or LEA to determine whether the household is income eligible. USDA provided early implementation guidance on the use of alternative income applications in 2024 in *SEBT 03–2023, Summer EBT Eligibility, Certification, and Verification,* July 31, 2023. States and LEAs are not required to use their alternative income applications for Summer EBT in 2024 and may utilize existing NSLP/SBP applications, including the USDA Prototype Application for Free and Reduced Price School Meals.[13] USDA anticipates that providing this flexibility for 2024 will ease implementation burden for those LEAs that have already issued alternative income applications and would otherwise need to ask households to submit an additional application for 2024 Summer EBT benefits. In many cases, LEAs developed and used alternative income applications for purposes other than Summer EBT and the data from those already-collected forms may be used to establish eligibility for Summer EBT in 2024. Therefore, Summer EBT agencies are not required to reimburse LEAs for expenses routinely incurred in the processing of alternative income forms; the Summer EBT agency is only responsible for new administrative costs that were incurred for the purposes of Summer EBT eligibility. USDA recognizes that the application requirement for children attending CEP schools for children who are not streamlined certified may be challenging for Summer EBT agencies. USDA stands ready to support Summer EBT agencies in the implementation of this requirement, as CEP expansion has continued to be pursued through recent rulemaking.

USDA invites comments on the application requirements of this IFR. Specifically, what challenges will there be with administering the Summer EBT application at the Summer EBT agency level? What are the benefits of processing Summer EBT applications at the Summer EBT agency level?

Consistent with current regulations for the school meal programs, Summer EBT agencies must comply with requirements for the handling of child data including who is authorized to receive eligibility information, and disclosure of eligibility information for Program purposes. This rulemaking also establishes penalties for unauthorized disclosure or misuse of such information.

Accordingly, this rulemaking established requirements for the provision and use of Summer EBT applications at 7 CFR 292.13.

3. Verification

In order to ensure program quality and integrity, Summer EBT agencies must have adequate processes in place to correctly determine the eligibility of children for Summer EBT benefits. Verification of Summer EBT applications will be required as a method to maximize program integrity.

For the purpose of Summer EBT, verification is the process through which applicants using a Summer EBT application are confirmed eligible for Summer EBT benefits by first matching against administrative data, and if not able to be confirmed, by then examining information provided by the applicant. However, as discussed above, the majority of Summer EBT participants will be enrolled through the streamlined certification process and will not be subject to the Summer EBT application verification requirements.

For Summer EBT applications, the verification process will align with the NLSP/SBP approach to verification, which is conducted after the initial eligibility determination of a self-

[13] Applying for Free and Reduced Price School Meals | Food and Nutrition Service (*usda.gov*)

attested income application. USDA heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State Agencies that implemented P–EBT that the requirement to verify all applications before P–EBT benefits could be issued (often referred to as up-front verification or documentation at time of application) was burdensome for both program administrators and households. Up-front verification requiring household contact and documentation is time-consuming and may delay the issuance of benefits which may result in children not receiving benefits during the Summer. Child Nutrition Programs, like NSLP/SBP and the Child and Adult Care Food Program, do not require up-front household income verification. Rather they require verification of a subset of applications *after* certification. For Summer EBT, Summer EBT agencies will be required to verify three percent of applications, chosen at random after an initial eligibility determination is made. A three-percent sample size for Summer EBT aligns with the sample size required for NSLP/SBP. Although applications that are subject to verification will be processed and an eligibility determination will be made before verification occurs, households selected for verification may not be issued Summer EBT benefits until the verification process is complete and household eligibility is confirmed. This approach strikes a balance by not requiring up-front verification, while also promoting Program integrity by reviewing a sample of applications and delaying release of Program benefits until eligibility is confirmed. If, as a result of verification for cause, a child who has already been issued benefits is determined ineligible for the Program, the Summer EBT agency must stop further benefit issuances, in cases where the Summer EBT agency has chosen to issue benefits in multiple issuances.

For the random, three-percent sample, Summer EBT agencies must base the calculation on the number of approved applications on file as of April 1 during the instructional year immediately preceding the summer operational period. However, Summer EBT agencies are allowed, and encouraged, to conduct verification on a rolling basis. *Rolling verification,* as defined in § 292.14(c), is an operational flexibility also used by LEAs to conduct verification for school meal applications. Rolling verification involves selecting more than one sample, however the last sample must still be selected on April 1, and be equal to 3% of total approved applications received up to April 1. Applications submitted after April 1 will still be subject to verification for cause, as applicable, but will not be subject to random selection. Summer EBT agencies are strongly encouraged to communicate an application deadline prior to April 1 in order to maximize program integrity, while also limiting administrative burden during the summer months, however as described above, households must not be prevented from applying at any point during the period of eligibility. A letter communicating this to households could say, ''In order to receive Summer EBT benefits prior to the start of summer, please submit your application no later than March 1.''

Rolling verification is encouraged for Summer EBT because of the longer period of time between when households will likely complete a Summer EBT application (late summer or fall) and when the benefits will be issued (the following summer). Summer EBT agencies that reach out to households selected for verification may be more likely to reach them if the contact is made closer to the date of application when the household's contact information or mailing address is more recent. Additionally, rolling verification may ease the administrative burden associated with the verification process by distributing tasks and responsibilities over a longer period of time. In practice, conducting verification on a rolling basis (*e.g.,* weekly or monthly) helps mitigate a possible rush of document processing and follow-up communications that may occur when sampling and household outreach occur at a single point in time.

In lieu of selecting a three-percent random verification sample, Summer EBT agencies may propose alternative methods for verification that strengthen program integrity and preserve participant access. Alternative approaches must still comply with all other provisions related to applications and verification, including the provisions at 7 CFR 292.14(f) related to procedures and assistance to households, and the restriction at 7 CFR 292.12(e)(4) that prohibits Summer EBT agencies from requiring up front documentation. Summer EBT agencies that intend to propose alternative procedures must include a detailed description of their plan in their POM submission, and proposals are subject to USDA approval.

Additionally, Summer EBT applications (or alternative income applications for Summer 2024) will be subject to verification for cause, a process through which questionable applications are verified on a case-by-case basis. Questionable applications might include those with conflicting or inconsistent information. For example, if a household submits two separate applications with different information, a Summer EBT agency may choose to verify that application for cause on the basis that the household submitted inconsistent or conflicting information. Also, applications may be verified for cause after the initial application processing, such as when a Summer EBT agency becomes aware of a questionable application after the application is certified. Summer EBT agencies must ensure that verification efforts are applied without regard to race, sex (including gender identity and sexual orientation), color, national origin, age, or disability. Verification for cause is defined in 7 CFR 292.2 and is described in detail in 7 CFR 292.14.

USDA recognizes that getting households to respond to verification requests will be challenging for Summer EBT staff. If households do not respond, they lose their benefits regardless of their true eligibility, and, in subsequent years non-respondents will also need to submit documentation at the time of application in order to be approved for Summer EBT benefits. The Summer EBT agency may, on a case-by-case basis, replace up to ten percent of applications that are randomly selected as part of the verification sample if the Summer EBT agency has knowledge of the applicant that they would be unlikely or unable to satisfactorily respond to the verification request. For example, if a Summer EBT agency has current, reliable data confirming that a household that was selected for verification is experiencing homelessness, they may randomly select a different application to verify instead.

Further, to better capture eligible children and reduce burden associated with verification, Summer EBT agencies must conduct direct verification, as defined in 7 CFR 292.2, prior to contacting the households that are selected as part of the random three (3) percent verification sample. Summer EBT agencies must conduct direct verification activities with the eligible programs defined for the purposes of streamlined certification at 7 CFR 292.12(d) and must also use other sources of administrative data such as State Income and Eligibility Verification Systems (IEVS) data, tax records, wage databases, or other sources available to the Summer EBT agency if approved by the Secretary. Depending on the data source, records may be used to verify income and/or program participation. Data sources that the Summer EBT

agency intends to use for direct verification, along with the description of the process, must be included in the annual POM submission. Applications that are confirmed through the direct verification process should not be contacted for verification.

If an application cannot be confirmed through direct verification, households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number to contact for assistance, and any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. The notice must include a description the type of acceptable information or documents, as well as the date by which they need to respond, and that they may instead request that the Summer EBT agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway. Households must also be informed that failure to cooperate with verification efforts will result in the termination of benefits.

During the verification process, the Summer EBT agency must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, email, or mail, and must be documented. A household will be considered a non-respondent if there was no response, or an incomplete or ambiguous response that does not permit the Summer EBT agency to resolve the child's eligibility for Summer EBT benefits.

Households must also be notified if as a result of verification, they are determined to be ineligible. The notice must include the reason(s) for the determination, notification of the right to appeal and when the appeal must be filed, instructions for how to appeal, and notification of the right to reapply at any time.

For the purposes of both regular verification and direct verification, documentation may indicate participation in an applicable program or income at any point during the period of eligibility. The information provided only needs to indicate eligibility at a single point in time during the period of eligibility, not that the child was eligible at the time of application or verification. Such documentation may include written evidence, information from individuals outside of the child's household who can verify the child's circumstances, and systems of records. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the Summer EBT agency may use individuals outside of the child's household who can verify the child's circumstances including but not limited to: employers, social service agencies, school officials, and migrant agencies. The Summer EBT agency may also accept a statement from an adult member of the child's household when other forms of documentation are not available. In such a situation, the Summer EBT agency shall annotate the application for such child documenting the basis of verifying the child's eligibility.

USDA stands ready to support Summer EBT agencies in implementing verification procedures so as to limit the number of eligible families that might not receive a Summer EBT benefit as a result of the verification process. Additionally, USDA developed a Verification Toolkit for use by LEAs in the NSLP that may also be useful to Summer EBT agencies conducting verification of Summer EBT applications. The Toolkit contains a collection of resources that LEAs can use in their efforts to improve verification response rates and the overall efficiency of the process. Information on direct verification, including a description of types of direct verification, timing, and guidance on follow up activities is included the Eligibility Manual for School Meals Determining and Verifying Eligibility.

States and ITOs must establish procedures to carry out verification as described in this section and include those procedures in their annual POM submission, as described in 7 CFR 292.8(d)(8). Although ITOs do not currently conduct verification unless they also operate NSLP/SBP schools, USDA has determined that it is appropriate for ITOs to complete the full verification process for Summer EBT. Verification plays a critical role in promoting program integrity and provides information that can help program operators improve their certification process. Many of the steps in the verification process are designed to prevent eligible participants from being denied benefits. As such, ITO-operated Summer EBT programs and program participants will benefit from the ITO Summer EBT agency completing the verification process as prescribed in these regulations. However, USDA recognizes that ITO Summer EBT agencies will need support conducting verification, particularly in the early years of implementation. The Department will work with ITO Summer EBT agencies to train staff on the verification process, provide guidance materials that are clear and easy to follow, resources to help explain the process to families, and provide ongoing technical assistance to ITO Summer EBT agencies as they develop their verification processes. NSLP schools in the Territories that conduct NSLP verification should continue to do so; there will not be a separate or additional verification requirement for NSLP applications used for eligibility for Summer EBT.

USDA invites comments on the verification requirements of this IFR. Specifically:

- What are the considerations around staffing that USDA should be aware of?
- Is April 1 the best time to select a sample and start verification, both in terms of the timing of when most applications are received, and the process of preparing to issue benefits?
- Are there additional data sources that could be used to conduct direct verification that could limit outreach to households and limit administrative burden?
- Are there alternative approaches to verification that appropriately balance burden and program integrity?
- Does rolling verification increase household response rates?
- Does rolling verification help alleviate administrative burden?
- Should there be different timeframes or requirements for verification, the follow-up activities, and benefit issuance?
- What are the specific criteria that should be used for targeting high-risk applications, and should Summer EBT agencies be required to verify certain high-risk applications for cause?
- How can Summer EBT agencies ensure verification efforts are applied without regard to race, sex (including gender identity and sexual orientation), color, national origin, age, or disability.
- What are the challenges and benefits of verifying applications at the Summer EBT agency level?

4. Notification of Eligibility, Denial, Appeal Rights, and the Ability to Opt-Out

The Summer EBT agency must notify the household of a child's eligibility status. Households with children whose eligibility is established through SC must be notified, in writing, that their children are eligible for Summer EBT and that no application is required. For agencies that administer the school meal

programs, this will be similar to the *Notice of Direct Certification.* Households that establish eligibility through an application must be notified of the child's eligibility determination (or notification must be placed in the mail) by the Summer EBT agency within 15 operational days of receiving a complete application. Summer EBT agencies must also develop a process to enable anyone who has been determined to be eligible for Summer EBT benefits to see that they are eligible and unenroll, or opt-out, of the Program if they prefer. Therefore, the notice of eligibility and enrollment must inform the household how to opt-out if they do not want their child(ren) to receive Summer EBT benefits. Children from households that notify the Summer EBT agency that they do not want Summer EBT benefits should not be issued benefits or must have their benefits discontinued as soon as possible if already issued. Any notification from the household declining benefits must be documented and maintained on file, as required under 7 CFR 292.23, to substantiate any change in benefits. Households that opt out of the Program may contact their Summer EBT agency at any time before the end of the summer operational period to request reenrollment.

The Summer EBT agency must provide written notification to a household denied because their application is not complete or does not meet the eligibility criteria for Summer EBT benefits within 15 operational days of receiving a complete application. At a minimum, the notice to families must include the reason for the denial of benefits, notification of the household's right to appeal the decision, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time. The Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application.

A household wanting to appeal a denied application may do so in accordance with the procedures established by the Summer EBT agency as required by 7 CFR 292.26. Prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

Lastly, Summer EBT agencies must also comply with minimum information requirements for applicants and recipients by informing them of their Program rights and responsibilities. This can be accomplished through whatever means the Summer EBT agencies deem appropriate. All Program informational material must be available in languages other than English, as necessary, including the USDA nondiscrimination statement, and should be provided in alternate formats for individuals with disabilities, as practicable.

Accordingly, this rulemaking establishes 7 CFR 292.12 which outlines the Summer EBT agency's responsibilities for enrolling eligible children, maintaining an enrollment database, certification, applications, verification, notification to households, and appeal rights for households denied benefits.

Subpart D—Issuance and Use of Program Benefits

In this subpart, USDA addresses issuance of Summer EBT benefits by Summer EBT agencies and the use of Program benefits by Program participants. In developing requirements for the issuance and use of Summer EBT benefits, USDA's overall objective is to leverage existing systems and processes, to the greatest extent possible, in order to streamline implementation for Summer EBT agencies and take advantage of proven implementation strategies. However, Summer EBT is different from SNAP, WIC, and school meal programs, and requires unique approaches to implementation, as described below. Sections that specifically apply to ITOs or do not apply to ITOs are so indicated.

i. General Standards

Consistent with section 13A(b)(4)(A), this IFR establishes that Summer EBT benefits may only be issued for use during the summer months, when school is not in session. Summer EBT agencies must receive approval from USDA for any alternative plans for the periods during which Summer EBT benefits may be issued and used by children who are attending a school operating on a continuous school calendar. Summer EBT agencies must include their plans to serve schools operating on a continuous calendar as part of their POM. Timeliness of benefit issuance is addressed in more detail in § 292.15(c)(1)(i) of this rulemaking.

Accordingly, this program's standards for the timing of benefit issuance are codified at 7 CFR 292.15(a) through (c).

1. Benefit Issuance

Summer EBT is a seasonal program that is designed to provide benefits to eligible children during a specific window of time annually. In order to meet the nutritional needs of children when they are out of school, Summer EBT agencies must be able to provide benefits prior to the summer operational period. If a State or ITO chooses to provide all benefits for the summer in a single issuance, the benefits must be available for households to spend before the first day of the summer operational period; when a State or ITO opts for multiple benefit issuances (*e.g.,* monthly), the first issuance must occur before the start of the summer operational period. More information on benefit issuance schedules is included in the *benefit amount* section of this preamble. This is different from P–EBT, where benefits were issued retroactively at the end of eligible periods. The Summer EBT authorizing statute is a part of USDA's permanent operating authority, and USDA and Summer EBT agencies have the opportunity to build this Program from the ground up, allowing time to establish systems and processes that will support timely issuance of summer benefits to children annually. Therefore, USDA expects that Summer EBT agencies will be able to implement Summer EBT timely and with integrity, delivering benefits to children before the first day of the summer operational period so that benefits are available to spend during the summer months when the recipients are not in school and are unable to access school meals. However, if a child's Summer EBT application is selected for verification, that child may not be issued benefits until after verification is complete and eligibility is confirmed.

The Summer EBT agency must establish the date on which benefits will be issued to households within the State or ITO and inform households of this date. Recognizing that students may face food insecurity as soon as school lets out, benefits must be issued and available for participants to spend at least seven calendar days and not more than 14 calendar days before the start of the summer operational period. In other words, Summer EBT agencies should issue and activate cards so benefits are available to spend at least one week before the start of the summer operational period, allowing households sufficient time to purchase food for their children so it will be available to eat on the first day of the summer operational period. Accordingly, this rulemaking includes a requirement that benefits be

issued before the start of the summer operational period. If the Summer EBT agency issues benefits after the summer operational period, a corrective action plan outlining the reasons benefits were not issued in a timely manner and steps the Summer EBT agency will take to ensure timely issuance in the future will need to be submitted to FNS.

USDA understands that some participants will be difficult to reach for a variety of reasons including, but not limited to, outdated contact information, mail to the household is returned as undeliverable, or changes in the child's custody during the summer operational period. Summer EBT agencies should plan their issuance activities to allow enough time to resolved difficult cases and issue benefits to these children timely, to the maximum extent practicable, and work to resolve outstanding cases and issue participant benefits as expeditiously as possible. If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future. However, consistent with § 292.7(a) households have until the last day of the summer operational period to apply for benefits. The Summer EBT agency must process applications and issue benefits within 15 operational days of receipt of the application, as detailed in § 292.12(f)(1). Therefore, Summer EBT agencies are not subject to corrective actions for benefits issued after the end of the summer operational period but within the 15 day window in these instances.

For eligible children who apply too late to be included in the Summer EBT agency's initial benefit issuance, the agency must issue benefits as quickly as possible but not later than 15 operational days after a complete application is received by the Summer EBT agency so that recipients have the opportunity to use their benefits to purchase food in the summer. This means EBT cards and PINs, if applicable, must be placed in the mail before the end of the 15th operational day. USDA recognizes that this is a shorter timeline than the 30 day issuance requirement in SNAP; however, Summer EBT benefits have a shorter period during which they can be spent, and Summer EBT applications do not require income verification before issuance which means they can be processed faster than SNAP applications. USDA will work with Summer EBT agencies to develop and implement systems and processes that will reliably deliver benefits timely.

Summer EBT agencies are responsible for assisting children who do not live in a permanent dwelling or a fixed mailing address so they may obtain the Summer EBT benefits. This can be accomplished by assisting such households in finding an authorized representative who can act on their behalf, or through other appropriate means. Vulnerable populations such as these may need benefits quickly to meet an acute need. These standards require the administering agency to identify eligible households and make benefits available.

Use of EBT cards is the industry standard for SNAP and WIC, and USDA expects that Summer EBT agencies will issue Program benefits on EBT cards in a similar manner to SNAP or WIC. However, section 13A(b)(2)(B) allows benefits to be issued through another electronic means, as determined by the Secretary. In the event that a Summer EBT agency wants to adopt a new method of Summer EBT payment, such as payment with a mobile phone, USDA will work with the Summer EBT agency to determine whether and how this can best be executed while still meeting other program requirements. Some Territories operating the Nutrition Assistance Program (NAP), including American Samoa and the Commonwealth of the Northern Mariana Islands, do not currently issue program benefits electronically. For these agencies, Summer EBT benefits may be issued in the same manner as NAP benefits.

Accordingly, this rulemaking codified requirements for Summer EBT benefit issuance at 7 CFR 292.15(c).

2. Dual Participation

Dual participation in Summer EBT in the same summer operational period is not allowed. This means that, in each summer, children may not receive multiple benefit allotments from the same State or ITO-administered program, and children may not receive benefits from more than one State or ITO-administered program each summer. For example, a child who moves in the spring may not receive a benefit from the State they left *and* from the State to which they moved. (Note: as stated above in section iv.3. (*Applications*), SNAP benefits are interoperable, which means they can be used in any SNAP-authorized retailer in the United States, regardless of where they were issued. Therefore, households that move can use the benefits issued by their previous State of residence in the State to which they moved.) Likewise, a child living within an ITO Summer EBT agency's service area (as described in § 292.9) may not receive benefits from the ITO-administered program *and* a State-administered program that operates in a proximate geographic area, nor may they receive benefits from two ITO-administered programs. (Note: also stated above, benefits issued by ITO-administered programs are not interoperable. FNS will work with ITOs to determine the best way to convey eligibility and use of benefits for children enrolled in an ITO program who move during the summer.) That same child also may not receive duplicative Summer EBT benefits from the same source, *i.e.,* multiple Summer EBT benefit allotments from a State Summer EBT agency which total in excess of $40 per month for that child, as adjusted annually. Households engaged in dual participation may be subject to a claim by the Summer EBT agency as described in 292.27.

State and ITO Summer EBT agencies must work together to prevent dual participation, particularly in border areas and around ITO service areas, and must establish detection and prevention procedures in their POMs. Summer EBT agencies could choose to adapt systems already in place for their SNAP or WIC program, or propose an alternative approach. USDA seeks comment on best practices for collaboration across States and ITOs to detect and prevent dual participation.

Accordingly, 7 CFR 292.15(d) promulgates regulations on requirements for prevention of dual participation in the Summer EBT Program.

3. Benefit Amount

As established in the NSLA, the monthly value of the Summer EBT benefit will be $40 in 2024, and will be adjusted annually starting in 2025 to reflect changes to the Thrifty Food Plan, which is a plan developed by USDA to estimate the cost of a low-cost, healthy diet.[14] The statute defines a benefit rate per month, as opposed to a daily or weekly rate, and allows States and ITOs to streamline program administration by establishing a single summer operational period. Therefore, Summer EBT agencies may not prorate benefits for partial months and must issue the full summer benefit to each eligible child. In general, summer break spans all or part of three months, with the May to September period being the most common months of summer break. Accordingly, USDA considers the summer operational period to constitute three months, meaning that Summer

[14] *https://www.fns.usda.gov/taxonomy/term/415.*

EBT agencies must issue a full three months of benefits, even if the benefit issuance does not align with calendar months. In summer 2024, the benefits level is $40 per child per month and so each participating child will receive a $120 benefit, issued at the intervals described the Summer EBT agency's POM. Children who are certified as eligible for the Program *during* the summer must be issued the full summer benefit as well.

Consistent with other USDA programs, the Agency will publish a notice in January of each year in the **Federal Register** to announce the monthly benefit level for that year. This notice will also include details on how the benefit was calculated. Annual benefit adjustments will be consistent across programs operated by States and ITOs. Due to a higher cost of living in areas outside the contiguous United States, the statute allows USDA to adjust the monthly benefit for Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. Rates for these areas will also be included in an annual **Federal Register** notice.

Summer EBT agencies have the flexibility to establish an issuance schedule, which does not need to align with the start of calendar months, and may include a single benefit issuance before the start of the summer operational period, or periodic issuances during the Summer. Benefits provided as a single issuance must be issued prior to the start of the summer operational period. If multiple issuances are provided, the first issuance must occur before the start of the summer operational period. Summer EBT agencies may also stagger throughout the month. Staggering means that a State is issuing benefits to eligible households on multiple days within a given month. In this case, a staggered issuance means that not every household in the State gets receives their benefit on the exact same day, which can help State agencies administer the program. Pro-rated benefits, which are prohibited under this rulemaking, is where participants would only receive a part of their benefits. Once established, the Summer EBT agency must inform households of the first day they will be able to access benefits and the schedule for expunging benefits. USDA urges Summer EBT agencies to consider the needs of eligible households and their benefit usage patterns when establishing an issuance schedule. Regardless of the issuance schedule used, the Summer EBT agency must adhere to the reporting requirements and benefit issuance requirements established in this rulemaking. These standards are designed to be consistent with SNAP regulations at § 274.2(a) and (b), except that, instead of the 30-day standard described in § 274.2, Summer EBT agencies must adhere to the 15-day issuance standard described above.

Accordingly, this program's requirements for related to the value of benefits that may be issued and the manner of issuance are promulgated in 7 CFR 292.15(e)(f).

4. Participant Support

Clear and consistent communication with the public will be central to successful implementation of Summer EBT in a State or ITO. Summer EBT is a new program, which means stakeholders at all levels need information that clearly explains what the Program is, who is eligible, and how benefits can be accessed and redeemed. Because P–EBT similarly provided EBT benefits to children who lost access to free or reduced price school meals, USDA anticipates that some eligible households and stakeholders will be confused about the difference between Summer EBT and P–EBT. Summer EBT agencies will need to provide information to clarify differences between Summer EBT and P–EBT. A key difference is that, in P–EBT, all children attending special provision schools, where every student is served meals at no charge, were eligible to receive the P–EBT benefit. However, Summer EBT is only available to children at special provision schools who have been determined to be income eligible for free or reduced price meals through existing administrative data or a Summer EBT application, as required by the statute. Communications with households of children attending special provision schools will need to clearly explain that, unlike P–EBT, households must submit a Summer EBT application if their child(ren) cannot be identified as eligible through streamlined certification, and that children attending special provision schools who received P–EBT are not eligible to receive Summer EBT if they are not determined to be income eligible. Similarly, Summer EBT is a program for school-age children while the statute authorizing P–EBT explicitly extended eligibility to children from birth to age 6 who were members of SNAP households whose covered child care facility was closed or operating with reduced hours or attendance. Families will need to know that their children are only eligible for Summer EBT if they are income eligible and attend an NSLP or SBP-participating school or are school-age and identified through existing administrative data.

In addition, Summer EBT benefits will be issued for the summer operational period while P–EBT also included the school year. Families of eligible children will need materials that explain when the benefit will be made available and the period of time, they have to use their benefits before the benefits are no longer available to spend.

Summer EBT agencies must provide written materials to each household prior to Summer EBT issuance and as needed during ongoing operation of the Summer EBT program. At a minimum, the household materials must provide information including, but not limited to: where benefits can be used, what foods are eligible for purchase, unallowable uses of benefits, and penalties for misuse, use of security Personal Identification Numbers (PINs), how families may access customer service supports during non-business hours, the eligibility criteria for benefits, and disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where and how to dispute an adjustment and request a fair hearing. All materials must include the USDA statement of non-discrimination and be prepared at an educational reading level suitable for participant households. These standards are a minimum, and UDSA highly encourages Summer EBT agencies to maintain more frequent contact with eligible households to ensure they have the information they need to access program benefits. Examples include providing information through the schools before the end of the school year, robo-calls and texts to families to remind them that they have benefits available to spend, and social media ads. Summer EBT agencies should consider how they can incorporate outreach throughout the summer period in a manner that is inclusive of individuals with disabilities or limited English proficiency, and people who are unhoused, or generally are not well connected with community services or media.

This subsection also addresses requirements for EBT cards and PINs, adjustments to posted benefits, and providing replacement EBT cards or PINs. To ease program implementation, these requirements largely mirror SNAP and WIC regulations on these issues.

In the event benefits are erroneously posted or adjustments are needed to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a

result of a system error, the Summer EBT agency may adjust benefits posted to household accounts. The Summer EBT agency must also ensure a duplicate account is not established which would permit households to access more than one account in the system.

The Summer EBT agency must implement a reporting system which is continually operative. Once a household reports their EBT card has been lost or stolen, the Summer EBT agency must assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. An immediate hold must be placed on Summer EBT accounts at the time notice is received from a household regarding the need for card or PIN replacement in order to limit agency liability in the event the card is used for additional purchases after a card or PIN replacement request is received. The Summer EBT agency or its agent must maintain a record showing the date and time of all reports by households of a lost or stolen card. Finally, the Summer EBT agency must make replacement EBT benefits available to households when the household reports food purchased with Summer EBT benefits was destroyed in a household misfortune or disaster. FNS is interested in comments on the challenges associated with providing replacement Summer EBT benefits or not providing replacement Summer EBT benefits.

Accordingly, this program's requirements for participant support are codified at 7 CFR 292.15(g).

5. Expungement

Summer EBT benefits are intended to be available for households to spend when children are not receiving school meals during the summer. Accordingly, the NSLA places limits on how long benefits may remain available for households to spend after the summer operational period ends. As discussed in subpart B, Summer EBT agencies have the discretion to establish a summer operational period that generally reflects the start and end dates of local summer vacations. In order to allow a reasonable amount of time after the end of the summer operational period for households to finish spending their benefits, Summer EBT benefits must be expunged four months after issuance, which, for the purpose of Summer EBT, will be 122 calendar days. Once expunged, benefits may not be reinstated. This approach may be new for ITO Summer EBT agencies as WIC benefits are not available to spend beyond the month for which they were issued. In the SEBTC demonstration projects, a few grantees that were WIC-administering agencies and used WIC infrastructure issued benefits that were available to spend throughout the entire summer period and they found that this increased benefit redemption and was appealing to participating households. Summer EBT agencies must also provide notice to the household that benefits in their EBT account are approaching expungement not less than 30 days before benefit expungement is scheduled to begin. This approach is consistent with statutory limits on benefit availability included in the Food and Nutrition Act of 2008, while also allowing flexibility for families to use their benefits. In the SEBTC demonstrations, grantees determined that frequent contact with households throughout the summer was a best practice for providing timely technical assistance and encouraging benefit use.

Summer EBT agencies must establish procedures to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account funds, or to remove benefits from inactive accounts for expungement. Whenever benefits are expunged, the Summer EBT agency must document the date and amount of the benefits in the household case file and issuance reports must reflect the adjustment to the Summer EBT agency issuance totals to comply with reporting requirements in 7 CFR 292.23.

Some State Summer EBT agencies may choose to load Summer EBT benefits on existing SNAP cards for households that participate in both programs. Because Summer EBT benefits have a shorter expungement period than SNAP benefits, Summer EBT agencies that load Summer EBT benefits onto existing SNAP accounts must ensure Summer EBT benefits are drawn down prior to SNAP benefits so they are used prior to expungement period.

Accordingly, this program's benefit expungement requirements are codified at 7 CFR 292.15(h) and (i).

ii. Issuance and Adjustment Requirements Specific to States That Administer SNAP

This section details benefit issuance requirements that are specific to all States that operate SNAP. This section does not apply to Territories that administer the Nutrition Assistance Program (NAP). As previously stated, USDA's aim in promulgating these regulations is to streamline operations and reduce burden to the greatest extent possible by adopting systems and processes that Summer EBT agencies are already accustomed to using. To that end, this rulemaking establishes a framework that includes certain SNAP requirements for effective and responsible administration of the Summer EBT Program by State Summer EBT agencies.

These requirements are:

- Basic issuance requirements including the establishment of issuance and accountability systems consistent with § 274.1.
- Requirements and restrictions regarding general SNAP terms and conditions consistent with § 272.1.
- Automation and computerization of State Summer EBT operations and data management systems for obtaining, maintaining, utilizing and transmitting information concerning Summer EBT consistent with § 292.16(c).
- Requirements regarding internal controls consistent with § 272.4(c)(1), court suit reporting consistent with § 272.4(d), Summer EBT agency monitoring of duplication consistent with § 272.4(e), and hours of operations consistent with § 272.4(f).
- Program informational activities that convey information about the Program, including household rights and responsibilities, through means such as publications, telephone hotlines, and face-to-face contacts, consistent with t § 272.5(b).
- Procedures for program administration in Alaska. To achieve the efficient and effective administration of SNAP in rural areas of Alaska, USDA has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. USDA is applying the regulations established at § 272.7 for SNAP implementation in Alaska to Summer EBT implementation in Alaska.
- Procedures for household disqualification consistent with 273.16 .
- Requirements that Summer EBT benefits may only be used to purchase eligible foods from retail food stores approved for participation in SNAP.
- Requirement that SNAP retailers to also accept Summer EBT benefits, subject to the participation requirements for SNAP.
- Requirement that the State Summer EBT agency to maintain issuance, inventory, reconciliation, and other accountability records consistent with § 274.5.
- Requirements for standards regarding benefit redemption by eligible households consistent with § 274.7.
- State Summer EBT agency assurance that its EBT system is capable

of performing necessary functional requirements, including interoperability and portability requirements, consistent with the regulations at § 274.8.

- State Summer EBT agencies must account for all issuance through a reconciliation process as described by USDA.

Accordingly, this subsection codifies issuance and adjustment requirements for State Summer EBT agencies at 7 CFR 292.16.

iii. Retailer Integrity Requirements Specific to States, Including Territories That Administer SNAP

As required by section 13A of the NSLA, Summer EBT benefits are subject to certain integrity requirements found in the Food and Nutrition Act of 2008. Specifically, Summer EBT agencies must comply with section 12, *Civil penalties and disqualification of retail food stores and wholesale food concerns;* section 14, *Administrative and judicial review;* and section 15 *Violations and enforcement* (7 U.S.C. 2021, 2023, 2024). As these requirements were established in the Food and Nutrition Act for SNAP, USDA has already promulgated regulations that implement each requirement. These SNAP regulations were informed by real-world experience and were developed through notice and comment rulemaking, so they have the benefit of practical knowledge and public input. USDA has determined that many aspects of the SNAP regulations implementing sections 12, 14, and 15 of the Food and Nutrition Act are also appropriate for Summer EBT, and adopting these same requirements is preferable to developing different requirements for Summer EBT. This approach is also the least burdensome for administering agencies because it does not require agencies to develop new implementation approaches to meeting the requirements in sections 12, 14, and 15 of the Food and Nutrition Act for Summer EBT.

Specifically, this rulemaking applies the following SNAP requirements to the Summer EBT Program:

- Participation of retail food stores and wholesale food concerns, and redemption of
- Summer EBT benefits requirements at §§ 278.2, 278.3, and 278.4.
- Firm eligibility standards found in parts 271, 278, and 279.
- Penalties for firms that commit certain violations described in part 278.
- Claims standards for retail food stores and wholesale food concerns described at § 278.7.
- Administrative and Judicial review. Firms aggrieved by administrative action under sections 271, 278, and 279 may request administrative review of the administrative action with USDA in accordance with part 279, subpart A, of this chapter. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

Accordingly, this section codifies retailer integrity requirements for State, including territories that administer SNAP, in 7 CFR 292.17.

iv. Requirements Specific to States That Administer Nutrition Assistance Programs (NAP)

In lieu of SNAP, section 19 of the Food and Nutrition Grant [42 U.S.C. 2028] authorizes Nutrition Assistance Program (NAP) block grants for food assistance to low-income households in the U.S. Territories of the Commonwealth of Puerto Rico and American Samoa. Pursuant to authority at 48 U.S.C. 1469d, FNS has also extended a NAP grant in lieu of SNAP to the Commonwealth of the Northern Mariana Islands.

This rulemaking codifies section 13A(b)(1)(A) of the NSLA, which requires that Summer EBT benefits issued by a Territory administering NAP may only be used by the eligible household to purchase NAP-eligible foods from retail food stores that have been approved for participation in NAP. In addition, States that administer NAP shall establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.

Accordingly, this rulemaking codified requirements for States that administer NAP at 7 CFR 292.18.

v. Requirements Specific to ITO Summer EBT Agencies

This section of the IFR provides ITO-specific responsibilities related to the issuance of Summer EBT program benefits, in addition to the general standards set forth in this subsection. The ITO Summer EBT agency must ensure that Summer EBT program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from Summer EBT-enrolled vendors that have been approved for participation in the WIC Program.

ITO Summer EBT agency procedures and operations related to basic issuance requirements, reconciliation, benefit redemption, and functional and technical EBT system requirements, should be consistent with WIC regulations at 7 CFR part 246.12 as applicable to the benefit delivery model used, to the extent such requirements do not conflict with the requirements set forth for ITO Summer EBT agencies in this part.

The Department learned from participating ITOs through the Summer EBT demonstration projects the importance of providing flexibility in how benefits may be offered to participants. To promote maximum flexibility, ITO Summer EBT agencies may choose to pursue a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The ITO Summer EBT agency must use the same benefit model for all participants throughout its service area, in accordance with its POM.

For ITOs using solely a CVB model, the ITO Summer EBT agency must issue a benefit level equal to the amount set forth in 7 CFR 292.15(e). For 2024, the monthly benefit level will equal $40, and USDA will adjust the benefit level amount in subsequent years pursuant to statutory and regulatory requirements. For ITOs choosing to use a food package model, a combination CVB/food package model, or alternate model, the benefit level may not exceed that set forth in 7 CFR 292.15(e). The ITO Summer EBT agency is not required to restrict CVB to the purchase of fruits and vegetables and may expand their Summer EBT-eligible foods to include other items that meet the definition of a supplemental food as described below. USDA is open to innovative benefit issuance solutions, and will work with ITO Summer EBT agencies to identify which model best fits the unique needs of each community.

In addition, pursuant to statute, this section requires ITO Summer EBT agencies to provide supplemental foods that: contain nutrients determined by nutritional research to be lacking in the diets of children and promote the health of the population served by the program, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns or allow for different cultural eating patterns than foods described in such subparagraph. Supplemental food that can be purchased with WIC benefits have similar nutritional requirements; thus, an ITO Summer EBT agency may consider supplemental foods authorized in its WIC Program to meet the requirements to be a Summer EBT-authorized product. However, infant formula and infant foods are excluded from use in Summer EBT program, consistent with the statutory definition of *supplemental food* in section 13(A)(h)(4) of the NSLA and Summer EBT program regulations at 7 CFR

292.19 even if they are approved for the ITO's WIC program. ITO Summer EBT agencies may tailor the benefit to specific student age groups as long as the monthly benefit level equals that set forth in 7 CFR 292.15 9(e).

Further, ITO Summer EBT agencies must ensure that vendors charge prices for eligible food items which are reasonable for the area(s) served and are at the current price or less than the current price charged to other customers. Vendors may not charge Summer EBT participants more for an item than the price in the retail environment for all other customers. This section also requires ITO Summer EBT agencies to ensure vendor integrity, in accordance with existing WIC regulations. However, ITO Summer EBT agencies may also set forth an alternate system to ensure effective vendor management and vendor integrity.

Accordingly, this rulemaking codifies requirements specific to ITO Summer EBT agencies at 7 CFR 292.19.

Subpart E—General Administrative Requirements

i. Payments to Summer EBT Agencies and Use of Administrative Program Funds

The language in this section applies to States, territories, and ITOs unless otherwise specified.

1. Benefit Funds

Summer EBT is a permanent program that will provide benefits to children each summer. This permanence and stability will afford Summer EBT agencies the opportunity to plan, prepare, and invest in program infrastructure to deliver Summer EBT benefits in a manner that is efficient, effective, and supports high levels of program integrity.

Establishing systems to keep Summer EBT benefits fully separate from other benefit streams is critical to the integrity of the Program. For P–EBT, USDA permitted States to issue food benefits through the Account Management Agent (AMA), using the same account through which the State's SNAP benefits are issued. As a result, P–EBT and SNAP benefits are generally indistinguishable throughout the issuance and redemption process. This has made it very challenging for USDA to separately track SNAP and P–EBT funds and undermines USDA's oversight and integrity efforts. Despite these significant drawbacks, States were permitted to use this approach for P–EBT so that the Program could be implemented quickly during a national emergency, delivering timely benefits to millions of children who had suddenly lost access to school meals because of the COVID–19 pandemic. USDA has identified a better approach to providing Summer EBT benefit funds that Summer EBT agencies will have the time and stability to implement.

To help Summer EBT agencies meet the statutory integrity requirements discussed in subpart D of this rule, USDA will obligate 100 percent of Summer EBT benefit funds to Summer EBT agencies as a grant. Summer EBT agencies, in partnership with their EBT processors, will need to manage the Summer EBT benefit funds in a manner similar to WIC, State-funded food assistance programs, and cash programs. At the point of redemption, the Summer EBT agency will draw funds from the USDA-provided Summer EBT benefit grant through the associated Automated Standard Application for Payments (ASAP) account. This account will be accessed and managed by the Summer EBT agency. This approach will enable Summer EBT agencies to more effectively track Summer EBT benefits separately from SNAP benefits, WIC benefits, or other benefit types, allowing them to apply the same oversight, restrictions and requirements as SNAP and WIC benefits. ITOs will be familiar with this process as it is the method used to fund WIC. Territories that administer NAP will issue Summer EBT benefits in the same manner they issue NAP benefits.

2. State Administrative Funds

USDA is authorized to pay each Summer EBT agency an amount equal to 50 percent of the administrative expenses incurred by the Summer EBT agency in operating the program under this section, including the administrative expenses of LEAs and other agencies in each State or ITO relating to the operation of their Summer EBT Program. This means that Summer EBT agencies will need to cover the balance of their administrative costs, *i.e.,* their ''match,'' with non-Federal funds. As previously discussed, Summer EBT agencies must include an administrative budget as part of the annual POM. In States or ITOs operating Summer EBT through more than one agency, each Summer EBT agency may include separate administrative funding requests in their POM for the administrative convenience of receiving funds without the need to transfer money between Summer EBT agencies. However, the coordinating Summer EBT agency and partnering Summer EBT agency requests must be coordinated to ensure the requests are consistent with overall program operations and the required cost allocations are maintained.

The Child Nutrition Programs, SNAP, and WIC are distinct programs from Summer EBT. Therefore, States and ITOs, generally may not use Federal Child Nutrition, SNAP, or WIC administrative funds in the administration of Summer EBT. If a Summer EBT agency conducts activities that will benefit the administration of more than one Federal program, the agency must appropriately allocate administrative costs to each affected program. In addition, the Summer EBT agency may generally not use other Federal program funds as part of their Summer EBT match.

The Summer EBT agency may use the following resources to pay their 50% share of administrative funding:

- project costs financed with cash contributed or donated to the Summer EBT, and
- project costs represented by services and real or personal property donated to the Summer EBT agency (*i.e.,* in kind contributions).

Project costs may be reported on either a cash or accrual basis by the Summer EBT agency.

Cash or in-kind contributions, as described above, are generally allowable if they are verifiable, allowable, necessary, in the agency's approved budget, and not related to any other Federal program costs unless specifically provided in regulations. The value of services rendered by volunteers is not an allowable in-kind contribution.

USDA received feedback from State agencies and ITOs that there are barriers and challenges to securing Summer EBT funding, designing and planning the program, and coordinating across agencies in time to implement benefit issuance in summer 2024. To address this, States and ITOs may receive administrative funding for a ''planning year'' if needed in 2024. States and ITOs will still be required to provide the 50% State or ITO match and submit and interim POM, but Summer EBT agencies will not be required to issue benefits in 2024. While this option is in place, USDA highly encourages States in a position to issue benefits in 2024 to do so. States and ITOs taking advantage of this option must have a plan to issue benefits by summer 2025 in order to receive administrative funding in 2024.

USDA will recover any administrative funds which are in excess of obligations reported at the end of each fiscal year through an adjustment in the Summer EBT agency's Letter of Credit. Each Summer EBT agency must maintain Program records to support

administrative costs and retain these records for a period of 3 years, or as otherwise specified.

Accordingly, payments to Summer EBT agencies and use of administrative program funds requirements are codified at 7 CFR 292.20.

ii. Methods of Payment

Summer EBT agencies will receive benefit funds and administrative funds through separate letters of credit (LOC). Each Summer EBT agency that wants to receive administrative funds directly from USDA will do so through its own LOC. If a State or ITO requests funds through only one LOC, the Summer EBT agency that is responsible for that LOC will also be responsible for distributing administrative funds across partnering agencies, as appropriate. The Summer EBT agency that administers the EBT benefit issuance will receive the benefit grant.

The LOC is the document by which an official of FNS authorizes a Summer EBT agency to draw funds from the United States Treasury. Summer EBT agencies will request payment(s) by submitting a request to the appropriate Treasury Regional Disbursing Office with a copy to FNS. If a Summer EBT agency cannot meet the requirements for the LOC method of payment, it will be provided funds by Treasury check in accordance with Treasury requirements.

Accordingly, methods of payment are codified at 7 CFR 292.20.

iii. Standards for Financial Management Systems

Summer EBT agencies are subject to the same standards for financial management systems as agencies administering other USDA programs. These standards also apply to all Summer EBT agencies and their respective subagencies or contractors.

Financial management systems for a Summer EBT agency's program funds must be able to provide accurate, current, and complete financial records, identify Federal awards received and expended and the Federal programs under which they were received, and include an audit trail to support any costs claimed for reimbursement. These systems must also be able to provide effective controls and accountability to safeguard Federal funds and minimize the time it takes for the agency to disburse funds for program costs. In addition, system procedures are needed to determine the reasonableness, allowability, and allocability of costs.

Periodic audits of Summer EBT agency financial management systems, consistent with 2 CFR part 200, subpart F, are required. The financial systems must support agency resolution of audit findings, recommendations, and follow up on corrective or preventive actions.

Accordingly, standards for financial management systems are codified at 7 CFR 292.21.

iv. Performance Criteria

This rulemaking establishes four performance criteria for Summer EBT in order to promote program access, a high standard of customer service, and program integrity. USDA adopted a similar approach with direct certification in 7 CFR 245.13. Performance benchmarks for direct certification are tied to a State's ability to directly certify each child who can be directly certified through SNAP in order to promote program accuracy, reduce paperwork for States and households, and increase eligible children's access to school meals. States that do not meet the NSLP direct certification benchmarks are required to submit a continuous improvement plan (CIP) which USDA supports with technical assistance during plan development and implementation. USDA data show that State direct certification rates are trending upward,[15] a finding which suggests that enhanced data collection, matching, and technical assistance associated with these benchmarks have supported program improvement over time.

The performance criteria for Summer EBT established in this rule making are directly linked to the effectiveness of the Program and must be monitored and documented by the Summer EBT agency. USDA does not expect that Summer EBT agencies will reach 100% on each of these benchmarks at the onset of the Program. Rather, the purpose of monitoring and documenting these criteria in the immediate term is to establish a reasonable baseline for each. If it is determined that these criteria are meaningful and can be accurately measured, USDA will consider adding numeric targets for each criterion to encourage continued Programmatic improvement. Similar to direct certification, if a target is not met, USDA would work with the Summer EBT agency to develop a continuous improvement plan (CIP) and provide technical assistance to help the Summer EBT agency achieve that target. USDA is interested in comments on the concept of having performance criteria, the benefits and challenges of linking numeric targets to a CIP, the value of each criteria as a meaningful and measurable assessment of performance, and if there are other metrics that are meaningful and measurable, such as the percent of benefits issued that are redeemed.

USDA will provide guidance on how to evaluate and document each of these criteria:

Performance Criteria 1—Percentage of children eligible for Summer EBT benefits who participated by using their benefits at least once.

This metric measures the Summer EBT agency's ability to identify, enroll, issue benefits to the correct location, and provide customer support to all children eligible for the program.

Performance Criteria 2—Percentage of Summer EBT benefits that are erroneously issued to children not eligible for Summer EBT, or erroneously not issued to children who are eligible.

This metric measures the Summer EBT agency's ability to correctly identify which children are eligible (or ineligible) and to prevent improper payments.

Performance Criteria 3—Percentage of children issued benefits who receive their first issuance before the start of the summer operational period.

This metric measures the Summer EBT agency's ability to enroll eligible children timely, obtain correct addresses for households of eligible children, and issue EBT cards (or other benefit instruments) in advance of the last day of school so that benefits are available to spend immediately when school lets out. P–EBT benefits were not issued timely for a variety of reasons, and this benchmark is intended to aid USDA and States in identifying why lags occur and develop strategies to prevent late issuances.

Performance Criteria 4—Percentage of eligible children who can be identified through streamlined certification who are enrolled without further application.

This metric measures the effectiveness of the Summer EBT agency's systems and processes to enroll children using existing administrative data without additional burden on families.

Accordingly, this IFR codified performance criteria at 7 CFR 292.22.

v. Records and Reports

Consistent with other USDA programs, Summer EBT agencies and LEAs must retain records for a period of 3 years after submission of the certification data for the fiscal year. If audit findings have not been resolved, the records must be retained beyond the

[15] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Direct Certification in the National Lunch Program: State Implementation Progress, School Year 2015–2016 and School Year 2016–2017, by Dennis Ranalli, Joe Templin and Maggie Applebaum, Alexandria, VA: October 2018.

3-year period as long as required for the resolution of the issues raised by the audit. Records may be retained in their original form or electronic form.

Accordingly, record retention and reporting requirements are codified at 7 CFR 292.23.

vi. Audits and Management Control Evaluations

1. Audits

Summer EBT agencies must arrange for audits of their own operations in accordance with uniform administrative requirements, cost principle, and audit requirement for Federal awards. Agencies must also provide USDA's Office of the Inspector General with full opportunity to audit the Summer EBT agency and LEAs.

2. Management Control Evaluations

Summer EBT agencies must provide USDA with full opportunity to conduct management control evaluations of all operations of the Summer EBT agency. The Summer EBT agency must make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by USDA.

vii. Investigations

In order to improve Program performance, Summer EBT agencies must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and take appropriate action to correct any irregularities. The Summer EBT agency must maintain on file all evidence relating to such investigations and actions. The Summer EBT agency must also inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds and USDA may make investigations at the request of the Summer EBT agency, or where it determines investigations are appropriate.

Accordingly, this IFR codifies investigation procedures for Summer EBT at 7 CFR 292.25.

viii. Hearing Procedure for Families and Summer EBT Agencies

Each Summer EBT agency must establish a hearing procedure allowing households to appeal decisions made with respect to a Summer EBT application they submitted and allowing Summer EBT agencies to challenge continued eligibly of a child. Because the process to establish eligibility for Summer EBT is rooted in the NSLP/SBP eligibility process, these requirements are largely the same as those included in NSLP/SBP regulations. As a result, a household's experience will be consistent if it requests a hearing in the NSLP, SBP, or Summer EBT. In order to provide for fair treatment of all parties involved in the hearing process, the regulations detail required hearing procedures including notices and written records, timeframes for action, the rights of participants to legal counsel and to present and view evidence, the right to refute any testimony or evidence, and requirements for hearing officials.

Accordingly, hearing procedures are codified at 7 CFR 292.26.

ix. Claims

Summer EBT agencies are responsible to ensure that program benefits are provided only to eligible children in the correct amount, and that no child receives duplicate benefits, in accordance with program regulations. USDA may hold Summer EBT agencies liable for erroneous payments and pursue claims against the State in the aggregate when merited, based on the nature of the error that gave rise to the erroneous payment, the size of the error, and whether such action would advance program purposes.

In turn, Summer EBT agencies must develop a process to manage cases of erroneous issuances and pursue claims against a household, as appropriate. Summer EBT agencies have the discretion to determine when to pursue a claim when erroneous issuances are discovered based on cost effectiveness or the individual circumstances. Most children who receive Summer EBT benefits will be enrolled through streamlined certification with no action on the part of the household required. Therefore, a child enrolled through streamlined certification might unknowingly use benefits that were issued in error, including a situation where the child's household applies for duplicate benefits because they are not aware of their automatic enrollment. It may be a significant burden on low-income households to pay back benefits already spent, especially when they were unaware of the error and do not have sufficient funds on hand to pay the claim. To the maximum extent practicable, Summer EBT agencies should limit claims against households to situations where there is evidence that the household knowingly obtained benefits through fraudulent activities. To limit risk of unintentional use of erroneous benefits, Summer EBT agencies have the responsibility to communicate eligibility determinations to households and provide sufficient information for households to determine their eligibility status and the amount they should be issued. In addition, Summer EBT agencies may not reclaim Summer EBT benefits by reducing a household's SNAP or WIC benefit. Summer EBT agencies must also develop a process to allow households to submit a claim for benefits that were not issued or issued in the incorrect amount.

To inform future rulemaking, USDA is interested in comments on Summer EBT claims including: the most common reasons for erroneous issuances, the frequency of erroneous issuances, how such issuances are detected, the feasibility of successfully pursuing a claim against a household, and the resources required to purse a claim.

Accordingly, claims procedures are codified at 7 CFR 292.27.

x. Procurement Standards

1. General

In general, Summer EBT is subject to Federal procurement requirements for Summer EBT agency and local agency costs paid with Federal funds, including costs associated with eligibility systems. Consistent with other USDA programs, such purchases must comply with Federal procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

As discussed in 7 CFR 292.11, Summer EBT is subject to the Advance Planning Document (APD) process, which is a series of successive steps through which agencies administering USDA programs obtain Federal prior approval and financial participation in automation projects supporting USDA programs. This generally includes all SNAP and WIC eligibility system and EBT projects. APD procurement requirements take the place of standard procurement rules for costs associated with projects subject to the APD process. Therefore, any costs associated with EBT projects for a Summer EBT program will follow APD rules and will not follow standard procurement rules.

Although the APD process usually applies to eligibility system projects, USDA is not requiring Summer EBT agencies that also operate Child Nutrition Programs to follow the APD process at this time. As detailed in 7 CFR 292.11, USDA has not historically used the APD process for CNP eligibility systems, which are the eligibility systems most likely to need changes to implement Summer EBT. The agency has determined that adding APD requirements for CNP agencies would take more time and planning than is available at this time, so they will

remain subject to standard procurement rules.

Accordingly, procurement requirements are codified at 7 CFR 292.27.

2. Contractual Responsibilities

The standards contained in this part, 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 415, as applicable, do not relieve any Summer EBT agency or local agency of any contractual responsibilities under its contracts. The Summer EBT agency or local agency is the responsible authority, without recourse to USDA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, ITO, or Federal authority that has proper jurisdiction.

Accordingly, contractual responsibilities are codified at 7 CFR 292.27(c).

3. Procedures

The Summer EBT agency may elect to follow either the State or ITO laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 200.326. Regardless of the option selected, Summer EBT agencies must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements in 2 CFR 200.236 and 2 CFR part 200, appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award, are followed.

Accordingly, additional procurement procedures are codified at 7 CFR 292.27(d).

xi. Miscellaneous Administrative Provisions

1. Civil Rights

In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. Summer EBT agencies and LEAs must comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113–1.

2. Program Evaluations

Summer EBT agencies, LEAs, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department that are related to programs authorized under the NSLA and the Child Nutrition Act of 1966.

3. General Responsibilities

The criminal penalties and provisions established in section 12(g) of the NSLA, (42 U.S.C. 1760(g)), state substantially: Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud must, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, must be fined not more than $1,000 or imprisoned for not more than one year, or both.

Accordingly, this IFR codifies civil right requirements at 7 CFR 292.28(a), requirements for cooperation with Program evaluations at 7 CFR 292.28(b), and general responsibilities of Summer EBT agencies at 7 CFR 292.28(c).

xii. Information Collection/ Recordkeeping—OMB Assigned Control Numbers

F. Severability

The statutory enhancement of the USDA summer meals programs for children through establishment of the Summer Electronic Benefits Transfer Program for Children providing States and covered Indian Tribal Organizations nutrition assistance through electronic benefit transfer or similar methods, which may be used to purchase food from approved retail stores is essential for ensuring that all children receive nutritious meals during the summer months when school is not in session. The benefits will be used to purchase food during the summer months. As directed by statute, USDA is establishing the Summer EBT program beginning in Summer 2024 through this rulemaking, in partnership with States and covered Indian Tribal Organizations which choose to participate. Based on the statutory requirement to establish the Summer EBT program beginning in 2024, USDA has determined that its authority to implement the regulation is well-supported in law as well as in practice, based on USDA's administration of demonstration projects and similar programs over the past decade. Accordingly, USDA has determined that this exercise of its statutory authority reflects sound policy and should be upheld in any legal challenge. However, if any portion of the rule is declared invalid, USDA intends the various aspects of this rule to be severable. For example, if a court were to find any provision unlawful, such as (1) student eligibility determination protocols, (2) the expungement timeframes, or (3) some other aspect of this rule, USDA intends that all other provisions in the rule will remain in effect so that States and covered Indian Tribal Organizations can implement the Summer EBT program beginning in 2024. USDA has concluded that it is in the interests of our Nation's children for electronic benefits to be provided to families so they may purchase food during the summer months when school is not in session. Furthermore, in the event any part or the entirety of the Summer EBT program established by this rulemaking were declared invalid, Summer EBT is severable and does not prevent the non-congregate rural option, discussed above, from proceeding since the non-congregate rural option and Summer EBT program function independently.

IV. Coordinated Services Plan

The creation of the permanent Summer EBT Program, as well as the establishment of the Summer rural non-congregate meal service option, create together a fundamental shift in how summer nutrition can be provided to children across the country. As part of that fundamental shift, it is important to consider how these two Programs can complement one another, but also how other Federal, State, Tribal, and local programs can join efforts to increase children's access to food in the summer, as well as access to other important services.

Therefore, beginning in 2025, each State will be required to submit to FNS (and update at least every three years thereafter) a single Coordinated Services Plan (CSP). Any significant changes must be updated on an annual basis. States must also notify the public of their CSP and make it readily available

on their website. The intent of the CSP is for each State to craft a coordinated approach to reaching children with various human services programs in the summertime, with a focus on summer nutrition. If more than one State or Summer EBT agency administers these Programs within a respective State, they must work together to develop and implement the CSP. Indian Trial Organizations that administer Summer EBT may create their own CSP to the maximum extent practicable. In addition, States are strongly encouraged to coordinate services across other governmental and non-governmental programs in partnership with community organizations that directly administer the program and/or support its operation (*e.g.,* libraries that operate as sites and provide summer reading programs, community organizations that operate sites and provide funding or enrichment activities, etc.).

In order to ensure that CSPs remain up to date, they will be required to be submitted annually when there are significant updates, or at least once every three years. For both the initial CSP submission as well as the subsequent significant annual and/or triennial updates, States must consult with FNS to receive technical assistance and recommendations of additional avenues to ensure access for eligible children.

FNS plans to issue a CSP template following publication of this rule which will include a suggested format and examples of the kind of information to include in the Plans. FNS will provide technical assistance and share best practices to assist States and ITOs in drafting their Plans along with the release of the template in 2024.

USDA seeks public comments on all aspects of the Coordinated Services Plan. Commenters are especially encouraged to provide input on the following:

- Types of information that FNS should consider including in a Coordinated Services Plan template.
- Recommendations about what metrics States are able to collect in relation to all summer nutrition programs (for example, metrics capturing the expansion of non-congregate meal service into previously under-served areas, metrics related to community engagement and support for families to access summer nutrition options).
- Recommendations on how often Plans should be updated and resubmitted.
- Recommendations on partnerships with other Federal, State, Tribal, and local agencies, as well as organizations involved in the administration of nutrition and human services programs, participants, and other stakeholders that States may want to consider consulting with for the creation of their Plans.
- Specific recommendations on the steps States and ITOs could take to fully and substantively implement their plans.

Accordingly, this rule establishes a new § 225.3(e) in part 225 and a new § 292.10 in part 292 to require States to submit a Coordinated Services Plan.to require States to submit a Coordinated Services Plan.

V. Procedural Matters

Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim final rule has been determined to be significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094, and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required by Executive Order 12866, (as amended by Executive Order 14904), a Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this rule as an appendix. The following summarizes the conclusions of the regulatory impact analysis:In total, the 10-year cost of the interim final rule is estimated at $40.3 billion, with $7.4 billion attributed to non-congregate meal option implementation ($7.35 billion for program meal reimbursements and $43.2 million for provision administration) and $32.9 billion in costs attributed to Summer EBT implementation ($28.0 billion for program benefits and $5.0 billion for program implementation and administration). These costs represent the operation of both provisions over a ten-year period between Fiscal Years (FY) 2023 and 2032. It should be noted that Summer EBT will not be implemented until 2024 and therefore all analyses pertaining to Summer EBT represent only nine years of program operation. Though some States may have already incurred costs in FY 2023 preparing for the implementation of Summer EBT in FY 2024, it is assumed that the costs estimated in FY 2024 are representative of the total cost of program implementation occurring either during or prior to Summer EBT rollout.

The non-congregate meal provision is expected to increase participation among eligible populations in rural sites by 4.25 million children by 2027 (Year 5) with annual costs for associated meal reimbursements of just over $1 billion once peak participation is reached. Annual administrative burden to households add only marginally to these costs—between $0.2 million and $4.7 million annually, for a total of $29.3 million over ten years. The analysis also accounts for one-time costs associated with modifying operating systems to accommodate non-congregate meal service, which has been estimated at $250,000 per State agency, totaling $14.0 million across all 56 State agencies in 2023.

It is expected that 25.0 million children out of approximately 30.1 million eligible children will receive Summer EBT benefits, resulting in between $2.8 and $3.4 billion in benefits distributed each summer. Program implementation and administration costs, which include initial start-up costs equal to 30% of benefits administered and ongoing administrative costs equal to 7% of benefits administered, are expected to peak at $1 billion in 2024 and level off at $366 million by 2028. This includes expected administrative burden for Summer EBT retailers due to reporting and recordkeeping at $8.9 million, while the expected household burden of administrative tasks required for program participation (*e.g.,* applications) for children not already certified as Free and Reduced-Price eligible is estimated at $149 million. The retailer costs are expected to be incurred primarily in Year 1 (2024). Total annual costs for Summer EBT benefits and administration are estimated at between $3.5 and $3.8 billion annually for a total nine-year cost of $32.9 billion.

This rule is expected to yield substantial public benefit, including improvements in nutrition security and diet quality and economic growth via retail transactions.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives

that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this interim final rule would not have a significant impact on a substantial number of small entities. The provisions of this interim final rule are intended to reflect the needs of program operators of all sizes. No specific additional burdens are placed on small program operators seeking to operate summer nutrition programs. Additionally, non-congregate meal service and Summer EBT are optional provisions, and there is no requirement for States, Tribes, and/or sponsors to participate.

Congressional Review Act and Administrative Procedure Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2). In addition, pursuant to 5 U.S.C. 808(2), USDA has for good cause determined that the provisions of this interim final rule shall take effect immediately. A statutory requirement at 42 U.S.C. 1762(a) establishes a new program and specifies that it must begin in Summer 2024. Statutory requirements established at 42 U.S.C. 1761(a)(13)(F) and 42 U.S.C. 1762(f) further specify that the promulgation of regulations (to include interim final regulations) must occur not later than December 29, 2023. In accord with congressional direction to issue these provisions through interim final regulations, USDA finds that notice and public procedure thereon are unnecessary and that, for good cause, this rule will take effect immediately under 5 U.S.C. 808(2).

Furthermore, because this rule does not compel immediate action but rather provides the certainty that program stakeholders need to timely implement these regulatory provisions in support of Summer 2024 program operations and provide nutritious meals to children when school is not in session, all of which is consistent with congressional direction, there is no need for affected parties to have lead time to adjust their behavior before this rule takes effect. For these reasons USDA finds good cause for this rule to take effect immediately under 5 U.S.C. 553(d)(3).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, USDA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of $177 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *https://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $177 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under Number 10.559. The Summer Electronic Benefit Transfer Program for Children is listed in the Catalog of Federal Domestic Assistance under Number 10.646. The National School Lunch Program (which includes the Seamless Summer Option) is listed in the Catalog of Federal Domestic Assistance under Number 10.555. They are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

USDA has determined that this rule has Federalism implications.

1. Prior Consultation with State and Local Agencies: FNS has gathered extensive input from national, State, and local community partners through a variety of public engagement activities. These include, but are not limited to, webinars, over 40 listening sessions with a diverse array of program stakeholders, and town hall style meetings. These activities have helped FNS monitor program operations, identify best practices, and take into consideration requests from States and local program operators. In addition, since Child Nutrition Programs are State administered, federally-funded programs, and FNS Regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding program implementation and performance.

2. Nature of Concerns and the Need to Issue this Rulemaking: Publication of this interim final rule is required under the provisions of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). Program stakeholders expressed concerns related to the length of the implementation timeframe in advance of summer 2023 and 2024 operations, possible start-up and implementation costs, as well as the need for additional guidance and technical assistance from FNS to assist with implementation activities.

3. Extent to Which We Meet These Concerns: FNS has made every effort to address these concerns, balancing the goal of meeting statutory requirements established around the publication of this interim final rule against the need to minimize administrative burden and provide necessary implementation support. This final rule takes into account and is responsive, where feasible, to public input received during the stakeholder consultation process to ensure the provisions of this interim final rule are implemented efficiently and in a manner that is least burdensome. In addition, FNS will solicit robust feedback through public comment rulemaking with the publication of this interim final rule, and will assess and respond to such public comments when promulgating a final rule.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule is not intended to have preemptive

effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

Civil Rights Impact Analysis

USDA 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 (including gender identity and sexual orientation) or disability.

USDA believes that this rule will impact State agencies and local Program operators by increasing summer nutrition assistance for children between the introduction of both non-congregate meal service for rural areas and the establishment of the newly authorized Summer EBT Program. State agencies and Program operators will also be impacted by increased emphasis on accountability and strengthening monitoring efforts. However, mitigation strategies such as providing ample technical assistance and training to State agencies and Program operators will assist them with complying with the revised and newly established program requirements while also alleviating impacts that may result from the implementation of this rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. What follows is a summary of Tribal implications that are present and consultation/coordination taken to date:

This rule has potential Tribal implications. FNS provided an opportunity for consultation on this issue on May 23, 2023. During the consultation, participating Tribal representatives expressed enthusiasm for the permanent availability of rural non-congregate meal service during the summer. Some concerns raised by attendees included operating under State-wide limitations on meal service options (one respondent specifically highlighted limitations on multi-day meal distribution), the inability to serve members of their Tribe that live outside their service area, and concern about the rural definition. In response to these issues, this interim final rule only permits State agencies to limit multi-meal issuance on a case-by-case basis for an individual sponsor, based on specific concerns regarding a sponsor's ability to ensure Program integrity, food safety, and meal quality. In addition, this interim final rule expands the previously established definition of rural in response to Tribal and other stakeholder concerns.

In regard to Summer EBT, participating Tribal representatives also indicated excitement and interest in administering this program in the future, noting the significant potential health benefits for participants. However, concerns were raised regarding: the 50% administrative funding match requirement; the need to develop an MIS system to support program administration; the timeline to stand up a new program; ensuring ITOs are able to serve children in their jurisdictions; accessing data on children eligible for free and reduced-price school meals; and empowering Tribes to determine what foods may be purchased with Summer EBT benefits. In response to these concerns, the interim final rule clearly specifies the types of cash and in-kind contributions that ITO Summer EBT agencies may use to pay their 50% share of administrative funding, consistent with Federal administrative requirements. To address concerns about the timeline for developing a new program, the IFR will allow ITO Summer EBT agencies to receive administrative funding for a ''planning year'' if needed in 2024, in anticipation of launching their program in 2025. The IFR will also provide ITO Summer EBT agencies with priority consideration to serve eligible children in their service areas while also allowing households of eligible children the option to participate in a State-administered Summer EBT Program. This approach ensures that ITO-administered Summer EBT Programs are the default choice for households in their communities, rather than automatically enrolling these children in the State-administered Summer EBT Program through streamlined certification. With regard to accessing student data, the interim final rule requires that an ITO and a State Summer EBT agency serving proximate geographic areas must ensure the coordination of Summer EBT program services, including the timely transfer of student eligibility information from the State Summer EBT agency to the ITO Summer EBT agency, as applicable.

Finally, the interim final rule provides significant flexibility for ITO Summer EBT agencies to select which foods may be purchased through their Summer EBT Programs. As described in the rule, each ITO Summer EBT agency will propose its benefit delivery model [*i.e.,* a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model] and will provide the list of supplemental foods which participants can purchase upon enrollment in the Summer EBT Program.

If further consultation on the provisions of this final rule is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that provides State agencies operating the Summer Food Service Program (SFSP) the option to provide non-congregate meal service in rural areas with no congregate meal service and establishes a permanent summer electronic benefits transfer for children program (Summer EBT). As a result, the changes to SFSP meal delivery would provide flexibilities to program operators, including home delivery and parent pick-up meal service options, that would increase opportunities to rural children and families to benefit from SFSP. Likewise, the Summer EBT Program will ensure continued access to food when school is not in session for the summer.

In accordance with the Paperwork Reduction Act of 1995, this interim final rule revises existing information collection requirements and contains new information collection requirements, which are subject to review and approval by OMB. The existing requirements are currently approved under OMB Control Number 0584–0280 7 CFR part 225 Summer Food Service Program, expiration date September 30, 2025. This interim final rule also introduces new information collection requirements into OMB Control Number 0584–0280. Furthermore, the interim final rule will add additional new information

collection requirements that extend the non-congregate meal service option to SFAs utilizing the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP). Existing requirements for the SSO are currently approved under OMB Control Number 0584–0006, *7 CFR part 210 National School Lunch Program,* expiration date September 30, 2026. This interim final rule adds new information requirements and a new respondent group into OMB Control Number 0584–0006. In addition, this interim final rule is introducing new information collection requirements associated with the Summer EBT Program. This rulemaking revises existing and sets out new reporting and public disclosure requirements for State agencies, local sponsoring organizations, and non-profit private institutions and camps that administer the Summer Food Service Program (SFSP), as well as households that participate in the Program. This interim final rule also sets out new reporting, recordkeeping, and public disclosure requirements for Summer EBT agencies, Summer EBT Authorized Retailers, and households that will administer and participate in the Summer EBT Program.

FNS is submitting for public comment the revisions to OMB Control Number 0584–0280, *7 CFR part 225, Summer Food Service Program,* that will result from the adoption of this interim final rule. FNS is also submitting for public comment the revisions to OMB Control Number 0584–0006, *7 CFR part 210 National School Lunch Program,* that will result from the adoption of this interim final rule. In addition, FNS is requesting an OMB control number for a new information collection to contain the new reporting, recordkeeping, and public disclosure information collection requirements for the Summer EBT Program in 7 CFR part 292 that will result from this rulemaking and is also seeking public comment on this collection. Since this rule impacts three separate information collections, three separate PRA sections have been included to capture the burden impact that this interim final rule is estimated to have on these collections. The establishment of the information collection requirements and their associated burden are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection request is approved, the Department will publish a separate notice in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this interim final rule must be received by February 27, 2024.

Comments may be sent to: J. Kevin Maskornick, Community Meals Policy Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR part 210, National School Lunch Program.

Form Number: None.

OMB Control Number: 0584–0006.

Expiration Date: 09/30/2026.

Type of Request: Revision.

Abstract: This is a revision adding new information collection requirements to the existing information collection approved under OMB Control Number 0584–0006, as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting requirements for State agencies, school food authorities, and households that are being impacted by this rule.

The interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that establish rural non-congregate service options in the Seamless Summer Option (SSO) of the National School Lunch Program (NSLP). In current regulations, there is not an option for rural schools to provide non-congregate meal service. The interim final rule allows schools, in an area designated as rural, to have the option to enroll as non-congregate schools for the summer operating period.

This interim final rule will amend regulations 7 CFR 210.18(e) and 210.34(a) to extend the non-congregate service option to SSO and require that State agencies conduct at least two site reviews of a school food authority (SFA) that chooses to operate non-congregate meal service through SSO.

Reporting

State Agencies and School Food Authorities

The changes in this interim rule will add new reporting requirements to those that are currently approved under OMB Control Number 0584–0006 for State agencies and School Food Authorities (SFAs).

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 210.18(e)(3)(ii) that the State agency must review the Seamless Summer Option (SSO), if the school food authority (SFA) operates congregate and non-congregate meal service, at a minimum of two sites, one congregate and one non-congregate. USDA estimates that the 56 State agencies will review 338 schools that operate non-congregate meal service through SSO and that it takes approximately 2 hours to complete this reporting requirement for each record, which is estimated to add a total of 37,895 annual burden hours and 18,947 responses to the inventory.

USDA estimates that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA operating the SSO in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225 of this chapter. USDA estimates that the 1,997 school food authorities each will approve 3,111 meals consistent with non-congregate meal service during the summer operational period and that it takes approximately 5 minutes (0.0835 hours) to complete this requirement, which is estimated to add a total of 518,698 annual burden hours and 6,211,948 responses into OMB's information collection inventory. Of the 6,211,948 meals being served, USDA estimates that 5% of non-congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that this requirement will also have $1,537,457.13 (6,211,948 meals * .05 * $4.95) in mailing costs.

USDA expects that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA must comply with the non-congregate meals service provisions set forth at § 225.16(b)(5)(i) to obtain prior

parental consent, if meals are to be delivered to a child's home. USDA expects that the 1,997 school food authorities will obtain 3 adult consent forms annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add a total of 5,647 annual burden hours and 5,647 responses into OMB's information collection inventory.

USDA estimates that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA must comply with the non-congregate meals service provisions set forth at § 225.16(b)(5)(iv) to claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA estimates that the 1,997 school food authorities will report reimbursement claims for 55 days during the summer operating period annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add a total of 109,835 annual burden hours and 109,835 responses into OMB's information collection inventory.

USDA expects that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA may use the non-congregate meal service options contained in § 225.16(i). SFAs electing to operate non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA expects that the 1,997 school food authorities will have a system in place to ensure that the proper number of meals are distributed to each eligible child annually and that it takes approximately 5 hours to complete this requirement, which adds a total of 9,985 annual burden hours and 1,997 responses into OMB's information collection inventory.

USDA estimates that 1,997 school food authorities will be required to fulfill the requirement at 7 CFR 210.34(a) that an SFA may use the non-congregate meal service options contained in § 225.16(i) of this chapter. USDA estimates that the 1,997 school food authorities will have procedures in place to ensure that bulk meal components meet the requirements annually and that it takes approximately 2 hours to complete this requirement, which adds a total of 3,994 annual burden hours and 1,997 responses into OMB's information collection inventory.

Households

The changes to be implemented in this rule will add households, and reporting requirements for those households, to the types of respondents and information collection requirements that are currently approved under OMB Control Number 0584–0006. Currently, households are not part of the respondents currently covered under this collection.

USDA estimates that 5,647 households will be required to fulfill the requirement at 7 CFR 210.34(a) that households provide written consent to participate in the Program at a rural site that utilizes the home delivery option. USDA estimates that 5,647 households will submit a parental consent form annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add a total of 1,412 annual burden hours, 5,647 responses, and 5,647 respondents into OMB's information collection inventory.

USDA expects that 5,647 households will be required to fulfill the requirement at 7 CFR 210.34(a) that households travel to the parent or guardian pick-up site to take meals home to their children. USDA expects that the 5,647 households will travel to the pick-up site once a week for a total of 11 weeks during the summer operational period annually, and that it takes approximately 2 hours to complete this requirement, which is estimated to add a total of 124,239 annual burden hours, 62,119 responses, and 5,647 respondents into OMB's information collection inventory.

As a result of this interim final rule, USDA estimates that the burden for this existing information collection will increase to a total of 127,229 respondents, 54,050,134 responses, and 10,620,405 burden hours, which is an increase of 13,347 respondents, 6,418,138 responses, 811,704 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection request (ICR) for the final rule is approved, USDA estimates that the burden for OMB Control Number 0584–0006 will increase by 6,418,138 responses, 811,704 burden hours, 11,294 respondents, and $1,537,457.13 in total costs.

For NSLP, USDA estimates a cost of $769.88 per school food authority in mailing costs to provide home delivered meals to households in areas designated as rural due to this interim final rule. Therefore, as a result of what's outlined in this interim final rule, USDA estimates that this collection is expected to have $1,537,457.13 in costs related to the provision of home delivered meals that will be added to the currently approved burden for NSLP under OMB Control Number 0584–0006.

Reporting

Respondents (Affected Public): Households and State, local, and Tribal government. The respondent groups identified include households, school food authorities, and State agencies.

Estimated Number of Respondents: 13,347 respondents.

Estimated Number of Responses per Respondent: 481 responses.

Estimated Total Annual Responses: 6,418,138 responses.

Estimated Time per Response: 0.1 hours.

Estimated Total Annual Burden on Respondents: 811,704 hours.

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Reporting										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment**	**Hours Due to Program Change Due to Authoring Statute**	**Total Difference in Hours**
State Agencies										
SA must review the Seamless Summer Option (SSO), if the SFA operates congregate and non-congregate meal service, a minimum of two sites, one congregate and one non-congregate site.	210.18(e)(3)(ii)	56	338	18,947	2	37,895	0	0	37,895	37,895
State Agencies Total		56	338	18,947	2	37,895	0	0	37,895	37,895
School Food Authorities/Local Education Agencies										
SFA operating the SSO in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225.	210.34(a)	1,997	3,111	6,211,948	0.08	518,698	0	0	12,875,555	12,875,555
SFAs must comply with the non-congregate meals service provisions set forth at §225.16(b)(5)(i) to obtain prior parental consent, if meals are to be delivered to a child's home.	210.34(a)	1,997	3	5,647	1	5,647	0	0	5,647	5,647

SFAs must comply with the non-congregate meals service provisions set forth at §225.16(b)(5)(iv) to claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in §225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.	210.34(a)	1,997	55	109,835	1	109,835	0	0	109,835	109,835
SFAs may use the non-congregate meal service options contained in §225.16(i) of this chapter. SFAs electing to operate non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child.	210.34(a)	1,997	1	1,997	5	9,985	0	0	9,985	9,985
SFAs may use the non-congregate meal service options contained in §225.16(i). SFAs electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of §225.16; all food items that contribute to a reimbursable meal are clearly identifiable; menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal; food preparation, such as heating or warming, is minimal; and the maximum number of reimbursable meals provided to a child does	210.34(a)	1,997	1	1,997	2	3,994	0	0	3,994	3,994

not exceed the number of meals that could be provided over a 5-calendar day period.										
School Food Authorities/Local Education Agencies Total		1,997	3,170	6,331,424	0.1	648,159	0	0	648,159	648,159
Households										
Households provide written consent to participate in the Program at a rural site that utilizes the home delivery option	210.34(a)	5,647	1	5,647	0.25	1,412	0	0	1,412	1,412
Households travel to the parent or guardian pick-up site to take meals home to their children.	210.34(a)	5,647	11	62,119	2	124,239	0	0	124,239	124,239
Households Total		11,294	6	67,767	1.85	125,641	0	0	125,651	125,651
Total Reporting Burden		13,347	481	6,418,138	0.13	811,704	0	0	811,704	811,704

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SUMMARY OF BURDEN
[OMB #0584–0006]

Total No. Respondents	127,229
Average No. Responses per Respondent	425
Total Annual Responses	54,050,134
Average Hours per Response	0.19
Total Burden Hours	10,620,405
Current OMB Approved Burden Hours	9,808,701
Adjustments	0
Program Changes	811,704
Total Difference in Burden	811,704

Title: 7 CFR part 225, Summer Food Service Program.

Form Number: FNS–905, approved in OMB Control # 0584–0649, expiration date, December 31st, 2025.

OMB Control Number: 0584–0280.

Expiration Date: 09/30/2025.

Type of Request: Revision.

Abstract: This is a revision which introduces new information collection requirements and revises existing information collection requirements into the information collection currently approved under OMB Control Number 0584–0280, as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting and public disclosure requirements for the State/local/Tribal agencies, non-profit institutions, camps, and participating households that are being impacted by this rule.

The interim final rule will codify provisions of the Consolidated appropriations Act of 2023 that establish rural non-congregate meal service options in SFSP. In current regulations, there is not an option for rural sites to provide non-congregate meal service. The interim final rule allows sites, in an area designated as rural, to have the option to enroll as non-congregate sites for the summer operating period.

Currently, the regulations define ''rural'' as any areas in a county which is not a part of a Metropolitan Statistical Area or any ''pocket'' within a Metropolitan Statistical Area which is determined to be geographically isolated from urban areas. The interim final rule will expand the ''rural'' definition to also include any census tract classified as a non-metropolitan area based on Rural-Urban Commuting Area codes, areas of a Metropolitan Statistical Area which is not part of a Census Bureau-defined urban area, and areas of a State which are not part of an urban areas as determined by the Secretary. These revisions will expand access to SFSP by increasing the defined total rural service area. This will provide more program operators with an additional option for offering no-cost meals to children in rural areas.

This interim final rule will amend 7 CFR 225.16(b)(5) and (i) to define non-congregate meal service and the options available under the new meal service provisions. The revisions will establish the sponsors eligible for the new meal service options and the requirements for rural non-congregate participation.

Reporting

State/Local/Tribal Governments

The changes in this rule will introduce new reporting requirements and impact existing ones in the information collection currently approved under OMB Control Number 0584–0280 for State/local/Tribal governments.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.3(e)(1) that State agencies must establish, and update annually as needed, a coordinated services plan to coordinate the statewide availability of services offered through the Summer Food Service Program described in this part and the Summer EBT program established in 7 CFR part 292. USDA estimates that the 53 State agencies will be required to submit a coordinated services plan annually and that it takes approximately 1 hour to complete this reporting requirement for the plans. This new requirement will add 53 hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfil the new requirement at 7 CFR 225.4(d)(7) that State agencies must develop a plan for ensuring compliance with the food service management company procurement requirements set forth at § 225.6(l). USDA estimates that the 53 State agencies will be required to develop a compliance plan annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(8) that State agencies must provide an estimate of the State's need for monies available to pay for the cost of conducting health inspections and meal quality tests. USDA estimates that the 53 State agencies will be required to conduct a budget estimate for conducting health and meal quality inspections annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(9) that State agencies must include in the Program Management Administration Plan (MAP) a plan to provide a reasonable opportunity for children to access meals across all areas of the State. USDA estimates that the 53 State agencies will be required to include a plan to provide a reasonable opportunity for children to access meals across all areas of the State as a part of their MAP annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.4(d)(10) that State agencies must include in the Program Management Administration Plan (MAP) a plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State's plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service. USDA expects that the 53 State agencies will be required to submit the Program delivery plan annually as a part of their MAP and that it takes approximately 5 hours to complete this requirement, which is estimated to add a total of 265 annual burden hours and 53 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(a)(2) that State agencies must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals in those areas. USDA expects that 53 State agencies will be required to identify rural areas within their State annually and that it will take approximately 5 hours to complete this rural identification, which is estimated to add 265 hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(b)(6) that State agencies may approve exceptions for any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day, if the applicant demonstrates it has the capability of managing a program larger than these limits, and the SA has the capacity to conduct reviews of at least 10 percent of the sponsor's sites, as described in § 225.7(e)(4)(v). USDA estimates that the 53 State agencies will

each approve exceptions for at least 1 sponsor annually for a total of 76 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 76 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(c)(2) that State agencies must review applications submitted by new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems, for the provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA expects that the 53 State agencies will each review 20 applications annually for a total of 1,066 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 1,066 annual burden hours and responses to the collection.

USDA estimates that 640 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(c)(2)(ix) that new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that 640 local government sponsors will each provide information on their procedures to document meals annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 640 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that State agencies must review applications submitted by experienced sponsors and experienced sites and review provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA expects that the 53 State agencies will review provided information from 84 sponsors for a total of 4,458 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 4,458 annual burden hours and responses to the collection.

USDA estimates that 2,675 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that experienced sponsors and experienced sites must provide information on the procedures that document that meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is elected to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that 2,675 local government sponsors will be required to provide information annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,675 annual burden hours and responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(f)(1)(iii) that sponsors must submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application. USDA expects that the 567 local government sponsors will need to submit the policy statement annually with its application and that it takes approximately 1 hour to complete the requirement, which is estimated to add 567 total annual burden hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that State agencies must review the site information sheet submitted by sponsors, for new sites where non-congregate meal service is proposed for the first time. USDA estimates that the 53 State agencies will review at least 1 site information sheet annually for a total of 53 responses and that it will take approximately 1 hour to complete the requirement, which is estimated to add 53 annual burden hours and responses to the collection.

USDA expects that 38 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that sponsors must submit documentation, for new sites where non-congregate meals service is proposed for the first time, once every five years, or earlier if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA expects that the 38 local government sponsors will submit documentation once every five years for a total 8 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 8 annual burden hours and responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(g)(2) that State agencies must review the site information sheet submitted by sponsors, for experienced sites where non-congregate meal service is proposed for the first time. USDA estimates that the 53 State agencies will review 3 site information sheets annually for a total of 177 annual responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 177 annual burden hours and responses to the collection.

USDA expects that 529 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(g)(2) that sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA expects that the 529 local government sponsors will submit documentation once every five years for a total of 106 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 106 annual burden hours and responses to the collection.

USDA expects that 53 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.6(h)(3) and (4) that State agencies must ensure that sites applying for non-congregate meal service, or sites applying for both congregate and non-congregate meal service, meet the requirements for non-congregate meal service. USDA estimates that 53 State agencies will submit 18 responses annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 946 hours and responses to the collection.

USDA estimates that 53 local government sponsors will be required to fulfill the requirement at 7 CFR 225.7(d) that State agencies must review sponsors and sites to ensure compliance with Program regulations, including all applicant sponsors that did not participate in the prior year, all applicant sponsors that had operational problems noted in the prior year, and all

sites that the State agency has determined need a pre-approval visit, including sites did not participate in the prior year or sites that are new to non-congregate meal service. USDA estimates that 53 local government agencies will submit 485 responses annually and that it takes approximately 2 hours to complete this requirement for each record. The interim final rule is increasing the number of estimated sites that must respond to this requirement, which in turn increases the responses for this collection by 946 responses, from 24,764 to 25,710 responses. This results in an increase in the burden hours for this requirement by 49,364 hours, from 2,055 to 51,419 hours per year.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(d)(2) that State agencies may conduct pre-approval visits of a CACFP institution if it was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review. USDA expects that the 53 State agencies will review 64 CACFP institutions annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 6,750 annual burden hours and 3,375 responses into OMB's information collection inventory.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(d)(4) that State agencies must establish a process to determine which sites need a pre-approval visit, including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service and existing sites that exhibited operational problems in the prior year. USDA expects that 53 State agencies will establish a process annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 265 hours and 53 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(i) that State agencies must conduct a review of every new sponsor at least once during the first year of operation. USDA estimates that the 53 State agencies will conduct a review of 7 new sponsors annually for a total of 370 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 740 annual burden hours and 370 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(ii) that State agencies must annually review every sponsor that experienced significant operational problems in the prior year. USDA expects that the 53 State agencies will conduct a review of 3 sponsors with significant operation problems annually for a total of 159 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 318 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(iii) that State agencies must review each sponsor at least once every three years. USDA estimates that the 53 State agencies will review at least 35 sponsors annually for a total of 1,841 responses and that it will take approximately 2 hours to complete the requirement, which is estimated to add 3,683 annual burden hours and 1,841 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.7(e)(4)(iv) that State agencies may review sponsors that require additional technical assistance more frequently at their own discretion. USDA expects that the 53 State agencies will review 3 sponsors annually for a total of 159 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 318 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirements at 7 CFR 225.7(j) that State agencies must develop and provide monitor review forms to all approved sponsors. USDA estimates that the 53 State agencies will each develop a monitor review form annually and that it takes approximately 5 hours to complete the requirement, which is estimated to add 265 annual burden hours and 53 responses to the collection.

USDA expects that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.7(j) that sponsors must complete provided monitor review forms and include the required information. USDA expects that the 3,314 local government sponsors will complete a monitor review form annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 3,314 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.8(e) that State agencies, by May 1 of each fiscal year, submit to FNS a list of open site locations and their operational details via the Summer Meal Site Locator form (FNS–905) and update weekly as needed, with a minimum of 3 updates during the summer operational period. USDA expects that 53 State agencies will submit 3 Summer Meal Site Locator forms annually for a total of 159 responses and that it takes approximately 7.5 minutes (0.125 hours) to complete this requirement. The reporting burden for the FNS–905 is already accounted for in a separate information collection for OMB Control Number 0584–0649, Summer Food Sites Locations for State Agencies. This requirement is currently voluntary but the interim final rule changes it to a mandatory requirement for the participating State agencies. Therefore, USDA estimates that an additional 20 annual burden hours and 159 responses beyond what is currently approved for this requirement will be needed due to this interim final rule. To account for this burden, USDA is adding this requirement into this collection and estimates that it will add 20 burden hours and 159 responses into the collection. USDA intends to incorporate the burden associated with the requirement at 7 CFR 225.8(e) into the information collection for OMB Control Number 0584–0649, at a later date.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.8(e) that State agencies will update Information Systems (IS) to facilitate the submission of FNS–905 forms to FNS. USDA estimates that the 53 State agencies will each need to update their Information Systems to support the submission of FNS–905 forms to FNS and that it will take approximately 10 hours to complete the requirement. Furthermore, USDA estimates that each of the 53 State agencies incur a total of $14,542.96 in start-up costs to complete the requirement. USDA estimates that this requirement will add 530 annual burden hours, 53 responses, and $14,542.96 in costs to the collection.

USDA estimates that 28 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that sponsors that operate non-congregate meal service and deliver meals directly to children's homes obtain written parental participation consent. USDA estimates that 28 local government agencies will submit 226 responses annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 1,603 hours and 6,410 responses to the collection.

USDA expects that 567 local government sponsors will be required to

fulfill the new requirement at 7 CFR 225.14(d)(7) that sponsors that operate conditional non-congregate sites must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement. USDA expects that 567 local government agencies will submit a certification annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 567 hours and responses will be added to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.15(d)(1) that SAs must develop training for administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor. USDA estimates that 53 State agencies will need to develop training for SFSP annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 530 annual burden hours and 53 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor. USDA estimates that the 3,314 local government sponsors will each conduct a training session for its administrative and site personnel annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 16,570 annual burden hours and 3,314 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors. USDA estimates that the 3,314 local government sponsors will each submit documentation annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 3,314 annual burden hours and responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.15(d)(2) that sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, sites that experienced operational problems the previous year, and sites that have experienced significant staff turnover from the prior year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children. USDA estimates that 3,314 local government agencies will conduct 9 pre-operational visits annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 60,787 hours and 30,393 responses to the collection.

USDA estimates that 3,314 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(3) that sponsors must visit each of their sites at least once during the first week of operation under the Program. USDA estimates that the 3,314 local government sponsors will conduct 9 site visits annually for a total of 30,393 responses and that it takes approximately 30 minutes (0.5 hours) to complete the requirement for a total of 15,197 hours. This reporting requirement is currently approved in OMB Control Number 0584–0280, *7 CFR part 225, Summer Food Service Program,* at 7 CFR 225.15(d)(2), but the interim final rule moves the requirement to 7 CFR 225.15(d)(3). USDA also estimates that the number of responses will increase by 567, from 29,826 to 30,393 responses, and that the number of annual burden hours will increase by 284, from 14,913 to 15,197 burden hours.

USDA expects that 3,314 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(4) that sponsors must review food service operations for all sites at least once during the first four weeks of Program operations, and thereafter maintain a reasonable level of monitoring. USDA expects that the 3,314 local government sponsors will review 9 food service operations annually for a total 30,393 responses and that it takes approximately 2 hours to complete the requirement for a total of 60,787 hours. This requirement is currently approved in OMB Control Number 0584–0280 at 7 CFR 225.15(d)(3), but the interim final rule moves this requirement to 7 CFR 225.15(d)(4). USDA also estimates that the number of responses will increase by 567, from 29,826 to 30,393 responses, and that the number of annual burden hours will increase by 1,135, from 59,652 to 60,787 burden hours.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(i) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home. USDA estimates that the 567 local government sponsors will obtain 11 parental consent forms annually for a total of 6,410 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 6,410 annual burden hours and responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 567 local government sponsors will serve 11,805 meals annually for a total of 6,698,902 responses and that it takes approximately 5 minutes (0.0835 hours) to complete the requirement, which is estimated to add 559,358 annual burden hours and 6,698,902 responses to the collection. Of the 6,698,902 meals being served, USDA estimates that 5% of non-congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that $1,657,978.25 (6,698,902 meals * .05 * $4.95) in mailing costs will be associated with this requirement.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meals service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 567 local government sponsors will serve 621 meals annually for a total of 352,574 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 705,148 annual burden hours and 352,574 responses to the collection.

USDA expects that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(iv) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic

conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA expects that the 567 local government sponsors will submit reimbursement claims for 55 days during the summer operating period annually, for a total of 31,211 responses and that it takes approximately 1 hour to complete the requirement, which is estimated to add 31,211 annual burden hours and responses to the collection.

USDA estimates that 567 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i) that sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA estimates that 567 local government agencies will need to ensure that a system is in place annually, for 567 responses, and that it takes approximately 5 hours to complete this requirement, which is estimated to add 2,837 hours and 567 responses to the collection.

USDA expects that 188 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i)(3) that sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of 7 CFR 225.16. USDA expects that the 188 local government sponsors will have procedures in place to ensure that bulk meal components meal service meets the requirements annually and that it takes approximately 2 hours to complete the requirement; which is estimated to add 3,376 annual burden hours and 188 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.3(b) to notify USDA if it intends to administer SFSP, by January 1 of each fiscal year, and submit an agreement that contains assurance that the State agency will comply with policy, instructions, guidance, and handbooks issued by FNS. USDA estimates that the 53 State agencies will be required to notify USDA annually and that it takes approximately 36 hours to complete this requirement. The interim final rule revises the submission date for the currently approved Program agreement from November 1 to January 1. As such, the 1,908 total annual burden hours and 56 responses will remain unchanged from the currently approved collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.8(d)(2) that State agencies within 5 days of approval of sponsors, must notify the appropriate FNSRO of sponsors, approved sites, locations, days of operation, estimated daily attendance, type of site approval, and other important details about each site. USDA expects that 53 State agencies will notify the appropriate FNSRO 104 times annually, once for each operating sponsor, and that it takes approximately 1 hour to complete this requirement. This is an existing requirement that is currently approved in OMB Control Number 0584–0280. The interim final rule adds type of site approval to the information collected about the site. This revision, however, is not expected to change the currently approved burden of 5,512 annual burden hours and responses.

Businesses (Non-Profit Institutions and Camps)

The changes in this rule will introduce new reporting requirements and impact existing ones in the information collection currently approved under OMB Control Number 0584–0280 for Non-profit Institutions and Camps.

USDA estimates that 426 non-profit institutions and camps be required to fulfill the new requirement at 7 CFR 225.6(c)(2)(ix) that new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2). USDA estimates that the 426 non-profit institutions and camps will provide information on their procedures annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 426 annual burden hours and responses to the collection.

USDA expects that 1,783 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(c)(3)(viii) that experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child. USDA expects that the 1,783 non-profit institutions and camps will provide information on their procedures annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 1,783 annual burden hours and responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(f)(1)(iii) that sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application. USDA estimates that the 378 non-profit institutions and camps will submit a policy statement annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 378 annual burden hours and responses to the collection.

USDA expects that 25 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(g)(1) that sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA expects that the 25 non-profit institutions and camps will submit documentation once every 5 years for a total of 5 responses annual and that it takes approximately 1 hour to complete the requirement, which is estimated to add 5 annual burden hours and responses to the collection.

USDA estimates that 353 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.6(g)(2) that sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. USDA estimates that the 353 non-profit institutions and camps will submit documentation once every five years for a total of 71 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 71 annual burden hours and responses to the collection.

USDA expects that 2,210 non-profit businesses and camps will be required to fulfill the new requirements at 7 CFR 225.7(j) that sponsors must complete provided monitor review forms and include the required information. USDA expects that the 2,210 non-profit institutions and camps will be required

to complete the monitor review form annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,210 annual burden hours and responses to the collection.

USDA expects that 19 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain participation consent from an adult household member. USDA expects that 19 non-profit institutions and camps will collect 226 consent forms annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 1,069 hours and 4,275 responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(7) that sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement. USDA estimates that 378 non-profit institutions and camps will certify that it will collect information annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 378 hours and responses to the collection.

USDA expects that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.14(d)(8) that sponsors that are not a school food authority (SFA) must enter into a written agreement or Memoranda of Understanding (MOU) with the State agency or SFA if it chooses to receive school data to determine children's Program eligibility, as required under § 225.15(k). USDA expects that 2,210 non-profit institutions and camps will enter an MOU annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 2,210 hours and responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must hold Program training sessions for its administrative and site personnel. USDA estimates that the 2,210 non-profit institutions and camps will hold a training session annually for administrative and site personnel and that it takes approximately 5 hours to complete the requirement; which is estimated to add 11,050 annual burden hours and 2,210 responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(d)(1) that sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors. USDA estimates that the 2,210 non-profit institutions and camps will provide documentation annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 2,210 annual burden hours and responses to the collection.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.15(d)(2) that sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children. USDA estimates that 2,210 non-profit institutions and camps will conduct 9 pre-operational visits annually and that it takes approximately 30 minutes (0.5 hours) to complete this requirement; which is estimated to add 10,134 hours and 20,268 responses to the collection.

USDA estimates that 2,210 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(3) that sponsors must visit each of their sites at least once during the first week of operation under the Program. USDA estimates that the 2,210 local government sponsors will conduct 9 site visits annually for a total of 20,268 responses and that it takes approximately 30 minutes (0.5 hours) to complete the requirement for a total of 10,134 hours. This requirement is currently approved in OMB Control Number 0584–0280, *7 CFR part 225, Summer Food Service Program,* at 7 CFR 225.15(d)(2), but the interim final rule moves the requirement to 7 CFR 225.15(d)(3). USDA also estimates that the number of responses will increase by 378, from 19,890 to 20,268 responses, and that the number of annual burden hours will increase by 189, from 9,945 to 10,134 hours.

USDA expects that 2,210 local government sponsors will be required to fulfill the requirement at 7 CFR 225.15(d)(4) that sponsors must review food service operations for all sites at least once during the first four weeks of Program operations, and thereafter maintain a reasonable level of monitoring. USDA expects that the 2,210 local government sponsors will review 9 food service operations annually for a total 20,268 responses and that it takes approximately 2 hours to complete this requirement for a total of 40,537 hours. This requirement is currently approved in OMB Control Number 0584–0280 at 7 CFR 225.15(d)(3), but the interim final rule moves it to 7 CFR 225.15(d)(4). USDA also estimates that the number of responses will increase by 378, from 19,890 to 20,268 responses, and that the number of annual burden hours will increase by 757, from 39,780 to 40,537 hours.

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.15(f) that sponsors may also use the household application procedures to identify eligible children in non-area eligible areas instead of entering into a written agreement or MOU with the local SFA. USDA estimates that the 2,210 non-profit institutions and camps will use household application procedures to identify 26 eligible children each for a total of 58,365 responses annually and that it takes approximately 30 minutes (0.5 hours) to complete the requirement, which is estimated to add 29,183 annual burden hours and 58,365 responses into the collection.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(i) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home. USDA expects that the 378 non-profit institutions and camps will obtain 11 parental consent forms for a total of 4,275 responses annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 4,275 annual burden hours and responses to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide parent or guardian pick-up of non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA estimates that the 378 non-profit institutions and camps will each serve 11,805 meals for a total of 4,467,283 responses annually and that it takes approximately 5 minutes (0.0835 hours) to complete the requirement, which is estimated to add 373,018 annual burden hours and 4,467,283 responses to the collection. Of the 4,467,283 meals being served, USDA estimates that 5% of non-

congregate meals will be served utilizing the home delivery meal service option. Estimates from the ongoing Meals to You (MTY) demonstration estimate that the mailing costs associated with home delivery is equal to the SFSP lunch meal reimbursement rate. As such, USDA estimates that $1,105,652.54 (4,467,2831,337,472 meals * .05 * $4.95) in mailing costs will also be added to this requirement.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(ii) that a sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meal service in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of 7 CFR 225.16. USDA expects that the 378 non-profit institutions and camps will each serve 621 meals for a total of 235,120 responses annually and that it takes approximately 2 hours to complete the requirement, which is estimated to add 470,240 annual burden hours and 235,120 to the collection.

USDA estimates that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(b)(5)(iv) that a sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed. USDA estimates that the 378 non-profit institutions and camps will each submit reimbursement claims for 55 days during the summer operational period annually and that it takes approximately 1 hour to complete the requirement, which is estimated to add 20,814 annual burden hours and responses to the collection.

USDA expects that 378 non-profit institutions and camps will be required to fulfill the new requirement at 7 CFR 225.16(i) that sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child. USDA expects that 378 non-profit institutions and camps will ensure that a system is in place annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 1,892 hours and 378 responses to the collection.

USDA estimates that 125 local government sponsors will be required to fulfill the new requirement at 7 CFR 225.16(i)(3) that sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of 7 CFR 225.16, USDA estimates that the 125 local government sponsors will have procedures in place to ensure that bulk meal components meal service meets the requirements annually and that it takes approximately 2 hours to complete the requirement, which is estimated to add 251 annual burden hours and 125 responses to the collection.

Households

The changes in this rule will add new reporting requirements to those currently approved under OMB Control Number 0584–0280 for Households.

USDA estimates that 10,685 households will be required to fulfill the new requirement at 7 CFR 225.14(d)(6) that households provide written consent to participate in the Program at a rural site that utilizes the home delivery option. USDA estimates that 10,685 households will have to provide their written consent to participate annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement, which is estimated to add 2,671 hours and 10,685 responses to the collection.

USDA expects that 10,685 households will be required to fulfill the new requirement at 7 CFR 225.16(i)(2) that households travel to the parent or guardian pick-up site to take meals home to their children. USDA expects that the 10,685 households will travel to the pick-up site 11 times annually for a total of 117,539 responses and that it takes approximately 2 hours to complete the requirement, which is estimated to add 235,078 annual burden hours and 117,539 responses to this collection.

Public Disclosure

State/Local/Tribal Governments

The changes in this rule will add a new public disclosure requirement to those currently approved under OMB Control Number 0584–0280 for State/Local/Tribal Governments.

USDA estimates 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.3(e)(4) that State agencies must make their service coordination plans available to the public through a website, or through similar means. USDA estimates that the 53 State agencies will have to make their State coordination plans publicly available annually and that it takes approximately 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 13 hours and 53 responses to the collection.

Businesses (Non-Profit Institutions and Camps)

The changes in this rule will add a new public disclosure requirement to those currently approved under OMB Control Number 0584–0280 for Businesses (Non-profit institutions and camps).

USDA estimates that 2,210 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.15(e) that each sponsor of sites that use free meal applications to determine individual eligibility must include certain information as a part of its notification to enrolled children. USDA estimates that the 2,210 non-profit institutions and camps will be required to provide the information as a part of its notification to 26 enrolled children annually for a total of 58,365 responses and that it takes approximately 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 14,591 annual burden hours and 58,365 responses the collection.

As a result of what's outlined in this rulemaking, USDA estimates that this information collection will have 63,942 respondents, 12,505,697 responses, and 3,120,966 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the ICR for the final rule is approved USDA estimates that the burden for OMB Control Number 0584–0280 will increase by 12,113,902 responses and 2,658,267 burden hours.

For SFSP, there is a wide variation in development and administration costs to implement information systems to accommodate the FNS–905 requirements. USDA estimates a cost of $14,542.96 per State agency to perform the necessary system upgrades for respondents of this interim rule ICR. Likewise, program operators will face increased costs to offer home delivered meals as a part of this interim final rule ICR. USDA estimates a cost of $2,924.12 for each local government sponsor and a cost of $2,925.01 for each non-profit institution and camp to cover mailing costs associated with providing home delivery. Therefore, as a result of the interim final rule, USDA estimates that this collection is expected to have $770,777 in system upgrade costs, $1,657,978.25 in local government sponsor mailing costs, and $1,105,652.54 in non-profit institution and camp mailing costs, which will add a total of $3,534,407.79 in combined

system upgrades and annual mailing costs to the currently approved burden for SFSP under OMB Control Number 0584–0280 to the currently approved burden for OMB Control Number 0584–0280.

Reporting

Respondents (Affected Public): Individual/households; businesses; and State, local, and Tribal government. The respondent groups identified include households, non-profit institutions and camps, and State/local/Tribal governments.

Estimated Number of Respondents: 26,948 respondents.

Estimated Number of Responses per Respondent: 454 responses.

Estimated Total Annual Responses: 12,238,098 responses.

Estimated Time per Response: 0.23 hours.

Estimated Total Annual Burden on Respondents: 2,770,008 hours.

Public Disclosure

Respondents (Affected Public): Businesses and State, local, and Tribal government. The respondent groups identified include State agencies and non-profit institutions and camps.

Estimated Number of Respondents: 2,263 respondents.

Estimated Number of Responses per Respondent: 26 responses.

Estimated Total Annual Responses: 58,418 responses.

Estimated Time per Response: 0.25 hours.

Estimated Total Annual Burden on Respondents: 14,605 hours.

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Reporting										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment**	**Hours Due to Program Change Due to Authorizing Statute**	**Total Difference in Hours**
State/Local Tribal Governments										
SAs must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the SFSP and the Summer EBT program.	225.3(e)(1)	53	1	53	1.00	53	0	0	53	53
SAs must develop a plan for ensuring compliance with the food service management company procurement requirements set forth at § 225.6(l).	225.4(d)(7)	53	1	53	5.00	265	0	0	265	265
SAs must provide an estimate of the State's need for monies available to pay for the cost of conducting health inspections and meal quality tests.	225.4(d)(8)	53	1	53	5.00	265	0	0	265	265
SAs must include in the Program Management Administration Plan a plan to provide a reasonable opportunity for children to access meals across all areas of the State.	225.4(d)(9)	53	1	53	5.00	265	0	0	265	265

SAs must include in the Program Management Administration Plan a plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State's plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service.	225.4(d)(10)	53	1	53	5.00	265	0	0	265	265
SAs must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals in those areas.	225.6(a)(2)	53	1	53	5.00	265	0	0	265	265
SAs may approve exceptions for any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day, if the applicant demonstrates it has the capability of managing a program larger than these limits, and the SA has the capacity to conduct reviews of at least 10 percent of the sponsor's sites, as described in § 225.7(e)(4)(v)	225.6(b)(6)	53	1	76	1.00	76	0	0	76	76

SAs must review applications submitted by new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems, for the provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2)	225.6(c)(2)	53	20	1,066	1.00	1,066	0	0	1,066	1,066
New sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(2)(ix)	640	1	640	1.00	640	0	0	640	640
SAs must review applications submitted by experienced sponsors and experienced sites and review provided information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that	225.6(c)(3)(viii)	53	84	4,458	1.00	4,458	0	0	4,458	4,458

duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).										
Experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(3)(viii)	2,675	1	2,675	1.00	2,675	0	0	2,675	2,675
Sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application.	225.6(f)(1)(iii)	567	1	567	1.00	567	0	0	567	567
SAs must review the site information sheet submitted by sponsors, for new sites where non-congregate meal service is proposed for the first time.	225.6(g)(1)	53	1	53	1.00	53	0	0	53	53

Sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(1)	38	0.20	8	1.00	8	0	0	8	8
SAs must review the site information sheet submitted by sponsors, for experienced sites where non-congregate meal service is proposed for the first time.	225.6(g)(2)	53	3	177	1.00	177	0	0	177	177

Sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(2)	529	0.20	106	1.00	106	0	0	106	106
SAs must ensure that sites applying for non-congregate meal service, or sites applying for both congregate and non-congregate meal service, meet the requirements for non-congregate meal service.	225.6(h)(3) & 225.6(h)(4)	53	18	946	1.00	946	0	0	946	946

The State agency must review sponsors and sites to ensure compliance with Program regulations, including all applicant sponsors that did not participate in the program the prior year, all applicant sponsors that had operational problems noted in the prior year, and all sites that the State agency has determined need a pre-approval visit, such as sites that did not participate in the prior year or sites new to non-congregate meal service.	225.7(d)	53	485	25,710	2.00	51,419	2,055	0	49,364	49,364
SAs may conduct pre-approval visits of a CACFP institution if it was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review.	225.7(d)(2)	53	64	3,375	2.00	6,750	0	0	6,750	6,750
SAs must establish a process to determine which sites need a pre-approval visit, including sites that did not participate in the Program in the prior year, existing sites that are new to non-congregate meal service, and existing sites that exhibited operational problems in the prior year.	225.7(d)(4)	53	1	53	5.00	265	0	0	265	265
SAs must conduct a review of every new sponsor at least once during the first year of operation.	225.7(e)(4)(i)	53	7	370	2.00	740	0	0	740	740
SAs must annually review every sponsor that experienced significant operational problems in the prior year.	225.7(e)(4)(ii)	53	3	159	2.00	318	0	0	318	318

SAs must review each sponsor at least once every three years.	225.7(e)(4)(iii)	53	35	1,841	2.00	3,683	0	0	3,683	3,683
SAs may review sponsors that require additional technical assistance more frequently at their own discretion.	225.7(e)(4)(iv)	53	3	159	2.00	318	0	0	318	318
SAs must develop and provide monitor review forms to all approved sponsors.	225.7(j)	53	1	53	5.00	265	0	0	265	265
Sponsors must complete provided monitor review forms and include the required information.	225.7(j)	3,314	1	3,314	1.00	3,314	0	0	3,314	3,314
SAs, by May 1 of each year, must submit to FNS a list of open site locations and their operational details via the Summer Meal Site Locator form and update weekly, with a minimum of three updates during the summer operational period.	225.8(e)	53	3	159	0.13	20	0	0	20	20
SAs will update Information Systems to facilitate the submission of FNS-905 forms to FNS.	225.8(e)	53	1	53	10.00	530	0	0	530	530
Sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain parental participation consent.	225.14(d)(6)	28	226	6,410	0.25	1,603	0	0	1,603	1,603
Sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement.	225.14(d)(7)	567	1	567	1.00	567	0	0	567	567

SAs must develop training for sponsor administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the dutites of the monitor.	225.15(d)(1)	53	1	53	10.00	530	0	0	530	530
Sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregate meal services, meal pattern requirements, and the duties of the monitor.	225.15(d)(1)	3,314	1	3,314	5.00	16,570	0	0	16,570	16,570
Sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors.	225.15(d)(1)	3,314	1	3,314	1.00	3,314	0	0	3,314	3,314
Sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children.	225.15(d)(2)	3,314	9	30,393	2.00	60,787	0	0	60,787	60,787

Sponsors must visit each of their sites at least once during the first week of operation under the Program.	225.15(d)(3)	3,314	9	30,393	0.50	15,197	14,913	0	284	284
Sponsors must review food service operations for all sites at least once during the first 4 weeks of Program operations, and thereafter maintain a reasonable level of monitoring.	225.15(d)(4)	3,314	9	30,393	2.00	60,787	59,652	0	1,135	1,135
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home.	225.16(b)(5)(i)	567	11	6,410	1.00	6,410	0	0	6,410	6,410
A sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	567	11,805	6,698,902	0.08	559,358	0	0	559,358	559,358
A sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	567	621	352,574	2.00	705,148	0	0	705,148	705,148
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meals service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other	225.16(b)(5)(iv)	567	55	31,211	1.00	31,211	0	0	31,211	31,211

sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.										
Sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child.	225.16(i)	567	1	567	5.00	2,837	0	0	2,837	2,837
Sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of § 225.16; all food items that contribute to a reimbursable meal are clearly identifiable; menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal; food preparation, such as heating or warming, is minimal; and the maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period.	225.16(i)(3)	188	1	188	2.00	376	0	0	376	376
State/Local Tribal Governments Subtotal		*3,367*	*2,151.2*	*7,246,552*	*0.21*	*1,549,991*	*76,620*	*0*	*1,473,371*	*1,473,371*
Businesses (Non-profit Institutions and Camps)										

New sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(2)(ix)	426	1	426	1.00	426	0	0	426	426
Experienced sponsors and experienced sites must provide information on the procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).	225.6(c)(3)(viii)	1,783	1	1,783	1.00	1,783	0	0	1,783	1,783
Sponsors submit the policy statement of all camps and conditional non-congregate sites that charge separately for meals that includes specific eligibility information and a copy of its hearing procedures with its application.	225.6(f)(1)(iii)	378	1	378	1.00	378	0	0	378	378

Sponsors must submit documentation, for new sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(1)	25	0.2	5	1.00	5	0	0	5	5

Sponsors must submit documentation, for experienced sites where non-congregate meal service operation is proposed for the first time, once every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation, on the site information sheet. As a part of the site information sheet, sponsors are required to demonstrate or describe an organized and supervised system for serving meals to children; arrangements for delivery and holding of meals and storing of leftovers for next day meal service to ensure food safety; arrangements for food service during periods of inclement weather; access to means of communication for making necessary adjustments for number of meals to be served at each site; whether the site is rural or non-rural; and whether the site's food service will be self-prepared or vended.	225.6(g)(2)	353	0.2	71	1.00	71	0	0	71	71
Sponsors must complete provided monitor review forms and include the required information.	225.7(j)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210
Sponsors that operate non-congregate meal service and deliver meals directly to children's homes must obtain participation consent from an adult household member.	225.14(d)(6)	19	226	4,275	0.25	1,069	0	0	1,069	1,069

Sponsors that operate a conditional non-congregate site must certify that it will collect information to determine children's Program eligibility to support its claims for reimbursement.	225.14(d)(7)	378	1	378	1.00	378	0	0	378	378
Sponsors that are not a SFA must enter into a written agreement or Memoranda of Understanding (MOU) with the State agency or SFA if it chooses to receive school data to determine children's Program eligibility, as required under §225.15(k).	225.14(d)(8)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210
Sponsors must hold Program training sessions for its administrative and site personnel, which must include: the purpose of the Program, site eligibility, recordkeeping, congregate and non-congregreate meal services, meal pattern requirements, and the duties of the monitor.	225.15(d)(1)	2,210	1	2,210	5.00	11,050	0	0	11,050	11,050
Sponsors must provide documentation that its administrative personnel have attended the State agency training provided to the sponsors.	225.15(d)(1)	2,210	1	2,210	1.00	2,210	0	0	2,210	2,210

Sponsors must conduct pre-operational visits for new sites, including existing sites that are new to non-congregate meal service, and sites that experienced operational problems the previous year before a site operates the Program to determine that the sites have the facilities and capability to provide and conduct the proposed meal service for the anticipated number of children.	225.15(d)(2)	2,210	9	20,268	0.50	10,134	0	0	10,134	10,134
Sponsors must visit each of their sites at least once during the first week of operation under the Program.	225.15(d)(3)	2,210	9	20,268	0.50	10,134	9,945	0	189	189
Sponsors must review food service operations for all sites at least once during the first 4 weeks of Program operations, and thereafter maintain a reasonable level of monitoring.	225.15(d)(4)	2,210	9	20,268	2.00	40,537	39,780	0	757	757
Sponsors may also use the household application procedures to identify eligible children in non-area eligible areas instead of entering into a written agreement or MOU with the local SFA.	225.15(f)	2,210	26	58,365	0.50	29,183	0	0	29,183	29,183
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must obtain prior parental consent, if meals are to be delivered to a child's home.	225.16(b)(5)(i)	378	11	4,275	1.00	4,275	0	0	4,275	4,275

A sponsor that is approved to provide parent or guardian pick-up non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	378	11,805	4,467,283	0.08	373,018	0	0	373,018	373,018
A sponsor that is approved to provide multi-day meal issuance or bulk meal component non-congregate meals in rural areas with no congregate meal service must serve meals as described in paragraph (b)(3) of § 225.16.	225.16(b)(5)(ii)	378	621	235,120	2.00	470,240	0	0	470,240	470,240
A sponsor that is approved to provide non-congregate meals in rural areas with no congregate meal service must claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.	225.16(b)(5)(iv)	378	55	20,814	1.00	20,814	0	0	20,814	20,814
Sponsors electing to operate multi-day meal issuance, parent or guardian pick-up, or bulk meal component non-congregate meal service must have a system in place to ensure that the proper number of meals are distributed to each eligible child.	225.16(i)	378	1	378	5.00	1,892	0	0	1,892	1,892

Sponsors electing to serve bulk meal components must ensure that required food components for each reimbursable meal are served, as described in paragraph (d) of § 225.16; all food items that contribute to a reimbursable meal are clearly identifiable; menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal; food preparation, such as heating or warming, is minimal; and the maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period.	225.16(i)(3)	125	1	125	2.00	251	0	0	251	251
Businesses (Non-profit Institutions and Camps) Subtotal		*2,210*	*2,200.60*	*4,863,322*	*0.20*	*982,268*	*49,725*	*0*	*932,543*	*932,543*
Households										
Households provide written consent to participate in the Program at a rural site that utilizes the home delivery option	225.14(d)(6)	10,685	1	10,685	0.25	2,671	0	0	2,671	2,671
Households travel to the parent or guardian pick-up site to take meals home to their children.	225.16(i)(2)	10,685	11	117,539	2.00	235,078	0	0	235,078	235,078
Households Subtotal		*21,371*	*6.000*	*128,224*	*1.854*	*237,749*	*0*	*0*	*237,749*	*237,749*
Reporting Total		**26,948**	**454.14**	**12,238,098**	**0.23**	**2,770,008**	**126,345**	**0**	**2,643,663**	**22,643,663**
Public Disclosure										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment due to Authorizing Statute**	**Hours Due to Program Change**	**Total Difference in Hours**
State/Local/Tribal Governments										

SAs must make their service coordination plans available to the public through a website, or through similar means.	225.3(e)(4)	53	1	53	0.25	13	0	0	13	13
State/Local Tribal Governments Subtotal		53	1.000	53	0.250	13	0	0	13	13
Businesses (Non-profit Institutions and Camps)										
Each sponsor of sites that use free meal applications to determine individual eligibility must include the Secretary's family-size and income standards for reduced price school meals, a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically eligible to receive free meal benefits at eligible program sites, and a statement that meals are available without regard to race, color, national origin, sex, age, or disability, as a part of its notification to enrolled children.	225.15(e)	2,210	26	58,365	0.25	14,591	0	0	14,591	14,591
Businesses (Non-profit Institutions and Camps) Subtotal		*2,210*	*26.410*	*58,365*	*0.250*	*14,591*	*0*	*0*	*14,591*	*14,591*
Public Disclosure Total		**2,263**	**25.814**	**58,418**	**0.250**	**14,605**	**0**	**0**	**14,605**	**14,605**
Total Burden		**26,948**	**456.31**	**12,296,516**	**0.226**	**2,784,612**	**126,345**	**0**	**2,658,267**	**2,658,267**

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SUMMARY OF BURDEN
[OMB #0584–0280]

Total No. Respondents	63,942
Average No. Responses per Respondent	196
Total Annual Responses	12,505,697
Average Hours per Response	0.25
Total Burden Hours	3,120,966
Current OMB Approved Burden Hours	462,699
Adjustments	0
Program Changes	2,658,267
Total Difference in Burden	2,658,267

Title: 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program.

Form Number: FNS–366(a), approved in OMB Control #0584–0594, expiration date, September 30th, 2026; FNS–388, approved in OMB Control #0584–0594, expiration date, September 30th, 2026; and SF–778, approved in OMB Control #0584–0594, expiration date, September 30th, 2026. Forms included to capture burden specific to this rule that is not captured in OMB Control Number 0584–0594.

OMB Control Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New.

Abstract: FNS is requesting a new OMB Control Number for the information collection requirements and associated burden for the Summer EBT program which is being implemented as a result of this interim final rule. Below is a summary of the changes in the rule and the accompanying reporting, recordkeeping, and public disclosure requirements that will impact the burden on Summer EBT Agencies (State agencies and Indian Tribal Organizations (ITOs)), the Commonwealth of Puerto Rico, local government agencies, Summer EBT authorized retailers (firms and retail food stores), and participating households.

The interim final rule will codify provisions of the Consolidated Appropriations Act of 2023 that establish a permanent, nationwide Summer EBT Program, beginning in 2024. The Summer EBT program will provide benefits on EBT cards for families to purchase food for their children, during the summer months, when school is not in session.

The interim final rule will create a new chapter in 7 CFR part 292 to establish the Summer EBT Program and the required procedures to fully implement the Program. This rulemaking will introduce new reporting, recordkeeping, and public disclosure requirements to ensure State agencies and Indian Tribal Organization (ITO) operations are compliant with the NSLA and the regulations. New requirements include State agency responsibilities, new eligibility and benefit issuance requirements, and the development of standards and monitoring requirements to ensure that eligible children receive the proper benefit and protect program integrity. The interim final rule will create new reporting and recordkeeping responsibilities that Summer EBT authorized retailers must comply with in order to redeem Summer EBT benefits spent at their locations. As a part of this rulemaking, some households will be required to submit an income eligibility, notify the appropriate Summer EBT agency for opting-out of Program participation or seeking an appeal of a Summer EBT decision, and respond to a Summer EBT agency's request for verification their Program eligibility to participate in the Program.

Reporting

Summer EBT Agencies (State Agencies, Indian Tribal Organizations, and the Commonwealth of Puerto Rico)

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for State/Local/Tribal governments.

USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(b)(1) that State agencies that have been approved to administer the Program must enter into a written agreement with FNS for the administration of the Program in the State (this is known as the Federal/State agreement). USDA estimates that the 55 State agencies will be required to enter into a Program agreement annually, and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses into the inventory.

USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(e) that if the State has designated partnering agencies to provide support services to the Program, State agencies designated as the Summer EBT Coordinating Agency in their State must enter into a written agreement with partnering Summer EBT agencies that defines the roles and responsibilities of each (known as an inter-agency agreement). USDA expects that 55 State agencies will be required to enter into an inter-agency agreement annually, and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses into the inventory.

USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(2) that the State agency may submit a request for a waiver under paragraph (f)(1) of 7 CFR 292.3. USDA estimates that the 55 State agencies will submit a request for a waiver annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses to the inventory.

USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(3) that State agencies may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. USDA expects that the 55 State agencies will submit a waiver request on behalf of 757 eligible service providers annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory.

USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4) that State agencies must review any waiver request submitted by an eligible service provider and promptly forward approved requests to the appropriate FNSRO. USDA estimates that the 55 State agencies will review 757 waiver requests annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory.

USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4)(v) that the State agency must notify the requesting eligible service provider that the request is denied and state the reason for denying the request in writing within 30 calendar days of the receipt of the request. USDA expects that the 55 State agencies will notify 757 eligible service providers annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 41,635 annual burden hours and responses to the inventory.

USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.3(h)(3) that Indian Tribal Organizations must provide compelling justification for the waiver request in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. USDA estimates that the 102 Indian Tribal

Organizations will provide justification for a waiver request annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 102 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that State and Indian Tribal Organization Summer EBT agencies must, by August 15th of each fiscal year, submit to the appropriate FNS Regional Office (FNSRO) of its intent to administer the Summer EBT Program. USDA expects that the 157 Summer EBT agencies will be required to submit its intent to administer the Program annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that, for 2024, State and Indian Tribal Organization Summer EBT agencies must submit to the FNSRO its intent to administer the Summer EBT Program by January 1, 2024. USDA estimates that the 157 Summer EBT agencies will be required to submit its intent to operate the Program annually and that it takes approximately 5 minutes (0,08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(a) that, for 2024, State and Indian Tribal Organization Summer EBT agencies must submit an interim Plan for Operations and Management that must include the programmatic information required in § 292.8(e) and (f). USDA expects that the 157 Summer EBT agencies will submit an interim Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(b)(1) that, no later than February 15th of each year, the State and Indian Tribal Organization Summer EBT agencies must submit to the FNSRO a final Plan for Operations and Management that addresses all the requirements of § 292.8(e) and (f), for the Summer EBT Program for that fiscal year if the State has elected to participate in the Program. USDA estimates that the 157 Summer EBT agencies must submit a final Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement; which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(d) that State and Indian Tribal Organization Summer EBT agencies may amend an interim or final Plan for Operations and Management to reflect changes and must submit the amendments to USDA for approval. USDA expects that the 157 Summer EBT agencies will submit an amendment annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 314 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e) that State and Indian Tribal Organization Summer EBT agencies must include their final Plan for Operation and Management, which includes all of the required agreements, plans, procedures, and other documentation. USDA estimates that the 157 Summer EBT agencies will include the required documents as a part of their final Plan for Operations and Management annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e)(3) that State and Indian Tribal Organization Summer EBT agencies must submit an administrative budget on behalf of the entire Program as part of the Plan for Operations and Management, using the FNS–366A Form. USDA expects that the 157 Summer EBT agencies will submit an FNS–366a form annually, and that it takes approximately 12 hours and 49 minutes (12.82 hours) to complete this requirement, which is estimated to add 2,012 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.8(e)(3) that State and Indian Tribal Organization Summer EBT agencies must submit an amended expenditure plan should administrative fund needs change. USDA estimates that the 157 Summer EBT agencies will submit amendments annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 314 annual burden hours and 157 responses to the inventory.

USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.8(f) that Indian Tribal Organization Summer EBT agencies must also include the required plans, descriptions, lists, and other documentation as part of their final Plan for Operations and Management. USDA estimates that the 102 Indian Tribal Organizations will submit the required information annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 408 annual burden hours and 102 responses to the inventory.

USDA expects that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.9(b) that State agencies and Indian Tribal Organizations serving the same geographic areas must enter into a written agreement to ensure the coordination of Summer EBT program services. USDA expects that the 55 State agencies will enter into approximately 1.85 agreements with an ITO annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 102 burden hours and responses to the inventory.

USDA estimates that 102 Indian Tribal Organizations will be required to fulfill the requirement at 7 CFR 292.9(b) that State agencies and Indian Tribal Organizations serving the same geographic areas must enter into a written agreement to ensure the coordination of Summer EBT program services. USDA estimates that the 102 Indian Tribal Organizations will enter into approximately 0.54 agreements with the State agency annually and that it takes approximately 1 hour to complete this requirement, which is estimated to 55 burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.10(a) that State and Indian Tribal Organization Summer EBT agencies must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer Food Service Program (SFSP) and Summer EBT Program. USDA expects that the 157 Summer EBT agencies will establish and update a coordinated services plan annually and that it takes approximately 5 hours to complete this requirement, which is estimated to add 785 burden hours and 157 responses to the inventory.

USDA estimates that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b) that

State Summer EBT agencies must acquire Information Systems (IS) equipment or services to be utilized in an EBT system and adhere to the ADP process. USDA estimates that the 55 State Summer EBT agencies will be required to acquire IS equipment or services annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 55 State Summer EBT agencies will face a total of $73,317,942 in start-up costs and $25,760,358 in ongoing operation and maintenance costs related to this requirement. USDA estimates that this will add 550 annual burden hours, 55 responses, and $99,078,300 in total costs to the inventory.

USDA expects that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b)(4)(i) that State Summer EBT agencies must submit a new Planning APD, Implementation APD, and Testing documents to FNS for approval of IS projects. USDA expects that the 55 State Summer EBT agencies will be required to submit a new Planning APD, Implementation APD, and Testing documents to FNS annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 550 annual burden hours and 55 responses to the inventory.

USDA estimates that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(b)(4)(ii) that State Summer EBT agencies must submit an Annual APD to FNS 60 days prior to the expiration of the Federal Financial Participation (FFP) approval for the initial implementation of Summer EBT and subsequent significant project changes. USDA estimates that the 55 State Summer EBT agencies will be required to submit annual Planning APD to FNS annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 110 annual burden hours and 55 responses to the inventory.

USDA expects that 55 State Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(g) that State Summer EBT agencies must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. USDA expects that the 55 State Summer EBT agencies will be required to execute a service agreement annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 55 annual burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(q)(2) that State and Indian Tribal Organization Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of Summer EBT. USDA estimates that the 157 Summer EBT agencies will be required to implement and maintain a comprehensive Security Program annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(q)(3) that State and Indian Tribal Organization Summer State agencies must establish and maintain a program for conducting periodic risk analysis to ensure that appropriate, cost-effective safeguards are incorporated into the new and existing system. USDA expects that the 157 Summer EBT agencies will be required to establish and maintain a program for conducting periodic risk analysis annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirements at 7 CFR 292.11(q)(4) that State and Indian Tribal Organization Summer EBT agencies must review the security of IS involved in the administration of Summer EBT on a biennial basis. USDA estimates that the 157 Summer EBT agencies will be required to review the security of IS systems twice annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 628 annual burden hours and 314 responses to the inventory.

USDA expects that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(r) that Indian Tribal Organization Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process. USDA expects that the 102 Indian Tribal Organization Summer EBT agencies will acquire IS equipment or services annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will face a total of $136,018,290 in start-up costs and $47,790,210 in ongoing operation and maintenance costs to complete the requirement. USDA estimates that this requirement adds 1,020 annual burden hours, 102 responses, and $183,808,500 in total costs to the inventory.

USDA expects that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.11(s)(1) that ITO Summer EBT agencies must follow the Department APD requirements and submit Planning and Implementation APDs and appropriate updates. USDA expects that the 102 ITO EBT Coordinating agencies will submit Planning and Implementation APDs annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 burden hours and 102 responses to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to follow the requirements at 7 CFR 292.11(s)(3) that Indian Tribal Organization Summer EBT agencies must submit EBT project status reports annually as a part of the State plan. USDA estimates that the 102 State Summer EBT agencies will submit a EBT project status report annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 204 burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(1) that Summer EBT agencies must establish procedures to ensure correct eligibility determinations. USDA expects that the 157 State and Indian Tribal Organization Summer EBT agencies will each develop a process to determine eligibility annually and that it takes approximately 10 hours to complete this reporting requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(2) that State and Indian Tribal Organization Summer EBT agencies must establish procedures that allow households to provide updated contact information for the purpose of receiving Summer EBT benefits. USDA estimates that the 157 Summer EBT agencies will each develop a process to update contact information annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(b)(3) that State and Indian Tribal Organization Summer EBT agencies

must establish procedures that allow eligible households to opt out of participation in the Program. USDA estimates that the 157 State and Summer EBT agencies must establish procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that State and Indian Tribal Organization Summer EBT agencies must establish and maintain a State/ITO wide database of all children in NSLP/SBP participating schools within the State or ITO service area for the purposes of enrolling children for Summer EBT benefits and preventing duplicate benefit issuance. USDA expects that the 157 Summer EBT agencies will establish and maintain a State/ITO wide database annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 157 State and Indian Tribal Organization Summer EBT agencies will face a total of $207,325,800 in start-up costs and $72,755,100 in ongoing operation and maintenance costs for this requirement. USDA estimates that a total of 1,570 annual burden hours, 157 responses, and $280,080,900 in costs will be added to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that Indian Tribal Organization Summer EBT agencies may submit for USDA approval alternate plans to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance, if an ITO determines that establishing and maintaining a database is not feasible or is unnecessary. USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will submit for approval an alternate plan annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(d) that Summer EBT agencies must use streamlined certification to automatically enroll, without further application, each eligible child without regard to whether the child has been matched against an NSLP/SBP enrollment list. USDA expects that the 157 Summer EBT agencies will each automatically enroll 66,304 eligible children annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 869,212 annual burden hours and 10,409,726 responses to the inventory.

USDA estimates that 102 Indian Tribal Organization Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(d)(4) that Indian Tribal Organization Summer EBT agencies may submit for USDA approval alternate plans to efficiently enroll children with minimal burden for households if it determines that any element of automatic enrollment with Streamlined Certification is not feasible or is unnecessary. USDA estimates that the 102 Indian Tribal Organization Summer EBT agencies will submit an alternate plan annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(e) that State and Indian Tribal Organization Summer EBT agencies must make an application available to children who attend NSLP/SBP participating schools not already identified through streamlined certification and enroll them after matching against the statewide eligibility database. USDA estimates that the 157 Summer EBT agencies will each enroll 91,185 eligible children annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,195,387 annual burden hours and 14,316,012 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(e)(2) that State and Indian Tribal Organization Summer EBT agencies must match children on applications submitted directly to a Summer EBT agency against the statewide eligibility database, as required in § 292.12(c) prior to benefit issuance. USDA expects that the 157 Summer EBT agencies will each match 91,185 eligible children annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,195,387 annual burden hours and 14,316,012 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(1) that State and Indian Tribal Organization Summer EBT agencies must notify the household that filed an income application of their children's eligibility within 15 operating days of receiving the application from the household. USDA estimates that the 157 Summer EBT agencies will send 91,185 notifications annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 239,077 annual burden hours and 14,316,012 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(2) that State and Indian Tribal Organization Summer EBT agencies must notify households that their children are eligible for Summer EBT and that no application is required. USDA estimates that the 157 Summer EBT agencies will each notify 66,304 eligible households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 173,842 annual burden hours and 10,409,726 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(g) that State and Indian Tribal Organization Summer EBT agencies must notify households that submitted an incomplete application or does not meet the eligibility requirements for Summer EBT benefits that their application has been denied, the reason for the denial, the notification of the right to appeal, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time. USDA estimates that the 157 Summer EBT agencies will each notify 4,559 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 11,954 annual burden hours and 715,801 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(h) that State and Indian Tribal Organization Summer EBT agencies must receive a request for an appeal by households that submitted a denied application and promptly schedule a fair hearing upon request. USDA expects that the 157 Summer EBT agencies will each receive 4,559 requests annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(h) that State and Indian Tribal Organization Summer EBT agencies must provide a conference to a household upon request to provide the opportunity for the household to discuss the situation,

present information, and obtain an explanation of the data submitted in the application or the decision rendered. USDA estimates that the 157 Summer EBT agencies will provide 4,559 conferences annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 715,801 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.13(a) that, by 2025, State and Indian Tribal Organization Summer EBT agencies must develop a Summer EBT application to make available to households whose children attend NSLP/SBP participating schools, and who do not already have an individual eligibility determination. USDA expects that the 157 Summer EBT agencies will each develop an application annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.13(h) that State and Indian Tribal Organization Summer EBT agencies may establish a system for executing household applications electronically and using electronic signatures. USDA estimates that the 157 Summer EBT agencies will establish a system for executing household applications electronically annually and that it takes approximately 10 hours to complete this requirement. Furthermore, USDA estimates that the 157 State and Indian Tribal Organization Summer EBT agencies will face a total of $207,325,800 in start-up costs and $72,755,100 in ongoing operation and maintenance costs to complete the requirement. USDA estimates that this requirement adds a total of 1,570 annual burden hours, 157 responses, and $280,080,900 in total costs to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement 7 CFR 292.14(a)(1) that State and Indian Tribal Organization Summer EBT agencies must verify questionable applications, on a case-by-case basis. USDA expects that the 157 Summer EBT agencies will verify 531 applications and that it takes approximately 1 hour to complete this requirement, which is estimated to add 83,311 burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(a)(2) that State and Indian Tribal Organization Summer EBT agencies may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application. USDA estimates that the 157 Summer EBT agencies will verify 531 applications for cause and that it takes approximately 1 hour to complete this requirement; which is estimated to add 83,311 burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(a)(3) that State and Indian Tribal Organization Summer EBT agencies must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer. USDA estimates that the 157 Summer EBT agencies will sample 3,011 applications and that it takes approximately 1 hour to complete this requirement, which is estimated to add 472,766 burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(2) that State and Indian Tribal Organization Summer EBT agencies must provide written notification to households that their application has been selected for verification. USDA estimates that the 157 Summer EBT agencies will each notify 531 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 1,391 annual burden hours and 83,311 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(6) that State and Indian Tribal Organization Summer EBT agencies must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. USDA expects that the 157 Summer EBT agencies will make 1,134 attempts to follow-up on verification requests annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 356,076 annual burden hours and 178,038 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.14(f)(7) that State and Indian Tribal Organizations Summer EBT agencies must provide written notification to households of any reduction or termination of benefits as a result of verification. USDA expects that the 157 Summer EBT agencies will each notify 531 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 1,391 annual burden hours and 83,311 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(c)(1)(i) that State and ITO Summer EBT agencies are responsible for the timely and accurate issuance of benefits to certified eligible children. USDA expects that the 157 Summer EBT agencies will issue benefits to 157,489 eligible children annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 412,920 annual burden hours and 24,725,737 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(f)(2)(ii) that State and Indian Tribal Organization Summer EBT agencies must establish an availability date for household access to their benefits and inform households of this date. USDA estimates that the 157 Summer EBT agencies will establish an availability date annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 157 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(1) that State and Indian Tribal Organization Summer EBT agencies provide written training materials to each household prior to or at Summer EBT issuance. USDA expects that the 157 Summer EBT agencies will issue training materials to 157,489 households annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(4) that State and Indian Tribal Organization Summer EBT agencies must provide replacement EBT cards available for pickup or place the card in the mail within two businesses days following notification by the household to the State agency that the card has been lost, stolen, or damaged and report issuance. USDA estimates that the 157 Summer EBT agencies will issue replacement benefits to 40 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add

104 annual burden hours and 6,227 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(g)(5) that State and Indian Tribal Organization Summer EBT agencies must provide replacement EBT benefits to households whose benefits were stolen or who lost Summer EBT benefits as a result of a natural disaster. USDA expects that the 157 Summer EBT agencies will issue replacement benefits to 40 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 104 annual burden hours and 6,227 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(1)(ii) that Summer EBT agencies must provide notice, no less than 30 calendar days before benefit expungement is expected to begin, to households that their Summer EBT benefits are approaching expungement due to nonuse/inactivity. USDA estimates that the 157 Summer EBT agencies will notify 11,812 households annually and that it takes approximately 1 minute (0.02 hours) to complete this requirement, which is estimated to add 30,969 annual burden hours and 1,854,430 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2) that State and Indian Tribal Organization Summer EBT agencies must establish procedures to permit the appropriate managers to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement. USDA expects that the 157 Summer EBT agencies establish procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2)(ii) that State and Indian Tribal Organization Summer EBT agencies must produce issuance reports that reflect the adjustment made to the Summer EBT agency issuance totals to comply with the reporting requirements in § 292.23. USDA estimates that the 157 Summer EBT agencies will produce 11,812 issuance reports annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 154,845 annual burden hours and 1,854,430 responses to the inventory.

USDA estimates that 55 State agencies will be required to fulfill the requirement at 7 CFR 292.16(a) that State agencies must establish issuance and accountability systems as defined in § 274.1. USDA estimates that the 55 State agencies will establish issuance and accountability systems annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 550 annual burden hours and 55 responses to the inventory.

USDA expects that the Commonwealth of Puerto Rico will be required to fulfill the requirement at 7 CFR 292.18 that the Commonwealth of Puerto Rico is authorized to establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits. USDA expects that the Commonwealth of Puerto Rico will establish issuance and accountability systems annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 10 annual burden hours and 1 response to the collection.

USDA estimates that 102 ITOs will be required to fulfill the requirement at 7 CFR 292.19(c) that ITOs must create a system that ensures effective vendor integrity in accordance to specification. USDA estimates that the 102 ITOs will establish a system annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,020 annual burden hours and 102 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(4) that State and Indian Tribal Organization Summer EBT Agencies must provide for effective control and accountability by the Summer EBT agency for all Program funds, property, and other assets acquired with Program funds. USDA expects that the 157 Summer EBT agencies will provide for effective control and accountability for all Program funds, property, and other assets annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(5) that State and Indian Tribal Organization Summer EBT agencies must complete an Automated Standard Application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available. USDA estimates that the 157 Summer EBT agencies will each submit an ASAP form annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(6) that State and Indian Tribal Organization Summer EBT agencies must provide for controls which minimize the time between the receipt of Federal Funds from the United States Treasury and their disbursement for Program costs. USDA expects that the 157 Summer EBT agencies will provide controls annually and that it takes 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(7) that State and Indian Tribal Organization Summer EBT agencies must provide for procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415. USDA estimates that the 157 Summer EBT agencies will provide for procedures annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.21(b)(9) that the State and Indian Tribal Organization Summer EBT agencies must provide for an audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for Program administration. USDA expects that the 157 Summer EBT agencies will provide for an audit trail annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add of 1,570 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.22 that State and Indian Tribal Organization Summer EBT agencies must monitor and document compliance with Performance Standards I–IV. USDA

estimates that the 157 Summer EBT agencies will document 3 compliance reviews and that it takes approximately 10 hours to complete this requirement, which is estimated to add 4,160 annual burden hours and 416 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(d) that, for Summer EBT Administrative Grants, State and Indian Tribal Organizations Summer EBT agencies will be required to submit an expenditure plan by August 15th, prior to the beginning of each fiscal year. USDA expects that the 157 Summer EBT agencies will submit an expenditure plan annually and that it takes 1 hour to complete this requirement, which is estimated to add 157 annual burden hours and responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(e) that State Administrative Grant expenditures will be reported to FNS quarterly on a Summer EBT financial status report, using the FNS–778 Federal Financial Form. USDA estimates that the 157 Summer EBT agencies will report 4 Summer EBT financial status reports and that it takes 1 hour to complete this requirement, which is estimated to add 628 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(f) that State and Indian Tribal Organization Summer EBT agencies must report participation and issuance on a monthly basis using the FNS–388 Form. USDA expects that the 157 Summer EBT agencies will submit 12 FNS–388 forms annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 1,884 annual burden hours and responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.24(a) that State and Indian Tribal Organization Summer EBT agencies shall arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. USDA expects that the 157 Summer EBT agencies will conduct an audit of their own operations and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.24(b) that State and Indian Tribal Organization Summer EBT agencies shall provide FNS with the full opportunity to conduct management evaluations and financial management reviews of all operations of the SA or ITO. USDA estimates that the 157 Summer EBT agencies will conduct an audit of their own operations annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 628 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.25 that State and Indian Tribal Organization Summer EBT agencies shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. USDA expects that the 157 Summer EBT agencies will review 121 complaints received or irregularities noted in connection with the operation of the Program annually and that it takes 4 hours to complete this requirement, which is estimated to add 75,700 annual burden hours and 18,925 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(a) that State and Indian Tribal Organization Summer EBT agencies must establish a fair hearing procedure that is applicable to the State or ITO program as a whole. USDA expects that the 157 Summer EBT agencies will establish a process annually and that it takes approximately 10 hours to complete this requirement, which is estimated to add 1,570 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b) that State and Indian Tribal Organization Summer EBT agencies must produce oral or documentary evidence for a requested hearing. USDA expects that the 157 Summer EBT agencies will produce oral or documentary evidence for 4,559 hearings and that it takes approximately 4 hours to complete this requirement, which is estimated to add 2,863,202 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b)(9) that a hearing official must transmit written notification to the Summer EBT agency and the household of the hearing official's decision. USDA expects that the 157 Summer EBT agencies will notify 4,559 households and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

Local Government Agencies

The changes in this rule will establish a new reporting requirement, as required by statute, under OMB Control Number 0586–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the local government agencies.

USDA estimates that 757 local government agencies will be required to fulfill the requirement at 7 CFR 292.3(f)(4) that eligible service providers may submit a request for a waiver under paragraph (f)(1) of 7 CFR 292.3 in accordance with section 12(l) and the provisions of this part. USDA estimates that the 757 local government agencies will submit a waiver request annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 757 annual burden hours and responses to the inventory.

Businesses (Summer EBT Authorized Retailers)

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584–NEW, *7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT Authorized Retailers.*

USDA estimates that 247,636 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.17(a) that firms shall submit claims in accordance to the standards for determination and disposition of claims described at § 278.7. USDA estimates that the 247,636 Summer EBT Authorized Retailers will submit a claim monthly (12 claims annually) and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 248,131 annual burden hours and 2,971,632 responses to the inventory.

USDA expects that 9,552 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.17(e) that firms aggrieved by administrative action may request an administrative review of the administrative action with FNS. USDA expects that the 9,552 Summer EBT Authorized Retailers will submit a request annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 798 annual burden hours and 9,552 responses to the inventory.

Households

The changes in this rule will establish new reporting requirements, as required by statute, under OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the households.

USDA estimates that 14,316,012 households will be required to fulfill the requirement at 7 CFR 292.12(f)(1) that households not directly certified must submit an income application to determine eligibility for Summer EBT benefits. USDA estimates that the 14,316,012 households will submit an application annually and that it takes approximately 1 hour to complete this requirement, which is estimated to add 14,316,012 annual burden hours and responses to the inventory.

USDA expects that 2,132,112 households will be required to fulfill the requirement at 7 CFR 292.12(f)(3) that households must notify the appropriate Summer EBT agency that they decline their Summer EBT benefits. USDA expects that the 2,132,112 households will notify the Summer EBT agency annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 178,031 annual burden hours and 2,132,112 responses to the inventory.

USDA estimates that 715,801 households will be required to fulfill the requirement at 7 CFR 292.12(h) that households that received a notice of denial may seek an appeal in accordance to the procedures established by the Summer EBT agency or LEA. USDA estimates that the 715,801 households will submit a request for appeal annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 715,801 annual burden hours and responses to the inventory.

USDA expects that 715,801 households will be required to fulfill the requirement at 7 CFR 292.12(h) that households can request and participate for a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. USDA expects that the 715, 801 households will request and participate in a conference annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 1,431,601 annual burden hours and 715,801 responses to the inventory.

USDA estimates that 83,311 households will be required to fulfill the requirement at 7 CFR 292.14(f) that households selected and notified of their selection for verification must provide documentation of income or evidence of SNAP, FDPIR, or TANF participation. USDA estimates that the 83,311 households will notify the Summer EBT agency annually and that it takes approximately 2 hours to complete this requirement; which is estimated to add 166,623 annual burden hours and 83,311 responses to the inventory.

USDA expects that 83,311 households will be required to fulfill the requirement at 7 CFR 292.14(f)(6) that households must respond to a follow-up attempt at verification by the Summer EBT agency. USDA expects that the 83,311 households will participate in a follow-up meeting annually and that it takes approximately 2 hours to complete this requirement, which is estimated to add 166,623 annual burden hours and 83,311 responses to the inventory.

USDA estimates that 57,874 households will be required to fulfill the requirement at 7 CFR 292.26(a) that households can request for an appeal from a decision made with respect to the application the family has made for Summer EBT benefits. USDA estimates that the 57,874 households will request for an appeal annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 4,833 annual burden hours and 57,874 responses to the inventory.

USDA expects that 57,874 households will be required to fulfill the requirement at 7 CFR 292.26(b)(5) that households may present oral or documentary evidence and arguments that support their position. USDA expects that the 57,874 households will present oral or documentary evidence and arguments before a hearing official annually and that it takes approximately 4 hours to complete this requirement, which is estimated to add 231,497 annual burden hours and 57,874 responses to the inventory.

Recordkeeping

State/Local/Tribal Governments

The changes in this rule will establish new recordkeeping requirements, as required by statute, under OMB Control Number 0584–NEW, *7 CFR Summer Electronic Benefits Transfer (Summer EBT) Program for the State agencies and the Summer EBT agencies.*

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(c) that State and Indian Tribal Organization Summer EBT agencies must establish and maintain a statewide database of eligible children that attend NLSP/SBP participating schools for the purposes of conducting streamlined certification. USDA estimates that the 157 Summer EBT agencies will maintain records of 157,489 eligible children and that it takes approximately 5 minutes (0.08 hours) to complete the requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(f)(3) that State and Indian Tribal Organization Summer EBT agencies must document and maintain a record or any notification from a household declining Summer EBT benefits. USDA expects that the 157 Summer EBT agencies will each maintain 32,257 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add a total of 422,870 annual burden hours and 5,064,308 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(g) that State and Indian Tribal Organization Summer EBT agencies must document and maintain a record of the reasons for an ineligibility determination for a written application. USDA expects that the 157 Summer EBT agencies will each maintain 4,559 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.15(h)(2)(i) that State and Indian Tribal Organization Summer EBT agencies must document the date and amount of benefits in the household case file whenever benefits are expunged. USDA expects that the 157 Summer EBT agencies will each document the date and amount of 145,677 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,909,754 annual burden hours and 22,871,307 responses to the inventory.

USDA expects that 55 Summer agencies will be required to fulfill the requirement at 7 CFR 292.16(h) that State and Indian Tribal Organization Summer EBT agencies must maintain issuance, inventory, reconciliation, and other accountability records as described in § 274.5. USDA expects that the 55 State agencies will each maintain 12 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is

estimated to add 55 annual burden hours and 660 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.20(h) that State and Indian Tribal Organization Summer EBT agencies must maintain Program records as necessary to support the administrative costs claimed and the reports submitted to FNS under this paragraph and ensure that such records are retained for a period of 3 years. USDA estimates that the 157 Summer EBT agencies will each maintain a record of administrative costs claimed and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.22 that State and Indian Tribal Organization Summer EBT agencies must monitor and document the performance standards listed in this paragraph. USDA expects that the 157 Summer EBT agencies will each maintain 1 record annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 13 annual burden hours and 157 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.23(b) that State and Indian Tribal Organization Summer EBT agencies must retain records substantiating eligibility determinations on file for at least 3 years after the date of the submission of the final financial reports or until the audit findings have been resolved. USDA estimates that the 157 Summer EBT agencies will each maintain 157,489 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,064,599 annual burden hours and 24,725,737 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.25 that State and Indian Tribal Organizations Summer EBT agencies shall maintain on file all evidence relating to such investigations and corrective action procedures. USDA expects that the 157 Summer EBT agencies will each maintain 121 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 1,580 annual burden hours and 18,925 responses to the inventory.

USDA estimates that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.26(b)(11) that State and Indian Tribal Organization Summer EBT agencies shall preserve a written record of each hearing for a period of 3 years. USDA estimates that the 157 Summer EBT agencies will each maintain 4,559 records annually and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 59,769 annual burden hours and 715,801 responses to the inventory.

Businesses (Summer EBT Authorized Retailers)

The changes in this rule will establish a new recordkeeping requirement, as required by statute, under OMB Control Number 0584–NEW, *7 CFR Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT Authorized Retailers.*

USDA expects that 2,428 Summer EBT Authorized Retailers will be required to fulfill the requirement at 7 CFR 292.19(c)(3) that retail food stores and wholesale food concerns shall submit claims in accordance to the standards for determination and disposition of claims described in § 246.12. USDA expects that 2,428 firms will retain 12 records of submitted claims and that it takes approximately 5 minutes (0.08 hours) to complete this requirement, which is estimated to add 2,433 annual burden hours and 29,134 responses to the inventory.

Public Disclosure

The changes in this rule will establish new public disclosure requirements, as required by statute, under OMB Control Number 0584–NEW, *7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program for the Summer EBT agencies.*

State/Local/Tribal Governments

USDA estimates 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.10(d) that State and Indian Tribal Organization Summer EBT agencies must make their coordinated service plans available to the public through a website, or through similar means. USDA estimates that the 157 Summer EBT agencies will each make their coordinated service plans available to the public annually and that it takes 15 minutes (0.25 hours) to complete the requirement, which is estimated to add 39 annual burden hours and 157 responses to the inventory.

USDA expects that 157 Summer EBT agencies will be required to fulfill the requirement at 7 CFR 292.12(a)(1) that State and Indian Tribal Organization Summer EBT agencies shall inform participant and applicant households of their Program rights and responsibilities and that the materials meet the requirements. USDA expects that the 157 Summer EBT agencies will each publicly disclose to 157,489 households annually and that it takes approximately 1 minute (0.02 hours) to complete the requirement, which is estimated to add 412,920 annual burden hours and 24,725,737 responses to the inventory.

As a result of what's outlined in this rulemaking, FNS estimates that this new information collection will have 16,696,674 respondents, 246,393,631 responses, and 35,748,275 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the ICR for the final rule is approved, FNS estimates that the burden for OMB Control Number 0584–NEW 7 CFR part 292, Summer Electronic Benefits Transfer (Summer EBT) Program will increase OMB's information collection inventory by 246,393,631 responses and 35,748,275 burden hours.

For S–EBT, given the wide variation in information system development and maintenance costs across State and ITO Summer EBT agencies, USDA estimates a total program cost of $282,886,800 to acquire IS technology and perform system upgrades annually for the Advanced Planning Document (ADP) process described in this interim final rule ICR. Likewise, USDA estimates a total program cost of $280,080,900 to acquire and develop statewide NSLP/SBP databases per State and ITO Summer EBT agency and an additional cost of $280,080,900 to develop and maintain a system that is capable of processing electronic applications for S–EBT. Therefore, as a result of what's outlined in this final rule, USDA estimates that this collection is expected to have $628,260,000 in start-up costs related to system upgrades, and an additional $220,740,000 in ongoing operation and maintenance costs. USDA estimates that a total of $849,000,000 in combined start-up costs and ongoing operation and maintenance costs will be added to the inventory.

Reporting

Respondents (Affected Public): Individual/households; businesses; and State, local, and Tribal government. The respondent groups identified include households, Summer EBT Authorized Retailers (firms), State agencies, ITOs, Commonwealth of Puerto Rico, Summer

EBT agencies, and local government agencies.

Estimated Number of Respondents: 16,696,674 respondents.

Estimated Number of Responses per Respondent: 9 responses.

Estimated Total Annual Responses: 142,800,013 responses.

Estimated Time per Response: 0.2 hours.

Estimated Total Annual Burden on Respondents: 28,749,862 hours.

Recordkeeping

Respondents (Affected Public): Businesses; and State, local, and Tribal government. The respondent groups identified include Summer EBT Authorized Retailers (retail food stores), State agencies and Summer EBT agencies.

Estimated Number of Respondents: 2,585 respondents.

Estimated Number of Responses per Respondent: 30,512 responses.

Estimated Total Annual Responses: 78,867,723 responses.

Estimated Time per Response: 0.08 hours.

Estimated Total Annual Burden on Respondents: 6,585,455 hours.

Public Disclosure

Respondents (Affected Public): State, local, and Tribal government. The respondent groups identified include State and ITO Summer EBT agencies.

Estimated Number of Respondents: 157 respondents.

Estimated Number of Responses per Respondent: 157,49013 responses.

Estimated Total Annual Responses: 24,725,894 responses.

Estimated Time per Response: 0.02 hours.

Estimated Total Annual Burden on Respondents: 412,959 hours.

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Reporting										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment**	**Hours Due to Authorizing Statute (Program Change)**	**Total Difference in Hours**
State/Local/Tribal Governments										
Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs))										
SAs that have been approved to administer the Program must enter into a written agreement with FNS for the administration of the Program in the State (Federal/State agreement).	292.3(b)(1)	55	1	55	1.00	55.00	0	0	55	55
If the State has designated partnering agencies to provide support services to the Program, SAs designated as the Summer EBT Coordinating agency must enter into a written agreement with partnering Summer EBT agencies that defines the roles and responsibilities of each (Inter-agency agreement).	292.3(e)	55	1	55	1.00	55.00	0	0	55	55
SAs may submit a request for a waiver under paragraph (f)(1) of § 292.3 in accordance with section (12)(l)(2) and the provisions of this part.	292.3(f)(2)	55	1	55	1.00	55.00	0	0	55	55
SAs may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State.	292.3(f)(3)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635

SAs must review any waiver request submitted by an eligible service provider and promptly forward to the appropriate FNSRO, if the SA concurs with the request.	292.3(f)(4)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635
If the SA denies the request, the SA must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the receipt of the request.	292.3(f)(4)(v)	55	757	41,635	1.00	41,635.00	0	0	41,635	41,635
When submitting requests for waivers, ITOs must provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program.	292.3(h)(3)	102	1	102	1.00	102.00	0	0	102	102
State and ITO Summer EBT agencies, by Aug. 15 of each fiscal year, must submit to the FNSRO its intent to administer the Summer EBT Program.	292.8(a)	157	1	157	0.08	13.11	0	0	13	13
For 2024, State and ITO Summer EBT agencies must submit to the FNSRO its intent to administer the Summer EBT Program by Jan 1, 2024.	292.8(a)	157	1	157	0.08	13.11	0	0	13	13

For 2024, State and ITO Summer EBT agencies must submit an interim POM that must include the Summer EBT agency's forecasted program participation, anticipated administrative funding, and expenditure plan, and other programmatic information required in §292.8(e) and (f), if applicable, as soon as practicable.	292.8(a)	157	1	157	4.00	628.00	0	0	628	628
No later than Feb. 15 of each year, the State and ITO Summer EBT agencies must submit to the FNSRO a final POM that addresses all the requirements of §292.8(e) and (f), if applicable, for the Summer EBT Program for that fiscal year if the State has elected to participate in the Summer EBT Program.	292.8(b)(1)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies may amend an interim or final POM to reflect changes and must submit the amendments to USDA for approval. The amendments must be signed by the Summer EBT agency-designated official responsible for ensuring the Program is operated in accordance with the POM.	292.8(d)	157	1	157	2.00	314.00	0	0	314	314

State and ITO Summer EBT agencies must include a copy of the inter-agency written agreement, an estimate of the number of participants, a plan for timely and effective action against program violators, a plan to comply with the Summer EBT agency requirements in §§ 292.12 to 292.14, a plan to ensure that Summer EBT benefits are issued to children based on their eligibility at the end of the instructional year, a description of enrollment procedures, a plan to coordinate with an ITO Summer EBT Program or State Summer EBT Program, the procedures to detect and prevent dual participation, a description of the issuance process, customer service plans, and a copy of the fair hearing procedure for participants as a part of their final POM.	292.8(e)	157	1	157	4.00	628.00	0	0	628	628

State and ITO Summer EBT agencies must submit an administrative budget on behalf of the entire Program, which reflects the comprehensive needs of all SA and local agencies, the State's plan to comply with any standards prescribed by the Secretary for the use of these funds, as well as an expenditure plan reflecting planned administrative costs requirements for the year, as a part of the Plan for Operations and Management.	292.8(e)(3)	157	1	157	12.82	2,012.47	0	0	2,012	2,012
State and ITO Summer EBT agencies must submit an amended expenditure plan should administrative fund needs change.	292.8(e)(3)	157	1	157	2.00	314.00	0	0	314	314

ITO Summer EBT agencies must also include the service area of the ITO, a plan to enroll children already deemed eligible by a State Summer EBT agency serving the same geographic area, a plan to determine eligibility and enroll children who must apply through the ITO to receive benefits, a description of the benefit delivery model, the list of supplemental foods for which participants can transact upon enrollment, procedures for enrolling applicable vendors to transact and redeem Summer EBT benefits, a plan for providing technical assistance and training to vendors, and a plan for vendor integrity and monitoring, pursuant to §292.19, as a part of their final POM.	292.8(f)	102	1	102	4.00	408.00	0	0	408	408
SAs and ITOs serving the same geographic area must ensure the coordination of SEBT program services, entering into written agreement.	292.9(b)	55	2	102	1.00	102.00	0	0	102	102
SAs and ITOs serving the same geographic area must ensure the coordination of SEBT program services, entering into written agreement.	292.9(b)	102	1	55	1.00	55.00	0	0	55	55

State and ITO Summer EBT agencies must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the SFSP and the Summer EBT program.	292.10(a)	157	1	157	5.00	785.00	0	0	785	785
State Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process.	292.11(b)	55	1	55	10.00	550.00	0	0	550	550
State Summer EBT agencies must submit a new Planning APD, Implementation APD, and Testing documents to FNS for approval of IS projects.	292.11(b)(4)(i)	55	1	55	10.00	550.00	0	0	550	550
State Summer EBT agencies must submit an Annual APD to FNS 60 days prior to the expiration of the Federal Financial Participation (FFP) approval for the initial implementation of Summer EBT and subsequent significant project changes.	292.11(b)(4)(ii)	55	1	55	2.00	110.00	0	0	110	110
State Summer EBT agencies must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency.	292.11(g)	55	1	55	1.00	55.00	0	0	55	55

State and ITO Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of the Summer EBT.	292.11(q)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish and maintain a program for conducting periodic risk analysis to ensure that appropriate, cost-effective safeguards are incorporated into new and existing system. In addition, risk analyses must be performed whenever significant system changes occur.	292.11(q)(3)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must review the security of IS involved in the administration of Summer EBT on a biennial basis.	292.11(q)(4)	157	2	314	2.00	628.00	0	0	628	628
ITO Summer EBT agencies must acquire IS equipment or services to be utilized in an EBT system and adhere to the ADP process.	292.11(r)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
ITO Summer EBT agencies must follow the Department APD requirements and submit Planning and Implementation APDs and appropriate updates.	292.11(s)(1)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
ITO Summer EBT agencies must submit EBT project status	292.11(s)(3)	102	1	102	2.00	204.00	0	0	204	204

reports annually as a part of the State plan.										
State and ITO Summer EBT agencies must establish procedures to ensure correct eligibility determinations.	292.12(b)(1)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT benefits.	292.12(b)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish procedures to allow eligible households to opt out of participation in the Program.	292.12(b)(3)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must establish and maintain a State/ITO wide database of all children in NSLP/SBP participating schools within the State or ITO service area, as applicable, for the purposes of enrolling children for Summer EBT benefits and detecting and preventing duplicate benefit issuance.	292.12(c)	157	1	157	10.00	1,570.00	0	0	1,570	1,570

ITO Summer EBT agencies may submit for USDA approval alternate plans to enroll children for Summer EBT benefits and detect and prevent duplicate benefit issuance, if an ITO determines that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children	292.12(c)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
State and ITO Summer EBT agencies must use streamlined certification to automatically enroll, without further application, each eligible child without regard to whether the child has been matched against an NSLP/SBP enrollment list. This includes children who were determined free/reduced-priced school meals eligible, or who are members of a household receiving assistance under SNAP.	292.12(d)	157	66,304	10,409,726	0.08	869,212.08	0	0	869,212	869,212

ITO Summer EBT agencies may submit for USDA approval alternate plans to efficiently enroll children with minimal burden for households if it determines that any element of automatic enrollment with Streamlined Certification is not feasible or is unnecessary based on available resources or circumstances unique to the population served.	292.12(d)(4)	102	1	102	10.00	1,020.00	0	0	1,020	1,020
State and ITO Summer EBT agencies must make an application available to children who attend NSLP/SBP participating schools not already identified through streamlined certification, and enroll them after matching against the statewide eligibility database.	292.12(e)	157	91,185	14,316,012	0.08	1,195,386.99	0	0	1,195,387	1,195,387
State and ITO Summer EBT agencies must match children on applications submitted directly to a Summer EBT Agency against the statewide eligibility database, as required in §292.12(c), prior to benefit issuance.	292.12(e)(2)	157	91,185	14,316,012	0.08	1,195,386.99	0	0	1,195,387	1,195,387
State and ITO Summer EBT agencies must notify the household that filed an income application of their children's eligibility within 15 operating days of receiving the	292.12(f)(1)	157	91,185	14,316,012	0.02	239,077.40	0	0	239,077	239,077

application from the household.										
State and ITO Summer EBT agencies must notify households that their children are eligible for Summer EBT and that no application is required. The notice must inform the household who the parent or guardian must notify if they do not want their children to receive Summer EBT benefits.	292.12(f)(2)	157	66,304	10,409,726	0.02	173,842.42	0	0	173,842	173,842
State and ITO Summer EBT agencies must notify households that submitted an incomplete application or does not meet the eligibility requirements for Summer EBT benefits that their application has been denied, the reason for the denial, the notification of the right to appeal, instructions on how to appeal, and a statement reminding households that they may reapply for benefits at any time.	292.12(g)	157	4,559	715,801	0.02	11,953.87	0	0	11,954	11,954
State and ITO Summer EBT agencies must receive a request for an appeal by households that submitted a denied application and promptly schedule a	292.12(h)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769

fair hearing upon request.										
State and ITO Summer EBT agencies must provide a conference to a household upon request to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered.	292.12(h)	157	4,559	715,801	1.00	715,800.59	0	0	715,801	715,801
By 2025, State and ITO Summer EBT agencies must make a Summer EBT application available to households whose children attend NSLP/SBP participating schools, and who do not already have an individual eligibility determination.	292.13 (a)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies may establish a system for executing household applications electronically and using electronic signatures.	292.13(h)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must verify questionable applications, on a case-by-case basis.	292.14(a)(1)	157	531	83,311	1.00	83,311.25	0	0	83,311	83,311

State and ITO Summer EBT agencies may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application.	292.14(a)(2)	157	531	83,311	1.00	83,311.25	0	0	83,311	83,311
State and ITO Summer EBT agencies must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer.	292.14(a)(3)	157	3,011	472,766	1.00	472,766.25	0	0	472,766	472,766
State and ITO Summer EBT agencies must provide written notification to households that their application has been selected for verification.	292.14(f)(2)	157	531	83,311	0.02	1,391.30	0	0	1,391	1,391
State and ITO Summer EBT agencies must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, e-mail, mail, or in-person and must be documented.	292.14(f)(6)	157	1,134	178,038	2.00	356,076.00	0	0	356,076	356,076
State and ITO Summer EBT agencies must provide written notification to households of any reduction or termination of benefits as a result of verification. Households must be notified of their right	292.14(f)(7)	157	531	83,311	0.02	1,391.30	0	0	1,391	1,391

to reapply at any time with documentation of income.										
State and ITO Summer EBT agencies are responsible for the timely and accurate issuance of benefits to certified eligible children, including compliance with the expedited service benefit delivery standard and processing standards.	292.15(c)(1)(ii)	157	157,489	24,725,737	0.02	412,919.81	0	0	412,920	412,920
State and ITO Summer EBT agencies must establish an availability date for household access to their benefits and inform households of this date.	292.15(f)(2)(ii)	157	1	157	1.00	157.00	0	0	157	157
State and ITO Summer EBT agencies must provide written training materials to each household prior to or at Summer EBT issuance.	292.15(g)(1)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies must provide replacement EBT cards available for pickup or place the card in the mail within two business days following notification by the household to the SA that the card has been lost, stolen or damaged.	292.15(g)(4)	157	40	6,227	0.02	104.00	0	0	104	104

State and ITO Summer EBT agencies must provide replacement EBT benefits available to households whose benefits were stolen or who lost Summer EBT benefits as a result of a natural disaster.	292.15(g)(5)	157	40	6,227	0.02	104.00	0	0	104	104
State and ITO Summer EBT agencies must provide notice, no less than 30 calendar days before benefit expungement is expected to begin, to households that their Summer EBT benefits are approaching expungement due to nonuse/inactivity.	292.15(h)(1)(ii)	157	11,812	1,854,430	0.02	30,968.99	0	0	30,969	30,969
State and ITO Summer EBT agencies must establish procedures to permit the appropriate managers to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement.	292.15(h)(2)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must produce issuance reports that reflect the adjustment made to the Summer EBT agency issuance totals to comply with the reporting requirements in §292.23.	292.15(h)(2)(ii)	157	11,812	1,854,430	0.08	154,844.93	0	0	154,845	154,845
SAs must establish issuance and accountability systems as defined in §274.1.	292.16(a)	55	1	55	10.00	550.00	0	0	550	550

The Commonwealth of Puerto Rico is authorized to establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.	292.18	1	1	1	10.00	10.00	0	0	10	10
ITOs must ensure effective vendor integrity by setting forth a system which ensures: (1) Requirements and restrictions on the participation of vendors and the transaction of food benefits described at §246.12, apply to activities involving Summer EBT benefits; (2) Vendors are subject to the actions and penalties described at §246.12 of this chapter for noncompliance or violations involving Summer EBT benefits; and (3) The standards for determination and disposition of claims described at §246.12 of this chapter apply to Summer EBT benefits; or (4) set forth an alternate system to ensure effective vendor management and vendor integrity.	292.19(c)	102	1	102	10.00	1,020.00	0	0	1,020	1,020

State and ITO Summer EBT agencies must provide for effective control and accountability by the Summer EBT agency for all Program funds, property and other assets acquired with Program funds. Summer EBT agencies must adequately safeguard all such assets and must assure that they are used solely for program-authorized purposes unless disposition has been made in accordance with §292.21(b)(3).	292.21(b)(4)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must complete an Automated Standard application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available.	292.21(b)(5)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must provide for controls which minimize the time between the receipt of Federal Funds from the United States Treasury and their disbursement for Program costs. In the Letter of Credit system, the Summer EBT agency must make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as	292.21(b)(6)	157	1	157	10.00	1,570.00	0	0	1,570	1,570

nearly as possible to the time of making the disbursements.										
State and ITO Summer EBT agencies must provide for procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.	292.21(b)(7)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must provide for an audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for Program administration.	292.21(b)(9)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must monitor and document compliance with Performance Standards 1-4.	292.22	157	3	416	10.00	4,160.00	0	0	4,160	4,160

For Summer EBT Administrative Grants, State and ITO Summer EBT agencies will be required to submit an expenditure plan by August 15th, prior to the beginning of each fiscal year.	292.23(d)	157	1	157	1.00	157.00	0	0	157	157
State Administrative Grant expenditures will be reported to FNS quarterly on a Summer EBT financial status report.	292.23(e)	157	4	628	1.00	628.00	0	0	628	628
State and ITO Summer EBT agencies must report participation and issuance on a monthly basis	292.23(f)	157	12	1,884	1.00	1,884.00	0	0	1,884	1,884
State and ITO Summer EBT agencies shall arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415.	292.24(a)	157	1	157	4.00	628.00	0	0	628	628
State and ITO Summer EBT agencies shall provide FNS with full opportunity to conduct management evaluations and financial management reviews of all operations of the SA or ITO. Each SA shall make available its records, including records of receipts and expenditures of funds, upon a reasonable request by FNS.	292.24(b)	157	1	157	4.00	628.00	0	0	628	628

State and ITO Summer EBT agencies shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The SA shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds.	292.25	157	121	18,925	4.00	75,700.00	0	0	75,700	75,700
State and ITO Summer EBT agencies must establish a fair hearing procedure that is applicable to the State or ITO program as a whole.	292.26(a)	157	1	157	10.00	1,570.00	0	0	1,570	1,570
State and ITO Summer EBT agencies must produce oral or documentary evidence for requested hearing.	292.26(b)	157	4,559	715,801	4.00	2,863,202.36	0	0	2,863,202	2,863,202
Hearing official must transmit a written notification to the SA and household of the hearing official's decision.	292.26(b)(9)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal		*157*	*774,879*	*121,655,975*	*0.09*	*11,289,156.22*	*0*	*0*	*11,289,156*	*11,289,156*
Local Government Agencies										
Eligible service providers may submit a request for a waiver under paragraph (f)(1) of § 292.3 in accordance with section 12(l) and the provisions of this part.	292.3(f)(4)	757	1	757	1.00	757.00	0	0	757	757
Local Government Agencies Subtotal		*757*	1.000	757	1.000	757.00	0	0	757	757

State/Local/Tribal Governments Subtotal		*914*	*133,103.904*	*121,656,968*	*0.075*	*9,124,842.45*	*0*	*0*	*9,124,842*	*9,124,842*
Businesses (Summer EBT Authorized Retailers)										
Firms shall submit claims in accordance to the standards for determination and disposition of claims described at §278.7.	292.17(a)	247,636	12	2,971,632	0.08	248,131.27	0	0	248,131	248,131
Firms aggrieved by administrative action may request an administrative review of the administrative action with FNS.	292.17(e)	9,552	1	9,552	0.08	797.59	0	0	798	798
Businesses (Summer EBT Authorized Retailers) Subtotal		*247,636*	*12.039*	*2,981,184*	*0.084*	*248,928.86*	*0*	*0*	*248,929*	*248,929*
Households										
Households not directly certified must submit an income application to determine eligibility for Summer EBT Benefits.	292.12(f)(1)	14,316,012	1	14,316,012	1.00	14,316,011.81	0	0	14,316,012	14,316,012
Households must notify the appropriate Summer EBT agency that they decline their Summer EBT Benefits.	292.12(f)(3)	2,132,112	1	2,132,112	0.08	178,031.39	0	0	178,031	178,031
Households that received a notice of denial may seek an appeal in accordance to the procedures established by the Summer EBT agency or LEA.	292.12(h)	715,801	1	715,801	1.00	715,800.59	0	0	715,801	715,801
Households can request and participate for a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted	292.12(h)	715,801	1	715,801	2.00	1,431,601.18	0	0	1,431,601	1,431,601

in the application or the decision rendered.										
Households selected and notified of their selection for verification must provide documentation of income or evidence of SNAP, FDPIR, or TANF participation.	292.14(f)	83,311	1	83,311	2.00	166,622.50	0	0	166,623	166,623
Households must respond to a follow-up attempt at verification by the Summer EBT agency.	292.14(f)(6)	83,311	1	83,311	2.00	166,622.50	0	0	166,623	166,623
Households can request for an appeal from a decision made with respect to the application the family has made for Summer EBT benefits.	292.26(a)	57,874	1	57,874	0.08	4,832.50	0	0	4,832	4,832
Households may present oral or documentary evidence and arguments that support their position.	292.26(b)(5)	57,874	1	57,874	4.00	231,496.96	0	0	231,497	231,497
Households Subtotal		*16,448,124*	*1.00*	*18,162,096*	*0.948*	*17,211,019.43*	*0*	*0*	*17,211,019*	*17,211,019*
Total Reporting Burden		**16,696,674**	**8.553**	**142,800,013**	**0.201**	**28,749,86226,411,168.03**	**0**	**0**	**28,749,8626,411,168**	**28,749,862**
Recordkeeping										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment**	**Hours Due to Authorizing Statute (Program Change)**	**Total Difference in Hours**
State/Local/Tribal Governments										
Summer EBT Agencies (State agencies and Indian Tribal Organizations (ITOs))										

State and ITO Summer EBT agencies must establish and maintain a statewide database of eligible children that attend NSLP/SBP participating schools for the purposes of conducting streamlined certification.	292.12(c)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies must document and maintain a record or any notification from a household declining Summer EBT benefits.	292.12(f)(3)	157	32,257	5,064,308	0.08	422,869.69	0	0	422,870	422,870
State and ITO Summer EBT agencies must document and maintain a record of the reasons for an ineligibility determination for a written application.	292.12(g)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
State and ITO Summer EBT agencies must document the date and amount of benefits in the household case file whenever benefits are expunged.	292.15(h)(2)(i)	157	145,677	22,871,307	0.08	1,909,754.14	0	0	1,909,754	1,909,754
SA must maintain issuance, inventory, reconciliation, and other accountability records as described in §274.5.	292.16(h)	55	12	660	0.08	55.11	0	0	55	55

State and ITO Summer EBT agencies must maintain Program records as necessary to support the administrative costs claimed and the reports submitted to FNS under § 292.20(h). The SA shall ensure such records are retained for a period of 3 years or otherwise specified in §292.23.	292.20(h)	157	1	157	0.08	13.11	0	0	13	13
State and ITO Summer EBT agencies must monitor and document the performance standards listed in § 292.22.	292.22	157	1	157	0.08	13.11	0	0	13	13
State and ITO Summer EBT agencies must retain records substantiating eligibility determinations on file for at least 3 years after the date of the submission of the final Financial reports, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.	292.23(b)	157	157,489	24,725,737	0.08	2,064,599.07	0	0	2,064,599	2,064,599
State and ITO Summer EBT agencies shall maintain on file all evidence relating to such investigations and corrective action procedures.	292.25	157	121	18,925	0.08	1,580.24	0	0	1,580	1,580

State and ITO Summer EBT agencies shall preserve a written record of each hearing for a period of 3 years and shall be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.	292.26(b)(11)	157	4,559	715,801	0.08	59,769.35	0	0	59,769	59,769
Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal		*157*	*502,156.622*	*78,838,590*	*0.084*	*6,583,022.23*	*0*	*0*	*6,583,022*	*6,583,022*
Businesses (Summer EBT Authorized Retailers)										
Retail food stores and wholesale food concerns shall submit claims in accordance to the standards for determination and disposition of claims described at §246.12.	292.19(c)(3)	2,428	12	29,134	0.08	2,432.66	0	0	2,433	2,433
Businesses (Summer EBT Authorized Retailers) Subtotal		*2,428*	*12.000*	*29,134*	*0.084*	*2,432.66*	*0*	*0*	*2,433*	*2,433*
Total Recordkeeping Burden		**2,585**	**30,512.072**	**78,867,723**	**0.084**	**6,585,454.89**	**0**	**0**	**6,585,455**	**6,585,455**
Public Disclosure										
Description of Activities	**Regulation Citation**	**Estimated # of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Average Burden Hours per Response**	**Estimated Total Hours**	**Current OMB Approved Burden Hours**	**Hours Due to Program Adjustment**	**Hours Due to Authorizing Statute (Program Change)**	**Total Difference in Hours**
State/Local/Tribal Governments										
Summer EBT Agencies (State agencies and Indian Tribal Organizations (ITOs))										
State and ITO Summer EBT agencies must make their coordinated service plans available to the public through a website, or through similar means.	292.10(d)	157	1	157	0.25	39.25	0	0	39	39

State and ITO Summer EBT agencies shall inform participant and applicant households of their Program rights and responsibilities. All materials must be made available in languages other than English, as necessary; include the USDA nondiscrimination statement; and be provided in alternate formats for individuals with disabilities, as practicable.	292.12(a)(1)	157	157,489	24,725,737	0.02	412,919.81	0	0	412,920	412,920
Summer EBT Agencies (State Agencies and Indian Tribal Organizations (ITOs)) Subtotal		*157*	*157,489.773*	*24,725,894*	*0.017*	*412,959.06*	*0*	*0*	*412,959*	*412,959*
State/Local/Tribal Governments Subtotal		*157*	*157,489.773*	*24,725,894*	*0.017*	*412,959.06*	*0.00*	*0.00*	*412,959*	*412,959*
Total Public Disclosure Burden		***157***	***157,489.773***	***24,725,894***	***0.017***	***412,959.06***	***0.00***	***0.00***	***412,959***	***412,959***
Total Burden		**16,696,674**	**14.76**	**246,393,631**	**0.145**	**35,748,275.47**	**0**	**0**	**35,378,275**	**35,378,275**

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SUMMARY OF BURDEN
[OMB #0584–NEW]

Total No. Respondents	16,696,674
Average No. Responses per Respondent	15
Total Annual Responses	246,393,631
Average Hours per Response	0.145
Total Burden Hours	35,748,276
Current OMB Approved Burden Hours	0
Adjustments	0
Program Changes	35,748,276
Total Difference in Burden	35,748,276

E-Government Act Compliance

USDA is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. An electronic copy of this interim final rule will be made available through the agency's website.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 292

Administrative practice and procedure, Agriculture, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Public Assistance Programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Supplemental Assistance Programs.

Accordingly, 7 CFR chapter II is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2, add in alphabetical order a definition for ''Seamless Summer Option'' to read as follows:

§ 210.2 Definitions.

* * * * *

Seamless Summer Option means the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

* * * * *

■ 3. In § 210.18, amend paragraph (e)(3)(ii) as follows:

■ a. Remove the period at the end of the first sentence and add in its place ''and only operates congregate meal service.''; and

■ b. Add two sentences following the first sentence.

The addition reads as follows:

§ 210.18 Administrative reviews.

* * * * *

(e) * * *

(3) * * *

(ii) * * * If the school food authority operates congregate and non-congregate meal service, a minimum of two sites must be reviewed, one congregate site and one non-congregate site. If the school food authority has one site that operates both congregate and non-congregate meal services, the State agency may review a minimum of one site and must observe both a congregate and non-congregate meal service at that one site. * * *

* * * * *

■ 4. Add § 210.34 to read as follows:

§ 210.34 Seamless Summer Option non-congregate meal service.

A school food authority operating the Seamless Summer Option in a rural area may be approved to offer a non-congregate meal service consistent with that established in part 225 of this chapter. Such school food authorities must comply with the non-congregate meal service provisions set forth at § 225.16(b)(5)(i) and (iv) of this chapter and may use the non-congregate meal service options contained in § 225.16(i) of this chapter.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 5. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 6. In § 220.2, add in alphabetical order a definition for ''Seamless Summer Option'' to read as follows:

§ 220.2 Definitions.

* * * * *

Seamless Summer Option means the meal service alternative authorized by section 13(a)(8) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761(a)(8), under which public or nonprofit school food authorities participating in the National School Lunch Program or School Breakfast Program offer meals at no cost to children during the traditional summer vacation periods and, for year-round schools, vacation periods longer than 10 school days.

* * * * *

■ 7. Add § 220.23 to read as follows:

§ 220.23 Seamless Summer Option non-congregate meal service.

A school food authority participating in the National School Lunch Program's Seamless Summer Option, and which is approved to offer a non-congregate meal service, must comply with the provisions specified in § 210.34 of this chapter.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 8. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 9. In § 225.2:

■ a. Revise the definition for ''Children'';

■ b. Add in alphabetical order the definitions for ''Conditional non-congregate site'', ''Congregate meal service'', and ''Good standing'';

■ c. Revise the definition for ''New site'';

■ d. Add in alphabetical order a definition for ''Non-congregate meal service''; and

■ e. Revise the definitions for ''Operating costs'', ''Rural'', ''Site'', and ''Site supervisor''.

The revisions and additions read as follows:

§ 225.2 Definitions.

* * * * *

Children means:

(1) Persons 18 years of age and under; and

(2) Persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or

physically disabled and who participate in a public or nonprofit private school program established for the mentally or physically disabled.

* * * * *

Conditional non-congregate site means a site which qualifies for Program participation because it conducts a non-congregate meal service for eligible children in an area that does not meet the definition of ''areas in which poor economic conditions exist'' and is not a ''Camp,'' as defined in this section.

Congregate meal service means a food service at which meals that are provided to children are consumed on site in a supervised setting.

* * * * *

Good standing means the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

New site means a site which did not participate in the Program in the prior year, an experienced site that is proposing to operate a non-congregate meal service for the first time, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

* * * * *

Non-congregate meal service means a food service at which meals are provided for children to consume all of the components off site. Non-congregate meal service must only be operated at sites designated as ''Rural'' with no ''Congregate meal service,'' as determined in § 225.6(h)(3) and (4).

* * * * *

Operating costs means the cost of operating a food service under the Program:

(1) Including the:

(i) Cost of obtaining food;

(ii) Labor directly involved in the preparation and service of food;

(iii) Cost of nonfood supplies;

(iv) Rental and use allowances for equipment and space; and

(v) Cost of transporting children in rural areas to feeding sites in rural areas;

(vi) Cost of delivering non-congregate meals in rural areas; but

(2) Excluding:

(i) The cost of the purchase of land, acquisition or construction of buildings;

(ii) Alteration of existing buildings;

(iii) Interest costs;

(iv) The value of in-kind donations; and

(v) Administrative costs.

* * * * *

Rural means:

(1) Any area in a county which is not a part of a Metropolitan Statistical Area based on the Office of Management and Budget's Delineations of Metropolitan Statistical Areas;

(2) Any area in a county classified as a non-metropolitan area based on USDA Economic Research Service's Rural-Urban Continuum Codes and Urban Influence Codes;

(3) Any census tract classified as a non-metropolitan area based on USDA Economic Research Service's Rural-Urban Commuting Area codes;

(4) Any area of a Metropolitan Statistical Area which is not part of a Census Bureau-defined urban area;

(5) Any area of a State which is not part of an urban area as determined by the Secretary;

(6) Any subsequent substitution or update of the aforementioned classification schemes that Federal governing bodies create; or

(7) Any ''pocket'' within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO approval, is determined to be rural in character based on other data sources.

* * * * *

Site means the place where a child receives a program meal. A site may be the indoor or outdoor location where congregate meals are served, a stop on a delivery route of a mobile congregate meal service, or the distribution location or route for a non-congregate meal service. However, a child's residence is not considered a non-congregate meal site for Program monitoring purposes.

Site supervisor means the individual who has been trained by the sponsor and is responsible for all administrative and management activities at the site, including, but not limited to: maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts. Except for non-congregate meal service sites using delivery services, the individual is on site for the duration of the food service.

* * * * *

■ 10. In § 225.3, revise paragraph (b) add paragraph (e) to read as follows:

§ 225.3 Administration.

* * * * *

(b) *State administered programs.* Within the State, responsibility for the administration of the Program must be in the State agency. Each State agency must notify the Department by January 1 of the fiscal year regarding its intention to administer the Program. Each State agency desiring to take part in the Program must enter into a written agreement with FNS for the administration of the Program in accordance with the provisions of this part. The agreement must cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement must contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR part 15) issued under title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to 7 CFR part 15, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary must disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

* * * * *

(e) *Coordinated Services Plan.* (1) Each State agency must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer Food Service Program described in this part and the Summer Electronic Benefits Transfer (EBT) Program regulations (7 CFR part 292).

(2) Only one plan must be established for each State in which both the Summer Food Service Program and the Summer EBT Program is administered. If more than one agency administers the Summer Food Service Program and Summer EBT within a respective State, they must work together to develop and implement the plan. States should also ensure that plans include the National School Lunch Program's Seamless Summer Program if appropriate.

(3) The plan must include, at minimum, the following information:

(i) A description of the roles and responsibilities of each State administering agency, and, as applicable, any other agencies, Indian Tribal Organizations, or public or private organizations which will be involved in administering the Programs;

(ii) A description of how the State agency and any other organizations included in the plan will coordinate outreach and programmatic activities to maximize the reach of the Summer Food Service Program and Summer EBT Program;

(iii) Metrics to assess Program reach and coverage; and

(iv) The State agency's plans to partner with other Federal, State, Tribal, or local programs to aid participants in accessing all Federal, State, Tribal, or local programs for which they are eligible.

(4) States must notify the public about their plan and make it available to the public through a website, and should, to the maximum extent practicable, solicit and consider input on plan development and implementation from other State, Tribal, and local agencies; organizations involved in the administration of nutrition and human services programs; participants; and other stakeholders.

(5) States must consult with FNS on the development of and any significant subsequent updates to their plan. Initial Plans must be submitted to FNS no later than January 1, 2025. States must submit updates annually when significant changes are made to the plan, and otherwise no less than every 3 years.

■ 11. In § 225.4, revise paragraphs (d)(7) and (8) and add paragraphs (d)(9) and (10) to read as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) * * *

(7) The State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(l);

(8) An estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests;

(9) The State's plan to provide a reasonable opportunity for children to access meals across all areas of the State; and

(10) The State's plan for Program delivery in areas that could benefit the most from the provision of non-congregate meals, including the State's plan to identify areas with no congregate meal service, and target priority areas for non-congregate meal service.

■ 12. In § 225.6:

■ a. Revise paragraphs (a)(2) and (b)(6) and (8);

■ b. Add paragraph (b)(12);

■ c. Remove the word ''and'' at the end of the paragraph (c)(2)(ix);

■ d. Remove the period at the end of paragraph (c)(2)(x) and add in its place ''; and'';

■ e. Add paragraph (c)(2)(xi);

■ f. Remove the word ''and'' at the end of the paragraph (c)(3)(vi);

■ g. Remove the period at the end of paragraph (c)(3)(vii) and add in its place ''; and'';

■ h. Add paragraph (c)(3)(viii); and

■ i. Revise paragraphs (f)(1), (f)(2) introductory text, and (g) through (i).

The revisions and additions read as follows:

§ 225.6 State agency responsibilities.

(a) * * *

(2) By February 1 of each fiscal year, each State agency must announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency must:

(i) Identify areas in which poor economic conditions exist to qualify for the Program and actively seek eligible applicant sponsors to serve:

(A) Rural areas;

(B) Indian Tribal territories; and

(C) Areas with a concentration of migrant farm workers.

(ii) The State agency must identify rural areas with no congregate meal service and encourage participating sponsors to provide non-congregate meals to eligible children in those areas.

(iii) The State agency must target outreach efforts to priority outreach areas.

(iv) For approval of closed enrolled sites, the State agency must establish criteria to ensure that operation of a closed enrolled site does not limit Program access for eligible children in the area where the site is located.

* * * * *

(b) * * *

(6) The State agency must not approve any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day. However, the State agency may approve exceptions if:

(i) The applicant demonstrates that it has the capability of managing a program larger than the limits in this paragraph (b)(6); and

(ii) The State agency has the capacity to conduct reviews of at least 10 percent of the sponsor's sites, as described in § 225.7(e)(4)(v).

* * * * *

(8) Applicants which qualify as camps and sponsors of conditional non-congregate sites must be approved for reimbursement only for meals served free to enrolled children who meet the Program's income standards.

* * * * *

(12) The State agency must not deny a sponsor's application based solely on the sponsor's intent to provide a non-congregate meal service.

(c) * * *

(2) * * *

(xi) Procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).

(3) * * *

(viii) Procedures that document meals are only distributed, to a reasonable extent, to eligible children and that duplicate meals are not distributed to any child, if the applicant sponsor is electing to use the non-congregate meal service options described in § 225.16(i)(1) and (2).

* * * * *

(f) * * *

(1) *Nondiscrimination statement.* (i) Each sponsor must submit a nondiscrimination statement of its policy for serving meals to children. The statement must consist of:

(A) An assurance that all children are served the same meals and that there is no discrimination in the course of the food service; and

(B) Except for camps and conditional non-congregate sites, a statement that the meals served are free at all sites.

(ii) A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request.

(iii) In addition to the information described in paragraph (i) of this section, the policy statement of all camps and conditional non-congregate sites that charge separately for meals must also include:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced price school meals;

(B) A description of the method to be used in accepting applications from families for Program meals that ensures that households are permitted to apply on behalf of children who are members of households receiving SNAP, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method to be used for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the sponsor will establish hearing procedures for families

requesting to appeal a denial of an application for free meals. These procedures must meet the requirements set forth in paragraph (f)(2) of this section;

(E) An assurance that, if a family requests a hearing, the child will continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability.

(2) *Hearing procedures statement.* Each camp or sponsor of a conditional non-congregate site must submit a copy of its hearing procedures with its application. At a minimum, the procedures must provide that:

* * * * *

(g) *Site information sheet.* The State agency must develop a site information sheet for sponsors.

(1) *New sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. Where a non-congregate meal service operation is proposed for the first time, the sponsor must follow the requirements of this paragraph (g)(1). At a minimum, the site information sheet must demonstrate or describe the following:

(i) An organized and supervised system for serving meals to children;

(ii) The estimated number of meals to be served, types of meals to be served, and meal service times;

(iii) Whether the site is rural, as defined in § 225.2, or non-rural. Documentation supporting the rural designation is required. New documentation is required every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation;

(iv) Whether the meal service is congregate or non-congregate;

(v) Whether the site is a self-preparation site or a vended site, as defined in § 225.2;

(vi) Arrangements for delivery and holding of meals until meal service times and storing and refrigerating any leftover meals until the next day, within standards prescribed by State or local health authorities;

(vii) Access to a means of communication to make necessary adjustments in the number of meals delivered, based on changes in the number of children in attendance at each site;

(viii) Arrangements for food service during periods of inclement weather;

(ix) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years;

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census; and

(D) At the discretion of the State agency, sponsors proposing to serve an area affected by an unanticipated school closure may be exempt from submitting new site documentation if the sponsor has participated in the Program at any time during the current year or in either of the prior 2 calendar years;

(x) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; or documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years; and

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census;

(xi) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP;

(xii) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the camp's claim for reimbursement for each session;

(xiii) For sites that will serve children of migrant workers:

(A) Certification from a migrant organization, which attests that the site serves children of migrant workers; and

(B) Certification from the sponsor that the site primarily serves children of migrant workers, if non-migrant children are also served; and

(xiv) For conditional non-congregate sites, the number of children enrolled who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the sponsor's claim for reimbursement.

(2) *Experienced sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. The State agency may require sponsors of experienced sites to provide information described in paragraph (g)(1) of this section. At a minimum, the site information sheet must demonstrate or describe the following:

(i) The estimated number of meals, types of meals to be served, and meal service times;

(ii) Whether the site is rural, as defined in § 225.2, or non-rural. Documentation supporting the rural designation is required. New documentation is required every 5 years, or earlier, if the State agency determines that an area's rural status has changed significantly since the last designation;

(iii) Whether the meal service is congregate or non-congregate;

(iv) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years;

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census; and

(D) Any site that a sponsor proposes to serve during an unanticipated school closure, which has participated in the Program at any time during the current year or in either of the prior 2 calendar years, is considered eligible without new documentation;

(v) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; or documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every 5 years; and

(C) When census data are used, new documentation is required every 5 years, or earlier, if the State agency determines that an area's socioeconomic status has changed significantly since the last census;

(vi) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP;

(vii) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the camp's claim for reimbursement for each session; and

(viii) For conditional non-congregate sites, the number of children enrolled who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the sponsor's claim for reimbursement.

(h) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency must ensure that:

(i) If not a camp or a conditional non-congregate site, the proposed site serves an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal;

(iii) The site is approved to serve no more than the number of children for which its facilities are adequate; and

(iv) If it is a site proposed to operate during an unanticipated school closure, it is a non-school site.

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency must establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels must be established in accordance with the following provisions:

(i) The initial maximum approved level must be based upon the historical record of the number of meals served at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency must develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available. The State agency may consider participation at other similar sites located in the area, documentation of programming taking place at the site, statistics on the number of children residing in the area, and other relevant information.

(ii) The maximum approved level must be adjusted, if warranted, based upon information collected during site reviews. If the number of meals served at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that the number of meals served exceeds the sites' approved levels. The sponsor may request an upward adjustment at any point prior to submitting the claim for the impacted reimbursement period.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it must document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor must inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels must take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor must clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children being served meals is below the site's approved level, the sponsor must adjust meal orders with the objective of serving only one meal per child as required under § 225.15(b)(3).

(3) When approving the application of a site that will provide a non-congregate meal service, the State agency must ensure that the proposed site:

(i) Meets the requirements described in paragraphs (h)(1) and (2) of this section.

(ii) Is rural, as defined in § 225.2.

(iii) Will not serve an area where children would receive the same meal at an approved congregate meal site, unless it can be demonstrated to the satisfaction of the State agency that the site will serve a different group of children who may not be otherwise served.

(iv) Serves an area in which poor economic conditions exist or is approved for reimbursement only for meals served free to enrolled children who meet the Program's income standards.

(v) Distributes up to the allowable number of reimbursable meals that would be provided over a 10-calendar day period. The State agency may establish a shorter calendar day period on a case-by-case basis and without regard to sponsor type.

(4) When approving the application of a site which will provide both congregate and non-congregate meal services, the State agency must ensure that:

(i) The proposed site meets the requirements in paragraphs (h)(1) through (3) of this section.

(ii) The proposed site will only conduct a non-congregate meal service when the site is not providing a congregate meal service.

(iii) The sponsor proposes an organized and supervised system which prevents overlap between meal services and reasonably ensures children are not receiving more than the daily maximum allowance of meals as required in § 225.16(b)(3).

(i) *State-sponsor agreement.* A sponsor approved for participation in the Program must enter into a permanent written agreement with the State agency. The existence of a valid permanent agreement does not limit the State agency's ability to terminate the agreement, as provided under § 225.11(c). The State agency must terminate the sponsor's agreement whenever a sponsor's participation in the Program ends. The State agency or sponsor may terminate the agreement at its convenience, upon mutual agreement, due to considerations unrelated to either party's performance of Program responsibilities under the agreement. However, any action initiated by the State agency to terminate an agreement for its convenience requires prior consultation with FNS. All sponsors must agree in writing to:

(1) Operate a nonprofit food service during the period specified, as follows:

(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) During the period from October through April, if it serves an area

affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.

(2) For school food authorities, offer meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor and offer the same meals to all children.

(3) For all other sponsors, serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor and serve the same meals to all children.

(4) Serve meals without cost to all children, except that camps and conditional non-congregate sites may charge for meals served to children who are not served meals under the Program.

(5) Issue a free meal policy statement in accordance with paragraph (c) of this section.

(6) Meet the training requirement for its administrative and site personnel, as required under § 225.15(d)(1).

(7) Claim reimbursement only for the types of meals specified in the agreement that are served:

(i) Without charge to children at approved sites, except camps and conditional non-congregate sites, during the approved meal service time;

(ii) Without charge to children who meet the Program's income standards in camps and conditional non-congregate sites;

(iii) Within the approved level for the maximum number of children's meals that may be served, if a maximum approved level is required under paragraph (h)(2) of this section;

(iv) At the approved meal service time, unless a change is approved by the State agency, as required under § 225.16(c); and

(v) At the approved site, unless the requirements in § 225.16(g) are met.

(8) Submit claims for reimbursement in accordance with procedures established by the State agency, and those stated in § 225.9.

(9) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations.

(10) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department.

(11) Have access to facilities necessary for storing, preparing, and serving food.

(12) Maintain a financial management system as prescribed by the State agency.

(13) Maintain on file documentation of site visits and reviews in accordance with § 225.15(d) (2) and (3).

(14) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

(15) For approved congregate meal service, maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in § 225.16(h) are met.

(16) Retain final financial and administrative responsibility for its program.

* * * * *

■ 13. In § 225.7, revise paragraphs (d), (e)(2) and (4), (e)(5)(i), (j), and (n)(1) to read as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) *Pre-approval visits.* The State agency must conduct pre-approval visits of sponsors and sites, as specified in paragraph (d)(1) through (4) of this section, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application.

(1) The State agency must visit, prior to approval:

(i) All applicant sponsors that did not participate in the program in the prior year;

(ii) All applicant sponsors that had operational problems noted in the prior year; and

(iii) All sites that the State agency has determined need a pre-approval visit.

(2) If a sponsor is a school food authority or Child and Adult Care Food Program institution and was reviewed by the State agency under their respective programs during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency.

(3) Pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures may be conducted at the discretion of the State agency.

(4) Each State agency must establish a process to determine which sites need pre-approval visits. Characteristics that must be considered include, but are not limited to:

(i) Sites that did not participate in the program in the prior year;

(ii) Existing sites that are new to non-congregate meal service; and

(iii) Existing sites that exhibited operational problems in the prior year.

(e) * * *

(2) *Sample selection.* In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors and sites' previous participation in the Program, their current and previous Program performance, whether they operate as congregate or non-congregate sites, and the results of previous reviews.

* * * * *

(4) *Frequency and number of required reviews.* State agencies must:

(i) Conduct a review of every new sponsor at least once during the first year of operation;

(ii) Annually review every sponsor that experienced significant operational problems in the prior year;

(iii) Review each sponsor at least once every 3 years;

(iv) Review more frequently those sponsors that, in the determination of the State agency, require additional technical assistance; and

(v) As part of each sponsor review, conduct reviews of at least 10 percent of each reviewed sponsor's sites, or one site, whichever number is greater. The review sample must include sites representative of all meal service models operated by the sponsor.

(5) * * *

(i) State agencies must develop criteria for site selection when selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v) of this section. State agencies should, to the maximum extent possible, select sites that reflect the sponsor's entire population of sites. Characteristics that should be reflected in the sites selected for review include:

(A) The maximum number of meals approved to serve under § 225.6(h)(1) and (2);

(B) Method of obtaining meals (*i.e.,* self-preparation or vended meal service);

(C) Time since last site review by State agency;

(D) Type of site (*e.g.,* open, closed enrolled, camp);

(E) Type of physical location (*e.g.,* school, outdoor area, community center);

(F) Rural designation (*i.e.,* rural, as defined in § 225.2, or non-rural);

(G) Type of meal service (*i.e.,* congregate or non-congregate);

(H) If non-congregate, meal distribution method (*e.g.,* meal pick-up, delivery); and

(I) Affiliation with the sponsor, as defined in § 225.2.

* * * * *

(j) *Forms for reviews by sponsors.* Each State agency must develop and provide monitor review forms to all approved sponsors. These forms must be completed by sponsor monitors. The monitor review form must include, but not be limited to:

(1) The time of the reviewer's arrival and departure;

(2) The site supervisor's printed name and signature;

(3) A certification statement to be signed by the monitor;

(4) The number of meals prepared or delivered;

(5) Whether the meal service is congregate or non-congregate;

(6) The number of meals served to children;

(7) The deficiencies noted;

(8) The corrective actions taken by the sponsor; and

(9) The date of such actions.

* * * * *

(n) * * *

(1) Each State agency must comply with all requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR parts 15, 15a, and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person must, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Program.

* * * * *

■ 14. In § 225.8, revise paragraph (d)(2)(iii) and (iv) and add paragraph (e) to read as follows:

§ 225.8 Records and reports.

* * * * *

(d) * * *

(2) * * *

(iii) The type of site approval—open, restricted open, closed enrolled, conditional non-congregate, or camp; and

(iv) Any other important details about each site that would help the FNSRO plan reviews, including whether the site is rural or urban, congregate or non-congregate, or vended or self-preparation.

(e) By June 30 of each year, or a later date approved by the appropriate FNSRO, the State agency must submit to FNS a list of open site locations and their operational details and provide a minimum of two updates during the summer operational period. State agencies are encouraged to submit updates weekly if there are any changes to their data.

■ 15. In § 225.9:

■ a. Revise paragraph (d)(9);

■ b. Redesignate paragraph (d)(10) as paragraph (d)(12);

■ c. Add new paragraph (d)(10) and paragraph (d)(11); and

■ d. Revise paragraph (f).

The revisions and additions read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(d) * * *

(9) Sponsors of camps are reimbursed only for meals served to children in camps whose eligibility for Program meals is documented.

(10) Sponsors of NYSP sites are reimbursed only for meals served to children enrolled in the NYSP.

(11) Sponsors of conditional non-congregate sites are reimbursed only for meals served to children whose eligibility for Program meals is documented.

* * * * *

(f) *Meal claiming.* The sponsor must not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under § 225.6(h)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(5) of this section. In reviewing a sponsor's claim for congregate meals served, the State agency must ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.15(b)(4).

* * * * *

■ 16. In § 225.11, revise paragraphs (c)(4) and (d) to read as follows:

§ 225.11 Corrective action procedures.

* * * * *

(c) * * *

(4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c), as applicable;

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) For congregate meal service operations, the simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) For non-congregate meal service operations, distributing more than the daily meal limit when multi-day service is used;

(vii) Service of a significant number of meals which did not include required quantities of all meal components;

(viii) For congregate meal service operations, excessive instances of off-site meal consumption;

(ix) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* (1) With the exception for residential camps and non-congregate meal service set forth at § 225.16(b)(1)(ii) and (b)(5)(iii), respectively, the State agency must restrict to one meal service per day:

(i) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(ii) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c).

(2) If this action results in children not receiving meals under the Program, the State agency must make reasonable effort to locate another source of meal service for these children.

* * * * *

■ 17. In § 225.14:

■ a. Revise paragraph (c)(3);

■ b. Remove paragraph (d)(4);

■ c. Redesignate paragraphs (d)(5) and (6) as paragraphs (d)(4) and (5); and

■ d. Add new paragraph (d)(6) and paragraphs (d)(7) and (8).

The revision and additions read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(c) * * *

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist,

or qualifies as a camp or a conditional non-congregate site;

* * * * *

(d) * * *

(6) If the sponsor operates a non-congregate meal service that will deliver meals directly to a child's residence, it must obtain written parental consent prior to providing meals to children in that household.

(7) If the sponsor operates a conditional non-congregate site, it must certify that it will collect information to determine children's Program eligibility to support its claim for reimbursement.

(8) If the sponsor is not a school food authority, it must enter into a written agreement or Memorandum of Understanding (MOU) with the State agency or school food authority if it chooses to receive school data for the purposes of identifying eligible children and determining children's Program eligibility, as required under § 225.15(k).

■ 18. In § 225.15, revise paragraphs (b)(3) and (4), (d), (e), and (f)(3) introductory text to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(b) * * *

(3) All sponsors must plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service.

(i) The sponsor must make the adjustments necessary to achieve this objective using the results from its monitoring of sites.

(ii) The sponsor must adjust the number of meals ordered or prepared whenever the number of children receiving meals is below the maximum approved level of meal service.

(iii) The sponsor must not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with § 225.9(d)(5).

(iv) Records of participation and of preparation or ordering of meals must be maintained to demonstrate positive action toward meeting the objective of this paragraph (b)(3).

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed 2 percent of the number of first meals served to children for each meal type (*i.e.,* breakfasts, lunches, supplements, or suppers) during the claiming period for congregate meals served. The State agency must disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals must be served only after all participating children at the site's congregate meal service have been served a meal. Second meals may not be served as part of a non-congregate meal service.

* * * * *

(d) *Training and monitoring.* (1) Each sponsor must hold Program training sessions for its administrative and site personnel and must not allow a site to operate until personnel have attended at least one of these training sessions. The State agency may waive these training requirements for operation of the Program during unanticipated school closures.

(i) Training of site personnel must, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations, including both congregate and non-congregate meal services; meal pattern requirements; and the duties of a monitor.

(ii) Each sponsor must ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors must provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities.

(iii) Each site must have present at each meal service at least one person who has received this training.

(2) Sponsors must conduct pre-operational visits for new sites, sites that experienced operational problems the previous year, and existing sites that are new to non-congregate meal service, to determine that the sites have the capacity to provide meal service for the anticipated number of children in attendance and the capability to conduct the proposed meal service.

(3) Sponsors must visit each of their sites, as specified in paragraphs (d)(3)(i) through (iv) of this section, at least once during the first two weeks of program operations and must promptly take such actions as are necessary to correct any deficiencies. In cases where the site operates for seven calendar days or fewer, the visit must be conducted during the period of operation. Sponsors must conduct these visits for:

(i) All new sites;

(ii) All existing sites that are new to providing non-congregate meal service;

(iii) All sites that have been determined by the sponsor to need a visit based on criteria established by the State agency pertaining to operational problems noted in the prior year, as set forth in § 225.7(o); and

(iv) Any other sites that the State agency has determined need a visit.

(4) Sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations, and thereafter must maintain a reasonable level of site monitoring. Sponsors must complete a monitoring form developed by the State agency during the conduct of these reviews. Sponsors may conduct a full review of food service operations at the same time they are conducting a site visit required under paragraph (d)(3) of this section.

(e) *Notification to the community.* Each sponsor must annually announce in the media serving the area from which it draws its attendance the availability of free meals. Sponsors of camps, closed enrolled sites, and conditional non-congregate sites must notify participants of the availability of free meals and if a free meal application is needed, as outlined in paragraph (f) of this section. For sites that use free meal applications to determine individual eligibility, notification to enrolled children must include: the Secretary's family-size and income standards for reduced price school meals labeled ''SFSP Income Eligibility Standards;'' a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex (including gender identity and sexual orientation), age, or disability. State agencies may issue a media release for all sponsors operating SFSP sites in the State as long as the notification meets the requirements in this section.

(f) * * *

(3) *Application based on the household's receipt of SNAP, FDPIR, or TANF benefits.* Households may apply on the basis of receipt of SNAP, FDPIR, or TANF benefits by providing the following information:

* * * * *

■ 19. In § 225.16:

■ a. Add paragraph (b)(5);

■ c. Revise paragraphs (c);

■ d. Amend paragraph (e)(4) by removing the word ''believes'' and adding in its place the word ''determines'';

■ e. Amend the first sentence of paragraph (h) by removing the word

''Sponsors'' and adding in its place the words ''For congregate meal services, sponsors''; and

■ f. Add paragraph (i).

The additions and revision read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) * * *

(5) *Non-congregate meal service.* A sponsor of a site must have the administrative capability; the capacity to meet State and local health, safety, and sanitation requirements; and, where applicable, have adequate food preparation and holding facilities to be approved to serve non-congregate meals. Sponsors of sites that are approved to provide non-congregate meals in rural areas with no congregate meal service must:

(i) Obtain prior written parental consent, if meals are to be delivered to a child's home, as described in § 225.14(d)(6).

(ii) Serve meals as described in paragraph (b)(3) of this section.

(iii) Comply with meal service time requirements described in paragraphs (c)(1), (4), and (5) of this section.

(iv) Claim reimbursement for all eligible meals served to children at sites in areas in which poor economic conditions exist, as defined in § 225.2. At all other sites, only the non-congregate meals served to children who meet the eligibility standards for this Program may be reimbursed.

(c) *Meal service times.* (1) Meal service times must be:

(i) Established by sponsors for each site;

(ii) Included in the sponsor's application; and

(iii) Approved by the State agency. Approval of meal service times must be in accordance with the State agency or sponsor's capacity to monitor the full meal service during a review.

(2) Except for non-congregate meal service, breakfast meals must be served at or close to the beginning of a child's day. Three component meals served after a lunch or supper meal service are not eligible for reimbursement as a breakfast.

(3) At all sites except residential camps and non-congregate meal service, meal services must start at least one hour after the end of the previous meal or snack.

(4) Meals served outside the approved meal service time:

(i) Are not eligible for reimbursement; and

(ii) May be approved for reimbursement by the State agency only if an unanticipated event, outside of the sponsor's control, occurs. The State agency may request documentation to support approval of meals claimed when an unanticipated event occurs.

(5) The State agency must approve any permanent or planned changes in meal service time.

(6) If congregate meals are not prepared on site:

(i) Meal deliveries must arrive before the approved meal service time; and

(ii) Meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

* * * * *

(i) *Non-congregate meal service options.* The options described in this paragraph (i) are available to all types of sponsors in good standing, as defined in § 225.2, that are approved to operate non-congregate meal service sites. The State agency may limit the use of these options on a case-by-case basis, if it determines that a sponsor does not have the capability to operate or oversee non-congregate meal services at their sites. The State agency may not limit the use of options to only certain types of sponsors. The State agency's decision to prohibit a sponsor from using the options described in this paragraph (i) is not an appealable action. Sponsors in good standing may elect to use any of the following options:

(1) *Multi-day meal issuance.* Approved sponsors may distribute up to the allowable number of reimbursable meals that would be provided over a 10-calendar day period. The State agency may establish a shorter time period, on a case-by-case basis. Sponsors electing this option must have documented procedures, submitted with their application, in place to ensure that the proper number of meals are distributed to each eligible child.

(2) *Parent or guardian pick-up of meals.* Approved sponsors may distribute meals to parents or guardians to take home to their children. Sponsors electing this option must have documented procedures, submitted with their application, in place to ensure that meals are only distributed to parents or guardians of eligible children and that duplicate meals are not distributed to any child.

(3) *Bulk meal components.* Approved self-preparation sponsors may provide bulk food items that meet the minimum amounts of each food component of a reimbursable meal breakfast, lunch, supper, or snack, as described in paragraph (d) of this section. Sponsors electing this option must ensure that:

(i) Required food components for each reimbursable meal are served, as described in paragraph (d) of this section.

(ii) All food items that contribute to a reimbursable meal are clearly identifiable.

(ii) Menus are provided and clearly indicate the food items and portion sizes for each reimbursable meal.

(iv) Food preparation, such as heating or warming, is minimal. Sponsors may offer food items that require further preparation only with State agency and FNSRO approval.

(v) The maximum number of reimbursable meals provided to a child does not exceed the number of meals that could be provided over a 5-calendar day period. The State agency may establish a shorter or longer time period, which may not exceed the time period for which the sponsor is approved for multi-day meal issuance, on a case-by-case basis.

■ 20. In § 225.18, add paragraph (l) to read as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(l) *Updates to data sources.* By January 1 each year, or as soon as is practicable, FNS will issue any necessary updates to approved data sources listed under the definition of ''rural'' in § 225.2 to be used for rural site designations in that program year. FNS will make this information available and referenceable in a simplified format.

■ 21. Add part 292 to read as follows:

PART 292—SUMMER ELECTRONIC BENEFITS TRANSFER PROGRAM

Sec.

Subpart A—General

Subpart B—Eligibility Standards and Criteria

Subpart C—Requirements of Summer EBT Agencies

Authority: 42 U.S.C. 1762.

Subpart A—General

§ 292.1 General purpose and scope.

(a) This part establishes the regulations under which the Secretary will administer the Summer Electronic Benefits Transfer (Summer EBT) Program. Section 13A of the Richard B. Russell National School Lunch Act authorizes the Secretary to establish a Program under which States, and Indian Tribal Organizations (ITOs) that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), electing to participate in the Summer EBT Program must, beginning in Summer 2024 and annually thereafter, issue to each eligible household Summer EBT benefits.

(b) This program was established for the purpose of providing nutrition assistance during the summer months for each eligible child, to ensure continued access to food when school is not in session for the summer.

§ 292.2 Definitions.

2 CFR part 200 means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by the Office of Management and Budget (OMB). The part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F).

Act means the Richard B. Russell National School Lunch Act, as amended.

Acquisition means obtaining supplies or services through a purchase or lease, regardless of whether the supplies or services are already in existence or must be developed, created, or evaluated.

Administrative costs means costs incurred by a Summer EBT agency, LEA, or local agencies operating in a formal agreement with a Summer EBT agency related to planning, organizing, and managing a Summer EBT Program.

Adult means, for the purposes of completing an application for eligibility for Program benefits, any individual 18 years of age or older.

Advance Planning Document for project planning or *Planning APD (APD* or *PAPD)* means a brief written plan of action that requests Federal financial participation to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of an IS equipment or services acquisition, plan the acquisition of IS equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means a document submitted annually (Annual APDU) by the Summer EBT agency to report the status of project activities and expenditures in relation to the approved Planning APD or Implementation APD; or on an as needed basis (As Needed APDU) to request funding approval for project continuation when significant project changes occur or are anticipated.

Cash-Value Benefit (CVB) means a type of benefit that is a fixed-dollar amount used to obtain supplemental foods by participants served by an ITO Summer EBT agency for the purposes of the Summer EBT Program.

Categorically eligible means considered income eligible for Summer EBT, as applicable, based on documentation that a child is a member of a *household,* as defined in this section, and one or more children in that household are receiving assistance under *SNAP, TANF,* or *FDPIR,* or another means tested program, as approved by the Secretary. A *foster child, homeless child,* a *migrant child,* a *Head Start child* and a *runaway child,* as defined in § 245.2 of this chapter, are also categorically eligible. Categorical eligibility and automatic eligibility may be used synonymously.

Commercial Off-the-Shelf (COTS) means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices in which the software vendor is not positioned as the sole implementer or integrator of the product.

Continuous school calendar means a situation in which all or part of the student body of a school is:

(1) On a vacation for periods of 15 continuous school days or more during the period October through April; and

(2) In attendance at regularly scheduled classes during most of the period May through September.

Current income means income received during the month prior to application for Summer EBT benefits. If such income does not accurately reflect the household's annual income, income must be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

Department means the U.S. Department of Agriculture.

Direct verification means the process of verifying household income or categorical eligibility by matching against data sources or other records without the need to contact households for documentation.

Disclosure means reveal or use individual children's program eligibility information obtained through the Summer EBT eligibility process for a purpose other than for the purpose for which the information was obtained. The term refers to access, release, or transfer of personal data about children by means of print, tape, microfilm, microfiche, electronic communication or any other means.

Dual participation means a child simultaneously receiving benefits from more than one State or ITO-administered Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program.

Electronic Benefit Transfer (EBT) account means a set of records containing demographic, card, benefit, transaction, and balance data for an individual household within the EBT system that is maintained and managed by a Summer EBT agency or its contractor as part of the client case record.

Electronic Benefit Transfer (EBT) card means a method to access EBT benefits issued to a household member or authorized representative through the EBT system by a benefit issuer. This method may include an on-line magnetic stripe card, an off-line smart card, a chip card, a contactless digital

wallet with a stored card, or any other similar benefit access technology approved by USDA.

Electronic Benefit Transfer (EBT) contractor or vendor means an entity that is selected to perform EBT–related services for the Summer EBT agency.

Electronic Benefit Transfer (EBT) system means an electronic payments system under which benefits are issued from and stored in a central databank, maintained and managed by a Summer EBT agency or its contractor, and uses electronic funds transfer technology for the delivery and control of food and other public assistance benefits.

Eligible child means a child who meets the requirements to receive Summer EBT benefits as provided in §§ 292.5 and 292.6.

Eligible household means a household that includes at least one eligible child.

Enhancement means modifications which change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies which may have been present in the software or hardware, or to improve the operational performance of the software or hardware. Software enhancements that substantially increase risk or cost or functionality will require submission of an IAPD or an As Needed IAPDU.

Enrolled students means students who are enrolled in and attending schools participating in the NSLP/SBP and who have access to a meal service (breakfast or lunch) on a regular basis.

Expungement means the removal of Summer-EBT benefits from the EBT account to which they were issued, typically by an EBT processor on behalf of a Summer EBT agency.

FDPIR means the food distribution program for households on Indian reservations operated under 7 CFR part 253, and the food distribution program for Indian households in Oklahoma under 7 CFR part 254.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means an FNS Regional Office.

Firm, as used in this part:

(1) Means:

(i) A retail food store that is authorized to accept or redeem Summer EBT benefits;

(ii) A retail food store that is not authorized to accept or redeem Summer EBT benefits; or

(iii) An entity that does not meet the definition of a retail food store in § 271.2 of this chapter.

(2) For purposes of the regulations in this part the terms firm, entity, retailer, and store may be used interchangeably.

Food instrument, as applicable to ITO Summer EBT agencies, means the definition set forth in WIC regulations at § 246.2 of this chapter.

Household means a group of related or nonrelated individuals, who are not residents of an institution or boarding house, but who are living as one economic unit.

Implementation Advance Planning Document or *Implementation APD (IAPD)* means a written plan of action requesting Federal financial participation (FFP) to acquire and implement Electronic Benefit Transaction services. The Implementation APD includes the general design, development, testing, and implementation phases of the project during its initiation. Once the Summer EBT process becomes more routine (*e.g.,* after its initial implementation), the IAPD will be streamlined to include one the following documents as outlined in this section and in FNS Handbook 901:

(1) Transmittal letter.

(2) Cost Allocation Plan.

(3) Pre-conversion outlays (where applicable).

(4) Brief schedule of events and payments, and budget.

Income eligibility guidelines means the household-size and income standards prescribed annually by the Secretary for determining income eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

Indian Tribal Organization (ITO) means an Indian Tribe, band, or group recognized by the Department of the Interior or an intertribal council or group which is an authorized representative of Indian Tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such Tribes, bands or groups. For the purposes of the Summer EBT Program, this definition only includes those Indian Tribal Organizations which administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). For the purposes of the Summer EBT Program, an administering Indian Tribal Organization is also referred to as a ''Summer EBT agency''.

Information System (IS) means a combination of hardware and software, data and telecommunications that performs specific functions to support the Summer EBT agency, or other Federal, State, or local organization.

Instructional year means the period from July 1 of the prior year through one day prior to the summer operational period.

ITO Service Area means the geographic area served by an ITO Summer EBT agency.

Local Education Agency (LEA) means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools. The term also includes any other public or private nonprofit institution or agency having administrative control and direction of a public or private nonprofit elementary school or secondary school, including residential child care institutions, Bureau of Indian Affairs schools, and educational service agencies and consortia of those agencies, as well as the State educational agency in a State or territory in which the State educational agency is the sole educational agency for all public or private nonprofit schools.

NSLP/SBP means the National School Lunch Program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) and/or the School Breakfast Program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*).

NSLP/SBP application means an application for free and reduced price meals, submitted by a household for a child or children enrolled at an NSLP- or SBP-participating school(s). Eligibility determinations based on NSLP/SBP applications may be used to confer eligibility for Summer EBT.

OIG means the Office of Inspector General of the Department.

Period of eligibility means the period of time from the first day of *instructional year,* as defined in this section, immediately preceding the *summer operational period,* as defined in this section, through the last day of the summer operational period.

Planning Advanced Planning Document (PAPD) means a brief written plan of action that requests FFP to accomplish the planning activities necessary for a Summer EBT agency to determine the need for, feasibility of, projected costs and benefits of EBT service acquisitions, plan the acquisition of EBT services, and to acquire information necessary to

prepare an Implementation APD when there is a change or an enhancement to the EBT technology.

Program means the Summer Electronic Benefits Transfer for Children Program authorized by section 13A of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1762.

Program funds means Federal financial assistance made available to Summer EBT agencies for the purpose of making Program payments.

Project means a related set of information technology related tasks, undertaken by a Summer EBT agency, to improve the efficiency, economy and effectiveness of administration and/or operation of its human services programs. A project may also be a less comprehensive activity such as office automation, enhancements to an existing system, or an upgrade of computer hardware.

Request for Proposal (RFP) means the document used for public solicitations of competitive proposals from qualified sources as outlined in paragraphs (1) through (7) of this definition:

(1) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate.

(2) Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements must apply:

(i) Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable.

(ii) The Request for Proposal must identify significant evaluation factors, including price or cost where required and their relative importance.

(iii) The Summer EBT agency must provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the Summer EBT agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

Rolling verification means sampling applications for verification on a rolling basis from the beginning of the instructional year immediately preceding the summer operational period.

School aged means the years in which a child is required to attend school, or an equivalent program as defined by State or Tribal law. Also known as the age requirement for compulsory education.

Secretary means the Secretary of Agriculture.

SNAP means the program operated pursuant to the Food and Nutrition Act of 2008.

SNAP eligible foods means any food or food product that meets the definition of eligible foods at § 271.2 of this chapter.

SNAP retail food store means an establishment that meets the definition of retail food store at § 271.2 of this chapter.

Special provision school means, for the purposes of Summer EBT, those schools which do not collect NSLP/SBP applications annually described in section 11(a)(1)(B)–(F) of the Richard B. Russell National School Lunch Act (NSLA) which are provision 1 at § 245.9(a) of this chapter, provision 2 at § 245.9(b) and (c) of this chapter, provision 3 at § 245.9(d) and (e) of this chapter, and the community eligibility provision codified at § 245.9(f) of this chapter.

State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

Streamlined certification means automatically enrolling an eligible child for Summer EBT, without need for further application or confirmation of school enrollment.

Summer EBT application means an application submitted to a Summer EBT agency or an NSLP/SBP-participating school by a household for a child or children who are enrolled at a NSLP/SBP-participating school for Summer EBT benefits. Eligibility determinations based on Summer EBT applications may not be used to confer eligibility for the NSLP/SBP.

Summer EBT agency, as used in this part:

(1) Means:

(i)(A) Any agency of State government that has been designated by the Governor or other appropriate executive or legislative authority of the State which is responsible for the administration of the Summer EBT Program within the State and enters into a written agreement with USDA to administer Summer EBT. In those States where such assistance programs are operated on a decentralized basis, it includes all State agencies that assist with administration of the Summer EBT Program unless otherwise specified.

(B) Coordinating Summer EBT agencies have an inter-agency written agreement with partnering Summer EBT agencies to administer the Program, as applicable.

(ii) An ITO that is responsible for the administration of the Summer EBT Program and has entered into a written agreement with USDA to administer Summer EBT.

(2) Summer EBT agencies may be further described to clarify roles and requirements, as necessary, including:

(i) *Coordinating Summer EBT agency* means the Summer EBT agency within a State that is designated as the primary point of contact for USDA for the Summer EBT Program within the State or ITO and is responsible for the effective and efficient administration of the Program.

(ii) *Partnering Summer EBT agency* means a Summer EBT agency other than the coordinating Summer EBT agency that has a role in administration of the Program.

(iii) *ITO Summer EBT agency* means an agency of an ITO that administers the Program on behalf of the ITO.

(iv) *State Summer EBT agency* means an agency of a State that administers the Program on behalf of the State.

Summer operational period means the benefit period that generally reflects the period between the end of classes during the current school year and the start of classes for the next school year, as determined by the Summer EBT agency.

Supplemental foods means, for the purposes of ITOs administering the Summer EBT Program, foods—

(1) Containing nutrients determined by nutritional research to be lacking in the diets of children; and

(2) Promoting the health of the population served by the program under this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as determined by FNS; and

(3) Supplemental foods authorized for the WIC Program by the applicable WIC ITO meet the requirements set forth in this definition, excluding infant foods and infant formula.

System error means an error resulting from a malfunction at any point in the redemption process. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

TANF means the State funded program under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995. This program is commonly referred to as Temporary Assistance for Needy Families, although States may refer to the program by another name.

Trafficking means:

(1)(i) The buying, selling, stealing, or otherwise effecting an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers, and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(ii) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. 802, for Summer EBT benefits;

(iii) Purchasing a product with Summer EBT benefits that has a container requiring a return deposit with the intent of obtaining cash by intentionally discarding the product and intentionally returning the container for the deposit amount;

(iv) Purchasing a product with Summer EBT benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food; or

(v) Intentionally purchasing products originally purchased with Summer EBT benefits in exchange for cash or consideration other than eligible food.

(2) Attempting to buy, sell, steal, or otherwise affect an exchange of Summer EBT benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

Vendor means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores enrolled by an ITO for the purposes of the Summer EBT Program to provide supplemental foods in areas approved for service. To be eligible for the Summer EBT Program, the vendor must be authorized by the WIC ITO to provide authorized supplemental foods to WIC participants under a retail food delivery system.

Verification means confirmation of eligibility for the Summer EBT Program when a child's eligibility is established through a Summer EBT application. Verification includes confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application. Direct verification, as outlined in § 292.14(e), must be attempted prior to contacting the household. If such efforts are unsuccessful, verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 292.14(f)(3). If a SNAP or TANF case number or a FDPIR case number or other identifier is provided for a child, verification for such child must only include confirmation that the child is a member of a household receiving SNAP, TANF, or FDPIR benefits.

Verification for cause means verification of questionable applications, on a case-by-case basis, such as an instance when the Summer EBT agency is made aware of conflicting or inconsistent information than what was provided on the application.

WIC or *WIC Program* means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

§ 292.3 Administration.

(a) *Delegation to FNS.* FNS must act on behalf of USDA in the administration of the Program.

(b) *Delegation to a State or ITO.* The Governor or other appropriate executive or legislative authority of the State or ITO will designate one or more Summer EBT agencies to be responsible for the administration of the Summer EBT Program within the State or ITO. If more than one Summer EBT agency is named within a State or ITO, a coordinating Summer EBT agency must be named. All other Summer EBT agencies will be partnering Summer EBT agencies.

(1) *Coordinating Summer EBT agency.* (i) Each coordinating Summer EBT agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The coordinating Summer EBT agency is:

(A) The primary point of contact for the Summer EBT Program within the State or ITO;

(B) Responsible for the complete and timely submission of any required plans, forms, and reports;

(C) Responsible for activities as outlined in the inter-agency written agreement; and

(D) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2 CFR part 182); FNS guidelines; and, instructions issued under the FNS Directives Management System.

(2) *Partnering Summer EBT agencies.* (i) Each partnering Summer EBT agency must enter into a written agreement with USDA for the administration of the Program in accordance with the applicable requirements of this part.

(ii) The partnering Summer EBT agency is:

(A) Responsible for activities as outlined in the inter-agency written agreement. If only one Agency will be responsible for the administration of Summer EBT, designation of partnering agencies is not applicable.

(B) Responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a, and 15b); governing administration of grants (2 CFR part 200, subparts A through F, and USDA implementing regulations in 2 CFR parts 400 and 415); governing non-procurement debarment/suspension (2 CFR part 180 and USDA implementing regulations in 2 CFR part 417); governing restrictions on lobbying (2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400, 415, and 418); and governing the drug-free workplace requirements (2

CFR part 182); FNS guidelines; and, instructions issued under the FNS Directives Management System.

(c) *Designation of responsibility among Summer EBT agencies and requirements for written inter-agency agreements.* To ensure clear roles and responsibilities, the coordinating Summer EBT agency and any partnering Summer EBT agency or agencies must enter into an inter-agency written agreement that defines the roles and responsibilities of each, as well as the administrative structure and lines of authority, if applicable.

(1) The inter-agency written agreement should outline the Summer EBT agencies assignment of responsibilities including, but not limited to:

(i) Certification and enrollment of children;

(ii) Issuance, control, and accountability of Summer EBT benefits and EBT cards;

(iii) Developing and maintaining complaint procedures;

(iv) Developing, conducting, and evaluating training;

(v) Keeping records necessary to determine whether the program is being conducted in compliance with the requirements in this part for the proper storage and use of data. The records must survive the duration of this agreement;

(vi) Submitting accurate and timely financial and program plans, forms, and reports; and

(vii) Public notification and participant support.

(2) [Reserved]

(d) *Suspension, termination, and closeout procedures.* Whenever it is determined that a Summer EBT agency has materially failed to comply with the provisions of this part, FNS may suspend or terminate the agreement between FNS and the Summer EBT agency or agencies or take any other action as may be available and appropriate. A Summer EBT agency may also terminate the agreement, but must provide FNS at least 60 days advance written notice, including a detailed explanation and the proposed effective date of the change. FNS and the Summer EBT agency shall comply with the provisions of 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415 concerning grant suspension termination and closeout procedures.

(e) *Authority to waive statute and regulations for State Summer EBT agencies.* (1) As authorized under section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), FNS may waive provisions of such Act or the Child Nutrition Act of 1966, as amended, and the provisions of this part with respect to a State or eligible service provider. The provisions of this part required by other statutes may not be waived under this authority. FNS may only approve requests for a waiver that are submitted by a State Summer EBT agency and comply with the requirements at section 12(l)(1) and the limitations at section 12(l)(4), including that FNS may not grant a waiver that increases Federal costs.

(2) A State Summer EBT agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l)(2) and the provisions of this part.

(3) A State Summer EBT agency may submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver where the State concurs must be submitted to the appropriate FNSRO.

(4) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with section 12(l) and the provisions of this part.

(i) Any waiver request submitted by an eligible service provider must be submitted to the State Summer EBT agency for review.

(ii) A State Summer EBT agency must act promptly on such a waiver request and must deny or concur with a request submitted by an eligible service provider.

(iii) If a State Summer EBT agency concurs with a request from an eligible service provider, the Summer EBT agency must promptly forward to the appropriate FNSRO the request and a rationale, consistent with section 12(l)(2), supporting the request.

(iv) By forwarding the request to the FNSRO, the State Summer EBT agency affirms:

(A) The request meets all requirements for waiver submissions; and,

(B) The State Summer EBT agency will conduct all monitoring requirements related to regular Program operations and the implementation of the waiver.

(v) If the State Summer EBT agency denies the request, the State Summer EBT agency must notify the requesting eligible service provider and state the reason for denying the request in writing within 30 calendar days of the State Summer EBT agency's receipt of the request. The State Summer EBT agency response is final and may not be appealed to FNS.

(f) *Waivers for ITO Summer EBT agencies.* (1) The Secretary may waive or modify specific regulatory provisions of this part for one or more ITO Summer EBT agency. Waivers may be issued following an ITO Summer EBT agency request or at the discretion of USDA.

(2) To be approvable, a waiver must:

(i) Address a specific regulatory provision which cannot be implemented effectively by the requesting ITO operation;

(ii) Result in more effective and efficient administration of the Program;

(iii) Be consistent with the provisions of the Act; and

(iv) Not result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) When submitting requests for waivers, ITO Summer EBT agencies must provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers must include, but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) Anticipated impact on service to participants or potential participants who would be affected;

(iii) Anticipated time period for which the waiver is needed; and

(iv) A thorough description of the proposed waiver and how it would be implemented.

§ 292.4 [Reserved]

Subpart B—Eligibility Standards and Criteria

§ 292.5 General purpose and scope.

(a) Summer EBT eligibility is based on the eligibility standards for the NSLP/SBP, which includes children who are income eligible for free or reduced-price school meals based on the Income Eligibility Guidelines published by the Department by notice in the **Federal Register** and in accordance with the household size and income standards for free and reduced price school meals, and children who are categorically eligible, as defined in § 292.2.

(b) The Income Eligibility Guidelines are published annually and change on July 1. The guidelines in effect on the date of application must be used to determine eligibility.

§ 292.6 Eligibility.

Children eligible for Summer EBT include those who, at any time during the period of eligibility, are:

(a) School-aged and categorically eligible.

(b) Enrolled in an NSLP/SBP-participating school, except for special provision schools, and:

(1) Categorically eligible;

(2) Meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application;

(3) Otherwise are determined eligible to receive a free or reduced price meal; or

(4) Determined eligible through a Summer EBT application, consistent with § 292.13.

(c) Enrolled in a special provision school, and:

(1) Categorically eligible;

(2) Otherwise meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through an NSLP/SBP application; or

(3) Determined eligible through a Summer EBT application, consistent with § 292.13.

§ 292.7 Period to establish eligibility.

(a) Eligibility for Summer EBT, as determined through an application or by streamlined certification, may be established from the first day of the instructional year immediately preceding the summer operational period through the last day of the summer operational period, as defined by the Summer EBT agency in the Plan for Operations and Management (POM).

(b) Households are not required to report changes in circumstances during the instructional year or summer operational period, but a household may voluntarily contact the State or LEA to report any changes in income, household composition, or program participation.

(c) The carryover period in the school meal programs, as required at § 245.6(c)(1) of this chapter, may not be used to confer eligibility for Summer EBT benefits during the summer operational period following the instructional year in which the carryover benefit was provided as it is outside of the period to establish eligibility, as described in paragraph (a) of this section.

Subpart C—Requirements of Summer EBT Agencies

§ 292.8 Plan for Operations and Management.

(a) Not later than August 15 of each year, the Summer EBT agency must submit to the FNS Regional Office its intent to administer the Summer EBT Program the following summer, along with an interim Plan for Operations and Management (POM) and expenditure plan for the Summer EBT Program for the upcoming fiscal year. For 2024 only, the Summer EBT agency must submit to the FNS regional office its intent to administer the Summer EBT Program by January 1, 2024, and the interim POM and expenditure plan as soon as is practicable. The interim POM must:

(1) Include the Summer EBT agency's forecasted program participation, anticipated administrative funding needs as part of an expenditure plan, and other programmatic information required in paragraphs (e) and (f) of this section, if applicable, to the extent that such information has been determined at the time of submission.

(2) Be approved by FNS before the Summer EBT agency may draw Federal administrative funds for the fiscal year.

(b) Not later than February 15 of each year, the Summer EBT agency must submit to the FNS Regional Office a final POM. The final POM must:

(1) Address all the requirements of paragraphs (e) and (f) of this section, if applicable.

(2) Be approved by FNS before the Summer EBT agency may draw Federal food benefit funds for the fiscal year.

(c) USDA will respond to the interim and final POM, respectively, within 30 calendar days of receipt. If the plan initially submitted is not approved, the Summer EBT agency and USDA will collaborate to ensure changes to the plan are submitted for approval.

(d) At any time after approval, the Summer EBT agency may amend an interim or final POM to reflect changes. The Summer EBT agency must submit the amendments to USDA for approval. The amendments must be signed by the Summer EBT agency-designated official responsible for ensuring that the Program is operated in accordance with the POM.

(e) Summer EBT agencies must include the following in their final POM, at a minimum:

(1) A copy of the inter-agency written agreement between the Summer EBT coordinating agency and each partnering agency that outlines the roles and responsibilities of each as required in § 292.3(e) if applicable.

(2) An estimate of the number of participants who will be served for the coming year.

(3) The administrative budget on behalf of the State's or ITO's entire program operations which reflects the comprehensive needs of the Summer EBT agencies and local education agencies. The budget must include the Summer EBT agency's plan to comply with any standards prescribed by the Secretary for the use of these funds, as well as an expenditure plan reflecting planned administrative cost requirements for the year. Should administrative fund needs change, an amended expenditure plan is required.

(4) A plan for timely and effective action against program violators.

(5) A plan to comply with the Summer EBT agency requirements in §§ 292.12 through 292.14.

(6) A plan to ensure that Summer EBT benefits are issued to children based on their enrollment at the end of the instructional year immediately preceding each summer.

(7) A description of enrollment procedures including, but not limited to, applications, NSLP enrollment database, direct verification and verification, as applicable.

(8) The plan to coordinate with an ITO Summer EBT Program or State Summer EBT Program, as applicable, in accordance with § 292.9.

(9) The procedures to detect and prevent dual participation including a child simultaneously receiving benefits from more than one Summer EBT Program, or simultaneously receiving multiple allotments from the same State or ITO-administered Summer EBT Program as required in § 292.9(b)(3).

(10) A description of the issuance process including:

(i) The start and end dates of the summer operational period;

(ii) Date(s) when benefits will be issued;

(iii) Benefit issuance dates for LEAs operating on a continuous school calendar, as applicable;

(iv) Whether benefits will be added to an existing EBT card or other mobile payment instrument used to deliver SNAP or WIC benefits or, instead, whether benefits will be issued on a unique Summer EBT card or instrument;

(v) Whether benefits will be issued to each eligible child or to households, as applicable;

(vi) How the Summer EBT agency will provide access to households experiencing homelessness and other vulnerable populations; and

(vii) Claims procedures in cases of erroneous payments in accordance with requirements at § 292.16(g).

(11) Customer service plans including:

(i) A single point of contact for all customer service information and inquiries including a hotline and website;

(ii) How eligible households will be informed of the availability of program benefits and the process to apply for benefits, if necessary; and

(iii) A simplified process for households to opt out of the program.

(12) A copy of the fair hearing procedure for participants.

(f) In addition to the items listed in paragraph (e) of this section, an ITO

Summer EBT agency must include in its POM:

(1) The service area of the ITO, a map or other visual reference aid, and a description of any Tribal areas outside of the ITO's jurisdiction that they propose to serve;

(2) A plan and procedures to enroll children already deemed eligible by a State Summer EBT agency serving the same geographic area, without further application;

(3) A plan and procedures to determine eligibility for and enroll children who must apply through the ITO Summer EBT agency to receive benefits because they have not already been identified as eligible, *e.g.,* by a State Summer EBT agency serving the same geographic area. The ITO Summer EBT agency must use the eligibility criteria under § 292.6;

(4) A description of the benefit delivery model to be used. The ITO Summer EBT agency may use a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The ITO Summer EBT agency must use the same benefit model for all participants throughout its service area;

(i) For ITOs using a CVB-only benefit delivery model, a description of how the benefit level equal to the amount set forth in § 292.15(e); or

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, a description of how the benefit level will not exceed the amount set forth in § 292.15(e);

(5) The list of supplemental foods for which participants can transact upon enrollment, excluding infant formula and infant foods;

(6) Procedures for enrolling applicable vendors to transact and redeem Summer EBT Program benefits. As a prerequisite, such vendors must be approved for participation in the WIC Program;

(7) A plan for providing technical assistance and training to vendors enrolled to transact and redeem Summer EBT Program benefits; and

(8) A plan for vendor integrity and monitoring, pursuant to § 292.19.

§ 292.9 Coordination between State-administered and ITO-administered Summer EBT Programs.

(a) The ITO Summer EBT agency must receive priority consideration to serve eligible individuals within its service area, as identified in its FNS-approved Plan for Operations and Management (POM) per § 292.8.

(b) An ITO Summer EBT agency and State Summer EBT agency serving proximate geographic areas must coordinate Summer EBT Program services, which may include a written agreement between both parties. ITO Summer EBT agency and State Summer EBT agency coordination must, at minimum, include the following:

(1) The State Summer EBT agency must share data, including household contact information, indicating those individuals deemed eligible in the ITO Summer EBT agency's service area in a manner and timeframe that will allow the ITO Summer EBT agency to issue program benefits timely;

(2) The ITO Summer EBT agency and the State Summer EBT agency must each provide notice to eligible individuals or households that they may choose to receive Summer EBT Program benefits from either Summer EBT agency, in addition to referral information upon individual or household request; and

(3) The ITO Summer EBT agency and State Summer EBT agency must coordinate to detect and prevent dual participation in the same summer operational period when serving proximate service areas in accordance with § 292.15(d). For all student data exchanged applicable to the Summer EBT Program, the ITO Summer EBT agency and State Summer EBT agency must ensure the confidentiality of such data and data must only be used for program purposes in accordance with § 292.13(o).

(c) Eligible households choosing to participate in either the ITO-operated Summer EBT Program or the State-operated Summer EBT Program must participate in the same program for the duration of the summer operational period in any given year.

§ 292.10 Coordinated Services Plan.

(a) Each State Summer EBT agency must establish, and update annually as needed, a plan to coordinate the statewide availability of services offered through the Summer EBT Program described in this part and the Summer Food Service Program established in 7 CFR part 225. Each ITO Summer EBT agency is encouraged to develop a plan coordinating summer services available to the children and households they serve.

(b) Only one plan must be established for each State in which both the Summer Food Service Program and the Summer EBT Program is administered. If more than one agency administers the Summer Food Service Program and Summer EBT within a respective State, they must work together to develop and implement the plan. States should also ensure that plans include the National School Lunch Program's Seamless Summer Program if appropriate.

(c) The plan must include, at minimum, the following information:

(1) A description of the roles and responsibilities of each Summer Food Service Program and Summer EBT agency, and, as applicable, any other agencies, ITOs, or public or private organizations which will be involved in administering the Programs;

(2) A description of how the Summer EBT agency and any other organizations included in the plan will coordinate outreach and programmatic activities to maximize the reach of the Summer Food Service Program and Summer EBT Program; metrics to assess program reach and coverage; and

(3) The Summer EBT agency's plans to partner with other Federal, State, Tribal, or local programs to aid participants in accessing all Federal, State, Tribal, or local programs for which they are eligible.

(d) States must notify the public about their plan and make it available to the public through a website, and should, to the maximum extent practicable, solicit and consider input on plan development and implementation from other State agencies, ITOs, and local agencies; organizations involved in the administration of nutrition and human services programs; participants; and other stakeholders.

(e) States must consult with FNS on the development of and any significant subsequent updates to their plan. Initial plans must be submitted to FNS no later than January 1, 2025. States must submit updates annually when significant changes are made to the plan, and otherwise no less than every 3 years.

§ 292.11 Advance Planning Document (APD) processes.

(a) *APD process for State agencies and ITOs.* As a condition for the initial and continued ability to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation, and implementation of Information System (IS) equipment and services used in the administration of the Summer EBT Program, Summer EBT agencies must adhere to the APD process in this section (see guidance in Food and Nutrition Service's (FNS' Handbook 901 for more information), the State Systems APD process in paragraph (b) of this section, and for SNAP and WIC ITOs the existing APD process requirements for Management Information Systems and/or Information Systems as outlined in 7 CFR parts 246, 274, and 277, respectively. Summer EBT Projects have

the option to include the Summer EBT Program in an existing SNAP or WIC EBT APD or to create a separate APD specific to Summer EBT services. Where the Summer EBT agency is a SNAP or WIC agency, changes to the Management Information System to support Summer EBT follow the APD processes as outlined in §§ 246.12 and 277.18 of this chapter (see guidance within FNS' Handbook 901 for more information). Child Nutrition Programs do not have a similar requirement for Management Information Systems, so the APD requirements will only apply the EBT services projects associated with the Summer EBT Program.

(b) *APD process for States.* Requirements for FNS prior approval of IS projects—

(1) *For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards (subpart D of this part).* For Summer EBT agencies that administer SNAP and are planning changes to their SNAP information systems to incorporate the Summer EBT requirements, refer to § 277.18 of this chapter.

(2) *Specific prior approval requirements.* (i) For IS projects which require prior approval, as specified in paragraph (b)(1) of this section, the State Summer EBT agency must obtain the prior written approval of USDA for:

(A) Conducting planning activities, entering into contractual agreements or making any other commitment for acquiring the necessary planning services for the development of an initial Summer EBT services project; and

(B) Conducting design, development, testing or implementation activities, entering into contractual agreements or making any other commitment for the acquisition of IS equipment or services.

(ii) For IS equipment and services acquisitions requiring prior approval as specified in paragraph (b)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) *Requests for Proposals (RFPs).* Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval of the RFP before the RFP may be released. The State Summer EBT agency must obtain prior written approval from FNS for RFPs which are associated with an EBT system regardless of the cost.

(B) *Contracts.* All contracts must be submitted to FNS. The State Summer EBT agency must obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) *Contract amendments.* All contract amendments must be submitted to FNS. Unless specifically exempted by FNS, the State Summer EBT agency must obtain prior written approval from FNS of any contract amendments which cumulatively exceed 20 percent of the base contract costs before being signed by the State Summer EBT agency.

(3) *Procurement requirements.* (i) Procurements of IS equipment and services are subject to § 277.14 of this chapter (procurement standards) regardless of any conditions for prior approval contained in this section, except the requirements of § 277.14(b)(1) and (2) of this chapter regarding review of proposed contracts. The procurement standards in § 277.14(b)(1) and (2) include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(ii) The standards prescribed by § 277.14 of this chapter, as well as the requirement for prior approval in this paragraph (b), apply to IS services and equipment acquired primarily to support Summer EBT regardless of the acquiring entity.

(iii) The competitive procurement policy prescribed by § 277.14 of this chapter must be applicable except for IS services provided by the agency itself, or by other State or local agencies.

(iv) The following FNS-required provisions as required under 2 CFR part 200, appendix II, apply to Summer EBT procurements as well:

(A) Compliance with Executive Order 11246 related to equal employment opportunity.

(B) Compliance with Clean Air Act (42 U.S.C. 7401–7671q).

(C) Compliance with Clean Water Act (33 U.S.C. 1251–1387).

(D) Compliance with Anti-Lobbying Act.

(E) Compliance with Americans with Disabilities Act.

(F) Compliance with drug-free workplace requirements.

(G) Compliance with suspension/debarment requirements.

(H) USDA has royalty-free rights to use software and documentation developed.

(I) The State Summer EBT agency must obtain prior written approval from FNS, as specified in paragraphs (b)(1) and (2) of this section, to claim and receive reimbursement for the associated costs of the IS acquisition.

(4) *Document submission requirements.* (i) For IS projects requiring prior approval as specified in paragraphs (b)(1) and (2) of this section, the State Summer EBT agency must submit the following documents to FNS for approval:

(A) Planning APD as described in § 292.2.

(B) Implementation APD as described in § 292.2.

(C) Annual APDU as described in § 292.2 for the initial Summer EBT implementation.

(ii) The Annual APDU must be submitted to FNS 60 days prior to the expiration of the FFP approval, unless the submission date is specifically altered by USDA. In years where an As Needed APDU is required, as described in § 292.2, FNS may waive or modify the requirement to submit the annual APDU. The requirement in this paragraph (b)(4)(ii) will only apply to the initial implementation of Summer EBT.

(iii) As Needed APDU as described in § 292.2. As Needed APDU are required to obtain a commitment of FFP whenever significant project changes occur. Significant project changes are defined as changes in cost, schedule, scope or strategy which exceed FNS-defined thresholds or triggers. Without such approval, the Summer EBT agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD and subsequently approved APDU until such time as approval is specifically granted by FNS.

(iv) Acquisition documents as described in § 277.14(g) of this chapter for Summer EBT agencies that administer SNAP (see guidance within in FNS Handbook 901 for more information), or for Summer EBT services projects utilizing an existing or new SNAP EBT services contract for Summer EBT.

(v) Emergency acquisition requests as described in paragraph (j) of this section.

(c) *Prior approval.* The State Summer EBT agency must obtain prior FNS approval of the documents specified in paragraph (b)(4)(i) of this section in order to claim and receive reimbursement for the associated costs of the IS acquisition.

(d) *Approval by the State Summer EBT agency.* Approval by the State Summer EBT agency is required for all documents and acquisitions specified in this subpart prior to submission for FNS approval. However, the State Summer EBT agency may delegate approval authority to any subordinate entity for those acquisitions of IS equipment and services not requiring prior approval by FNS.

(e) *Prompt action on requests for prior approval.* FNS will reply promptly to State Summer EBT agency requests for prior approval. If FNS has not provided written approval, disapproval, or a request for additional information within 60 days of FNS' acknowledgment of receipt of the State Summer EBT agency's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (b) of this section. However, provisional approval will not exempt a State Summer EBT agency from having to meet all other Federal requirements which pertain to the acquisition of IS equipment and services. Such requirements remain subject to Federal audit and review.

(f) *APD content requirements*—(1) *Planning APD (PAPD).* The PAPD is a written plan of action to acquire proposed services or equipment and to perform necessary activities to investigate the feasibility, system alternatives, requirements and resources needed to replace, modify, or upgrade the State Summer EBT agency's IS. The PAPD must contain adequate documentation to demonstrate the need to undertake a planning process, as well as a thorough description of the proposed planning activities, and estimated costs and timeline (see guidance within FNS' Handbook 901 for more information).

(2) *Implementation APD (IAPD).* The IAPD is a written plan of action to acquire the proposed IS services or equipment and to perform necessary activities to design, develop, acquire, install, test, and implement the new IS. The IAPD must contain detailed documentation of planning and preparedness for the proposed project, (see guidance within FNS' Handbook 901 for more information), demonstrating the feasibility of the project, thorough analysis of system requirements and design, a rigorous management approach, stewardship of Federal funds, a realistic schedule and budget, and preliminary plans for key project phases. The IAPD must be submitted and approved prior to incurring any costs under the new EBT service contract.

(3) *Annual APDU content requirements.* The Annual APDU is a yearly update to ongoing IS projects when planning or implementation activities occur. The Annual APDU must contain documentation on the project activity status and a description of major tasks, milestones, budget, and any changes (see guidance within FNS' Handbook 901 for more information).

(4) *As Needed APDU content requirements.*

The As Needed APDU document must contain the items as defined in paragraph (b)(4)(ii) of this section with emphasis on the area(s) where changes have occurred or are anticipated that triggered the submission of the APDU (see guidance within FNS' Handbook 901 for more information).''

Paragraph (d) should read: (q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D to this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process in this section (see guidance within FNS' Handbook 901 for more information).

(g) *Service agreements.* (1) The State Summer EBT agency must execute service agreements when IS services are to be provided by a State central IT facility or another State or local agency. *Service agreement* means the document signed by the State or local agency and the State or local central IT facility whenever an IT facility provides IT services to the State or local agency. Service agreements must:

(i) Identify the IS services that will be provided;

(ii) Include a schedule of rates for each identified IS service, and a certification that these rates apply equally to all users;

(iii) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(iv) Include assurances that services provided will be timely and satisfactory;

(v) Include assurances that information in the IS as well as access, use and disposal of IS data will be safeguarded in accordance with provisions of §§ 272.1(c) (disclosure) and 277.13 (property) of this chapter;

(vi) Require the provider to obtain prior approval from FNS pursuant to paragraph (b) of this section for IS equipment and IS services that are acquired from commercial sources primarily to support federally aided public assistance programs and require the provider to comply with § 277.14 of this chapter (procurement standards) for procurements related to the service agreement. IS equipment and services are considered to be primarily acquired to support federally aided public assistance programs when the Programs may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the IS equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of IS equipment or services;

(vii) Include the beginning and ending dates of the period of time covered by the service agreement; and

(viii) Include a schedule of expected total charges to the Program for the period of the service agreement.

(2) The State Summer EBT agency must maintain a copy of each service agreement in its files for Federal review upon request.

(h) *Basis for continued Federal financial participation (FFP)*—(1) General. FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that IS resources are used for the purposes authorized. FNS will use the APDU to monitor IS project development. The submission of the update as prescribed in paragraph (b)(4) of this section for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of IS project development and State and local agency IS operations may be conducted by or for FNS to assure compliance with approved APDs, proper use of IS resources, and the adequacy of State or local agency IS operations.

(2) *Pre-implementation.* The State Summer EBT agency must demonstrate through thorough testing that the system meets all program functional and performance requirements. FNS may require a pre-implementation review of the system to validate system functionality prior to Summer EBT agency testing.

(3) *Testing.* The State Summer EBT agency must commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the project area:

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in this part in combination with the system components described by the approved system design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the functional demonstration if one is conducted. FNS may require that any or all of these tests be repeated in instances where significant modifications are made to

the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest.

(ii) *An Acceptance Test Plan.* The Acceptance Test Plan for the project must describe the methodology to be utilized to verify that the EBT system complies with Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan must address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing must include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing; and

(C) A ''what-if'' component must also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(iii) *Independent testing.* The Department reserves the right to participate and conduct independent testing as necessary during the acceptance testing and appropriate events during system design, development, implementation, and operation.

(iv) *An acceptance test report.* The State Summer EBT agency must provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. The report must summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report must contain the State Summer EBT agency's recommendations regarding implementation of the EBT system.

(v) *A prototype food retailer agreement.* The State Summer EBT agency must enter an agreement with each FNS authorized retailer that complies with the requirements under § 274.3 of this chapter.

(vi) *An implementation plan.* (A) The implementation plan must include the following:

(*1*) A description of the tools, procedures, detailed schedules, and resources needed to implement the project;

(*2*) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(*3*) A phase-in-strategy which permits a measured and orderly transition from one EBT system to another. In describing this strategy, the plan must address schedules that avoid disruption of normal shopping patterns and operations of participating children and food retailers. Training of Summer EBT eligible children, State Summer EBT agency personnel and retailers and/or their trainers must be coordinated with the installation of equipment in retail stores;

(*4*) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description must also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Program requirements; and,

(*5*) A plan for orderly phase-out of the project and/or for continuing benefit issuance operations if it is demonstrated during the pilot project or conversion operations that the new system is not acceptable.

(B) The State Summer EBT agency must submit a written contingency plan for FNS approval. The contingency plan must contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan must be incorporated into the Summer EBT State system security plan after FNS approval as specified in paragraph (p) of this section.

(i) *Disallowance of Federal financial participation (FFP).* If FNS finds that any acquisition approved under the provisions of paragraph (b) of this section fails to comply with the criteria, requirements and other undertakings described in the approved or modified APD, payment of FFP may be suspended or may be disallowed in whole or in part.

(j) *Emergency acquisition requirements.* The State Summer EBT agency may request FFP for the costs of IS equipment and services acquired to meet emergency situations in which the agency can demonstrate to FNS an immediate need to acquire IS equipment or services in order to continue operation of Summer EBT; and the State Summer EBT agency can clearly document that the need could not have been anticipated or planned for and precludes the State from following the prior approval requirements of paragraph (c) of this section. FNS may provide FFP in emergency situations if the following conditions are met:

(1) The State Summer EBT agency must submit a written request to FNS prior to the acquisition of any IS equipment or services. The written request must include:

(i) A brief description of the IS equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State Summer EBT agency's need to proceed with the acquisition prior to fulfilling approval requirements at paragraph (c) of this section; and

(iii) A description of the adverse impact which would result if the State Summer EBT agency does not immediately acquire the IS equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS must provide a written response to the State Summer EBT agency within 14 days. The FNS response must:

(i) Inform the State Summer EBT agency that the request has been disapproved and the reason for disapproval.

(ii) If FNS approves the request submitted under paragraph (j)(1) of this section, FFP will be available from the date the State Summer EBT agency acquires the IS equipment and services.

(iii) FNS recognizes that an emergency situation exists and grants conditional approval pending receipt of the State Summer EBT agency's formal submission of the IAPD information specified at paragraph (b)(4) of this section within 90 days from the date of the agency's initial written request.

(iv) If the complete IAPD submission required by paragraph (b)(2) of this section is not received by FNS within 90 days from the date of the initial written request, costs may be subject to disallowance.

(k) *General cost requirements*—(1) *Cost determination.* Actual costs must be determined in compliance with 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415 and an FNS approved budget and must be reconcilable with the approved FNS funding level. A State Summer EBT agency must not claim reimbursement for costs charged to any other Federal program or uses of IS systems for purposes not connected with Summer EBT. The approved APD cost allocation plan includes the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS

as part of the request for FNS approval of funding as required in this section. Operational costs are to be allocated based on the statewide cost allocation plan rather than the APD cost plan. Approved cost allocation plans for ongoing operational costs must not apply to IS system development costs under this section unless documentation required under paragraph (b) of this section is submitted to and approvals are obtained from FNS. Any APD-related costs approved by FNS must be excluded in determining the Summer EBT agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State Summer EBT agencies must assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, in accordance with the cost principles set forth in 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, the State Summer EBT agency must specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State Summer EBT agency must amend the cost allocation plan required by 2 CFR part 200, subpart E, to include the approved APD methodology for the identification, assignment, and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an IS must be identified and assigned by the State Summer EBT agency to funding sources in accordance with the approved cost allocation plan required by 2 CFR part 200, subpart E.

(iii) *Service agreement costs.* States that operate a central data processing facility must use their approved central service cost allocation plan required by 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415 to identify and assign costs incurred under service agreements with the State Summer EBT agency. The State Summer EBT agency must then distribute these costs to funding sources in accordance with the development and operational costs outlined in this section.

(iv) *Claiming costs.* Prior to claiming funding under this section the State Summer EBT agency must have complied with the requirements for obtaining approval and prior approval of paragraph (b) of this section.

(v) *Budget authority.* FNS approval of requests for funding must provide notification to the State Summer EBT agency of the budget authority and dollar limitations under which such funding may be claimed. FNS must provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization must be based on the budget submitted by the State Summer EBT agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, must require FNS approval of an As Needed APDU as prescribed in paragraphs (b)(4) and (f)(4) of this section, including an amended State budget. Requests to amend the budget authorization approved by FNS must be submitted to FNS prior to claiming such expenses.

(l) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, must be made available by the State Summer EBT agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access to all parts of the system may result in suspension and/or termination of Summer EBT funds for the costs of the system and its operation.

(m) *Ownership rights.* The State Summer EBT agency must comply with the requirements under this part and the requirement for intangible property in 2 CFR 200.315.

(n) *Software.* (1) The State or local government must include a clause in all procurement instruments which provides that the State or local government must have all ownership rights in any software or modifications thereof and associated documentation designed, developed, or installed with FFP under this section.

(2) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(3) Proprietary operating/vendor software packages which meet the definition of COTS in § 292.2 must not be subject to the ownership provisions in paragraph (m) of this section. FFP is not available for development costs for proprietary application software developed specifically for Summer EBT.

(o) *Information Systems equipment.* The policies and procedures governing title, use and disposition of property purchased with FFP, which appear at 2 CFR 200.315 are applicable to IS equipment.

(p) *Information system security requirements and review process*–(1) *Information system security requirements.* State and local agencies are responsible for the security of all IS projects under development, and operational systems involved in the administration of Summer EBT. State and local agencies must determine appropriate IS security requirements based on recognized industry standards or compliance with standards governing security of Federal information systems and information processing.

(2) *Information security program.* State Summer EBT agencies must implement and maintain a comprehensive Security Program for IS and installations involved in the administration of the Summer EBT. Security Programs must include the following components:

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of IS security:

(A) Physical security of IS resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency IS Security Manager.

(3) *Periodic risk analyses.* State Summer EBT agencies must establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses must be performed whenever significant system changes occur.

(4) *IS security reviews.* State Summer EBT agencies must review the security

of IS involved in the administration of Summer EBT on a biennial basis. At a minimum, the reviews must include an evaluation of physical and data security, operating procedures and personnel practices. State Summer EBT agencies must maintain reports of their biennial IS security reviews, together with pertinent supporting documentation, for Federal review upon request.

(5) *Applicability.* The security requirements of this section apply to all IS systems used by State and local governments to administer Summer EBT.

(q) *APD process for ITOs.* For the acquisition of IS equipment or services to be utilized in an EBT system regardless of the cost of the acquisition in accordance with the Summer EBT issuance standards in subpart D of this part, WIC EBT coordinating Summer EBT agencies, administering WIC, that are planning changes to their ITO Management Information Systems to incorporate the Summer EBT requirements should refer to the APD process requirements outlined in 7 CFR 246.12, 2 CFR part 200, appendix XI, and the APD process (see guidance within FNS' Handbook 901 for more information).

(r) *ITO EBT management and reporting.* (1) The Summer EBT agency must follow the Department APD requirements in this section and submit Planning and Implementation APDs and appropriate updates, for Department approval, for planning, development, and implementation of initial and subsequent EBT systems.

(2) If an ITO plans to incorporate additional programs in its EBT system, the ITO must consult with ITO officials responsible for administering the programs prior to submitting the Planning APD (PAPD) document and include the outcome of those discussions in the PAPD submission to the Department for approval.

(3) Annually as part of the State plan, the Summer EBT agency must submit EBT project status reports. At a minimum, the annual status report must contain:

(i) Any information on future EBT changes and procurement updates affecting present operations; and

(ii) Such other information the Secretary may require.

(4) The ITO must be responsible for EBT coordination and management for planning, implementation and ongoing operations of Summer EBT.

(s) *ITO Summer EBT procurements.* The following procurement requirements from title 2 of the Code of Federal Regulations apply to ITO Summer EBT agencies:

(1) 2 CFR 200.315;

(2) 2 CFR 200.317;

(3) 2 CFR 200.326;

(4) 2 CFR part 200, appendix II:

(i) Remedies for violation or breach;

(ii) Termination for cause and for convenience;

(iii) Equal employment opportunity (EEO) provisions;

(iv) Clean Air Act and Federal Water Pollution Control Act;

(v) Debarment and suspension requirements; and

(vi) Anti-lobbying requirements; and

(5) 2 CFR part 400.

(t) *ITO Program costs.* (1) The two kinds of allowable costs under the Program are ''food costs'' and ''nutrition services and administration costs.'' In general, costs necessary to the fulfillment of Program objectives are to be considered allowable costs. The two types of nutrition services and administration costs are:

(i) *Direct costs.* Those direct costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415.

(ii) *Indirect costs.* Those indirect costs that are allowable under 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415. When computing indirect costs, food costs may not be used in the base to which the indirect cost rate is applied. In accordance with the provisions of 2 CFR part 200, subpart E, and USDA implementing regulations in 2 CFR parts 400 and 415, a claim for indirect costs must be supported by an approved allocation plan for the determination of allowable indirect costs.

(2) Program funds may not be used to pay for retroactive benefits.

§ 292.12 Enrolling eligible children.

(a) *Minimum requirements for Program informational activities.* Summer EBT agencies must comply with the following minimum information requirements for applicants and recipients.

(1) Summer EBT agencies must inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the Summer EBT agency deems appropriate.

(2) All Program informational material must:

(i) Be in an understandable and uniform format, and to the maximum extent practicable, in a language that parents and guardians can understand;

(ii) Include the USDA nondiscrimination statement; and

(iii) Be provided in alternate formats for individuals with disabilities, as practicable.

(3) All program information material should be provided by households' preferred method of contact, to the maximum extent practicable.

(b) *General requirements.* In enrolling eligible children, Summer EBT agencies must:

(1) Establish procedures to ensure correct eligibility determinations;

(2) Establish procedures to allow households to provide updated contact information for the purpose of receiving Summer EBT; and

(3) Establish procedures to enable anyone who has been determined to be eligible for Summer EBT benefits to confirm their eligibility status and unenroll, or opt out, of the Program, if they do not want to receive benefits; and

(4) Provide assistance to households that seek help in applying for benefits.

(c) *NSLP/SBP enrollment database.* By 2025, Summer EBT agencies must establish and maintain a State- or ITO-wide database of all children enrolled in NSLP- or SBP-participating schools within the State or ITO service area, as applicable, for the purposes of enrolling children for Summer EBT benefits and detecting and preventing duplicate benefit issuance. If an ITO, in consultation with FNS, determines that establishing and maintaining a database meeting the requirements of this section is not feasible or is unnecessary based on their method of enrolling children, the ITO may submit a waiver request under § 292.3(h).

(1) *Database elements.* At a minimum, the database must contain the following information for these children:

(i) Name;

(ii) Date of birth;

(iii) School/school district where enrolled;

(iv) Mailing address;

(v) Individual free or reduced price eligibility status, as applicable; and

(vi) Any other information needed to issue benefits timely and with integrity.

(2) *Data use and confidentiality.* Summer EBT agencies must ensure the confidentiality of all such data, and the data must be used only for the purposes of the Summer EBT Program, or to provide other social service benefits to eligible children.

(3) *Data sharing across Summer EBT Programs.* State Summer EBT agencies must make this data available to ITO Summer EBT agencies for children within an ITO's Summer EBT service area, in a timeframe that allows ITO Summer EBT agencies to issue timely benefits. ITO Summer EBT agencies must ensure confidentiality of the data in accordance with paragraph (c)(2) of this section.

(d) *Automatic enrollment with streamlined certification.* (1) Summer

EBT agencies must enroll eligible children through streamlined certification, including those who, during the period of eligibility were:

(i)(A) Individually certified for free or reduced price school meals through the NSLP/SBP, per § 245.6 of this chapter; or

(B) School aged and:

(*1*) Members of a household receiving assistance under SNAP, as defined in § 292.2;

(*2*) Members of a household receiving assistance under FDPIR and TANF, if data for these programs are available at the State level; or

(*3*) A foster, homeless, migrant, runaway, or Head Start child, as defined in § 245.2 of this chapter, if data for these programs are available at the State level.

(ii) Not enrolled in a special provision school but are otherwise determined eligible for a free or reduced priced meal through the NSLP/SBP.

(2) Summer EBT agency may enroll eligible children through streamlined certification who are members of a household receiving assistance under other means-tested programs, as approved by the Secretary.

(3) Streamlined certification does not require further confirmation of school enrollment.

(4) If an ITO, in consultation with FNS, determines that any element of automatic enrollment with streamlined certification is not feasible or is unnecessary based on available resources or circumstances to the population served, the ITO may submit a waiver request under § 292.3(h).

(e) *Enrollment by Summer EBT application.* (1) Summer EBT agencies must enroll eligible children in Summer EBT if it is determined that they meet the requirements to receive free or reduced price meals at § 292.5(a), as determined through a complete Summer EBT application. A Summer EBT application is considered complete if the following information is provided:

(i) Names of children and other household members;

(ii) Amount, source, and frequency of income for each household member; and

(iii) Signature of an adult household member, including electronic signatures, as described in § 292.13(h).

(2) Confirmation of enrollment in an NSLP/SBP- participating school during the immediately preceding instructional year is required for children who apply by Summer EBT application. This can be accomplished by matching against the State or ITO-wide NSLP/SBP enrollment database, as required in paragraph (c) of this section, prior to benefit issuance.

(3) Children who are not in an NSLP or SBP-participating school in the immediately preceding instructional year cannot be certified as eligible, and therefore cannot be deemed eligible for Summer EBT through submission of an application for Summer EBT benefits.

(4) Summer EBT agencies are prohibited from requiring income documentation at the time of application.

(f) *Notice of approval*—(1) *Income applications.* The Summer EBT agency must notify (or place notification in the mail) eligible households of a child's approved status within 15 operational days of receipt of a complete application. This may be included in the mailing containing the EBT card, if applicable, or other communication informing the household about the issuance or use of benefits.

(2) *Streamlined certification.* Households approved for benefits based on information provided by the appropriate State or local agency responsible for the administration of a means-tested program that has been approved by the Secretary must be notified, in writing, that their children are eligible for Summer EBT and that no application is required. The notice of approval must also inform the household how to opt-out if they do not want their children to receive Summer EBT benefits.

(3) *Households declining benefits.* Children from households that notify the Summer EBT agency that they do not want Summer EBT benefits must not be issued benefits, or have their benefits expunged as soon as possible if already issued. Any notification from the household declining benefits must be documented and maintained on file, as required under § 292.23, to substantiate the change in benefits. Because any expungement in this instance is at the request of the household, the 30 day household notice typically required for expunging benefits is not required in this instance.

(4) *Duplicate benefit issuance.* Summer EBT agencies must include in the notice of approval a statement communicating that households that are erroneously issued duplicate benefits from more than one State or ITO should only use benefits from the State or ITO where their child(ren) completed the instructional year immediately preceding the summer operational period. Under no circumstances may they use both.

(g) *Denied applications and the notice of denial.* When the application furnished by a household is not complete or does not meet the eligibility criteria for Summer EBT benefits, the Summer EBT agency must document and retain the reasons for ineligibility and must retain the denied application. In addition, the Summer EBT agency must provide written notice to each household denied benefits within 15 operational days of receipt of a complete application. At a minimum, this notice must include:

(1) The specific reason or reasons for the denial of benefits, *e.g.,* income in excess of allowable limits or incomplete application;

(2) Notification of the right to appeal;

(3) Instructions on how to appeal; and

(4) A statement reminding households that they may reapply for benefits at any time.

(h) *Appeals of denied benefits.* A household that wishes to appeal an application that was denied may do so in accordance with the procedures established by the Summer EBT agency as required by § 292.26. However, prior to initiating the hearing procedure, the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(i) *Confidential nature of streamlined certification information.* Information about children or their households obtained through the streamlined certification process must be kept confidential and is subject to the limitations on disclosure of information in section 9 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758.

§ 292.13 Application requirements.

(a) Statewide application. By 2025, the Summer EBT agency must make a Summer EBT application available to households whose children are enrolled in NSLP- or SBP-participating schools and who do not already have an individual eligibility determination.

(b) Contracting application processes. Summer EBT agencies may not delegate to LEAs the responsibility of making a Summer EBT application available. However, a Summer EBT agency may contract with another entity into order to fulfill the requirement in this paragraph (b).

(c) *Household applications.* The application must be clear and simple in design and the required information must be limited to what is required to

demonstrate that the household does, or does not, meet the eligibility criteria for Summer EBT benefits at § 292.5(a). The application or associated instructions must also include the income eligibility guidelines and an explanation that households with incomes at or below the income limit may be eligible for Summer EBT. Summer EBT agencies are encouraged to include optional questions on the application to improve customer service including, but not limited to:

(1) Preferred method of communication (*e.g.,* mail, email, phone, text message);

(2) Preferred contact information;

(3) Preferred language of communication;

(4) Preferred method of benefit issuance (*e.g.,* EBT card, electronic benefit);

(5) Interest in receiving information about how to access other assistance program benefits (*e.g.,* Summer Food Service Program, NSLP/SBP, Child and Adult Care Food Program, SNAP, WIC, TANF, FDPIR, Medicaid);

(6) Membership in an ITO; and

(7) Other program options where a household may have preferences, receipt of information that households may find useful, or information that would aid Summer EBT agencies in successful program implementation.

(d) *Understandable communications.* Any communication with households for eligibility determination purposes must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

(e) *Availability of applications.* Summer EBT agencies must ensure that a Summer EBT application is available throughout the period of eligibility, as defined in § 292.2.

(f) *Timely certifications.* Summer EBT agencies must follow-up with a household that submits an incomplete application within 10 operational days of receipt of the application. See notice of approval at § 292.12(f) for additional requirements for complete applications that are approved for benefits, and providing benefits to participants at § 292.15(c) for requirements around timely issuance of benefits for eligible children.

(g) *Deadline for applications.* Households must submit an application for Summer EBT benefits by the last day of the summer operational period in order to receive benefits for that summer. Applications that are submitted after the last day of the summer operational period may be used to establish eligibility for the following summer. Summer EBT agencies may encourage households to apply prior to the application deadline, however applications must be accepted and processed up until the application deadline, and benefits must be issued if the application is approved.

(h) *Electronic applications.* In addition to the distribution of information, applications, and descriptive materials in paper form, the Summer EBT agency may establish a system for executing household applications electronically and using electronic signatures. The electronic submission system must comply with the same requirements as paper applications. Descriptive materials may also be made available electronically by the Summer EBT or local educational agency. If the application is made available electronically, a paper version must also be available.

(i) *Application content requirements.* Summer EBT applications must contain the following elements:

(1) *Required income information.* The information requested on the application with respect to the current income of the household must be limited to:

(i) The income received by each member identified by the household member who received the income or an indication which household members had no income; and

(ii) The source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available to pay for a child's meals.

(2) *Household members.* The application must require applicants to provide the names of all household members. However, the application must allow the household to provide a case number if they participate in SNAP, or another means-tested program that has been approved by the Secretary, in lieu of names of all household members and household income information.

(3) *Name of school where child is enrolled.* A State- or ITO-wide application must contain a space for the household to indicate the name of the school or district where each eligible child is enrolled.

(4) *Mailing address.* The application must contain a space for the household to list their mailing address. However, the application must be accepted and processed as complete even if the field was not completed by the applicant. The instructions should communicate that it will be used to mail their EBT card, as applicable, and therefore should be the address that will be used by the household at the time the Summer EBT agency issues benefits.

(5) *Adult member's signature.* The application must be signed by an adult member of the household.

(j) *Attesting to information on the application.* The application must also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that the applicant is not already receiving Summer EBT benefits in another State or ITO, that Summer EBT agencies may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(k) *Race and ethnicity.* The application must contain space for collection of information on race and ethnicity of applicants. The questions should be labeled as optional, and incomplete responses cannot be used as the basis for the denial of benefits.

(l) *Accompanying instructions.* The application must contain clear instructions is with respect to the completion and submission of the application to the Summer EBT agency to make eligibility determinations. The instructions should inform households that if they intend to move, or have recently moved, that they should apply for benefits in the State where their child will complete or completed the school year immediately preceding the summer operational period.

(m) *Required statements for the application.* The application and descriptive materials must include substantially the following statements:

(1) ''The Richard B. Russell National School Lunch Act requires that we use information from this application to determine who qualifies for Summer EBT benefits. We can only approve complete forms. We may share your eligibility information with education, health, and nutrition programs to help them deliver program benefits to your household. Inspectors and law enforcement may also use your information to make sure that program rules are met. Some children qualify for Summer EBT without an application. Please contact your State or ITO to get Summer EBT for a foster child, and children who are homeless, migrant, or runaway.''

(2) When either the Summer EBT agency or the LEA plans to use or disclose children's eligibility information for non-program purposes, additional information, as specified in § 245.6(h) of this chapter, must be added to this statement. State agencies and LEAs are responsible for drafting the appropriate statement.

(3) The application must contain the USDA nondiscrimination statement for Child Nutrition Programs.

(4) The Summer EBT agency must inform applicants and prospective applicants that a non-household member may be designated as the authorized representative for application processing purposes if they have difficulty completing the application process.

(n) *Calculating income.* The Summer EBT agency must use the income information provided by the household on the application to calculate the household's total current income. When a household submits a complete application, and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for Summer EBT benefits.

(o) *Persons authorized to receive eligibility information.* Only persons directly connected with the administration or enforcement of a program or activity listed in this section may have access to children's eligibility information, without parent or guardian consent. Persons considered directly connected with administration or enforcement of a program or activity are Federal, State, ITO, or local program operators responsible for the ongoing operation of the program or activity or responsible for program compliance. Program operators may include persons responsible for carrying out program requirements and monitoring, reviewing, auditing, or investigating the program. Program operators may include contractors, to the extent those persons have a need to know the information for program administration or enforcement. Contractors may include evaluators, auditors, and others with whom Federal or State agencies, ITOs, and program operators contract with to assist in the administration or enforcement of their program in their behalf.

(p) *Disclosure of all eligibility information in addition to eligibility status.* In addition to children's names and eligibility status, the Summer EBT agency, as appropriate, may disclose, without parental consent, all eligibility information obtained through the Summer EBT eligibility process (including all information on the application or obtained through streamlined certification) to:

(1) Persons directly connected with the administration or enforcement of programs authorized under the Richard B. Russell National School Lunch Act, the Child Nutrition Act of 1966, or the Food and Nutrition Act of 2008. This means that all eligibility information obtained for the Summer EBT Program may be disclosed to persons directly connected with administering or enforcing regulations under the Summer EBT Program, National School Lunch or School Breakfast Programs (7 CFR parts 210 and 220, respectively), Child and Adult Care Food Program (7 CFR part 226), Summer Food Service Program (7 CFR part 225), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (7 CFR part 246), and the Supplemental Nutrition Assistance Program (SNAP) (7 CFR parts 271 through 285);

(2) Federal, State, and local law enforcement officials for the purpose of investigating any alleged violation of the programs listed in § 292.16(b)(1)(iii); and

(3) The Comptroller General of the United States for purposes of audit and examination.

(q) *Phase-in flexibility.* For 2024, alternative income applications that do not meet the criteria in paragraph (i) of this section can be used to confer eligibility for Summer EBT if the information provided on the alternative application is sufficient for the Summer EBT agency or LEA to determine that the household meets the income eligibility guidelines for Summer EBT. In 2024, Summer EBT agencies may delegate application processing to LEAs. If a Summer EBT agency delegates application processing to LEAs, then it must cover all administrative costs incurred by the LEAs with respect to Summer EBT application processing.

§ 292.14 Verification requirements.

(a) Summer EBT applications are subject to the following verification requirements:

(1) *Verification for cause.* (i) The Summer EBT agency must verify for cause applications, on a case-by-case basis, such as in an instance when the agency is aware of conflicting or inconsistent information from what was provided on the application.

(ii) The Summer EBT agency may verify an application for cause at any time during the instructional year or summer operational period, but verification must be completed within 30 days of receipt of the application.

(iii) Applications verified for cause are not considered part of three (3) percent sample size described in paragraph (a)(2) of this section.

(iv) Applications do not need to be selected for verification for cause during initial application processing. A Summer EBT agency may become aware of a questionable application after the initial certification was completed and benefits were issued. In this case, the Summer EBT agency must verify the application for cause at the time they learn of the questionable or conflicting information.

(v) All verification procedures in this section must be followed for applications selected for verification for cause in the same manner as an application randomly selected as part of the sample described in paragraph (a)(2) of this section.

(2) *Verification sample.* (i) The Summer EBT agency must verify eligibility of children in a sample of household Summer EBT applications approved for benefits for the summer.

(ii) The sample size for the Summer EBT agency must equal three (3) percent of all applications approved by the Summer EBT agency from the start of the instructional year through April 1 of the school year immediately preceding the summer operational period, selected randomly from all applications.

(3) *Verification alternatives.* (i) In lieu of carrying out provisions in paragraph (a)(2) of this section, Summer EBT agencies may propose alternative methods for verification that strengthen program integrity and preserve participant access.

(ii) Summer EBT agencies that intend to propose alternative procedures must include a detailed description of their plan in their POM submission. Proposals are subject to USDA approval.

(b) *Replacing applications.* The Summer EBT agency may, on a case-by-case basis, replace up to ten percent of applications that are randomly selected as part of the verification sample. Applications may be replaced if the Summer EBT agency determines that the household would be unable to satisfactorily respond to the verification request.

(c) *Rolling verification sample selection. Summer EBT agencies may choose to conduct verification on a rolling basis, as long as the sample size requirements in paragraph (a)(3) of this section are met.* (1) If conducting rolling verification, the Summer EBT agency must:

(i)(A) Include in each sample pool only applications approved since the last sample was selected; and

(B) Select three (3) percent of approved applications, as required by the sampling method, each time, but round down to the nearest whole number to prevent over-sampling. If rounding down results in a zero, no applications should be verified for the sample period, and the applications received in that sample period should be included in the next sample pool.

(ii) Select the final sample on April 1.

(A) Selecting only from the applications approved since the last sampling;

(B) Summing the number of applications selected for verification to date (including the final, April 1 sample); and

(C) Calculating three (3) percent of all applications approved as of April 1, and rounding up to the next whole number.

(2) If the number of applications summed per paragraph (c)(1)(ii)(B) of this section is less than the three (3) percent calculated per paragraph (c)(1)(ii)(C) of this section, the Summer EBT agency must fill the remainder of the sample by selecting randomly from all applications.

(3) Summer EBT agencies may choose to sample at any frequency prior to April 1, but may not sample any applications after April 1.

(d) *Verification after April 1.* Applications that come in after April 1 are still subject to verification for cause, on a case-by-case basis, per paragraph (a)(1) of this section.

(e) *Direct verification.* Summer EBT agencies must conduct direct verification activities with the programs eligible for use in streamlined certification, as defined in § 292.12(d), as well as records from other assistance programs and administrative data, where available. Data records are subject to the timeframe specified in paragraph (e)(2) of this section.

(1) Direct verification must be conducted prior to contacting the household for documentation.

(2) For the purposes of direct verification, documentation may indicate participation in an applicable program or income at any point during the period of eligibility. The information provided only needs to indicate eligibility at a single point in time during the period of eligibility, not that the child was eligible at the time of application or verification.

(3) Summer EBT agencies must include in their POM submission all sources of administrative data that is intended to be used for direct verification.

(f) *Verification procedures and assistance for households*—(1) *Exceptions from verification.* Verification is not required of households if all children in the household are determined eligible based on documentation provided by the State or local agency responsible for the administration of the SNAP, FDPIR, TANF, or another means tested program, as approved by the Secretary, or if all children in the household are determined to be foster, homeless, migrant, or runaway, as defined in § 245.2 of this chapter.

(2) *Notification of selection.* Households selected for verification must be notified in writing that their applications were selected for verification. The written statement must include a telephone number to contact for assistance. Any communications with households concerning verification must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand. These households must be advised of the type of information or documents that will be expected. Households selected for verification must be informed that:

(i) They are required to submit the requested information to verify eligibility for Summer EBT benefits, by the date determined by the Summer EBT agency.

(ii) They may, instead, submit proof that the children receive assistance under SNAP, FDPIR, TANF, or another means tested program, as approved by the Secretary.

(iii) They may, instead, request that the Summer EBT agency contact the appropriate officials to confirm that their children are foster, homeless, migrant, or runaway.

(iv) Failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Sources of information.* For the purposes of this section, sources of information for verification may include, but are not limited to, written evidence, individuals outside of the child's household who can verify the child's circumstances, and systems of records as follows:

(i) Written evidence must be used as the primary source of information for verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, and letters from employers. Whenever written evidence is insufficient to confirm income information on the application or current eligibility, the verifying agency may require confirmation from a person outside of the child's household, or accept a statement from an adult member of the child's household.

(ii) Verbal confirmations of a household's circumstances by a person outside of the household may be made in person or by phone. The verifying official may select a person to contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a person, contact must not be made without providing written or oral notice to the household. At the time of this notice, the household must be informed that it may consent to the contact or provide acceptable documentation in another form. If the household refuses to choose one of these options, its eligibility must be terminated in accordance with the normal procedures for failure to cooperate with verification efforts. Individuals outside of the child's household who can verify the child's circumstances could include but are not limited to: employers, social service agencies, school officials, and migrant agencies.

(iii) Agency records to which the verifying agency may have access are not considered to be the same as a person outside of the child's household who can verify their circumstances. Information concerning income, household size, or SNAP, FDPIR, or TANF eligibility, maintained by other government agencies to which the verifying agency can legally gain access, must be used to confirm a household's income, size, or receipt of benefits, as applicable. Information may also be obtained from individuals or agencies serving categorically eligible children, as defined in § 292.2, including foster, homeless, migrant, or runaway children.

(iv) Households which dispute the validity of income information acquired through an individual outside of the child's household or a system of records must be given the opportunity to provide other documentation.

(4) *Documentation timeframe.* Households selected and notified of their selection for verification must provide documentation of income. The documentation must indicate the source, amount and frequency of all household income and may indicate eligibility at any point during the period of eligibility. The information provided only needs to indicate eligibility for participation in the program at a single point in time during the period of eligibility, not that the child was certified for that program's benefits at the time of application or verification.

(5) *Household cooperation.* If a household refuses to cooperate with efforts to verify, eligibility for Summer EBT benefits must be terminated.

(6) *Telephone assistance.* The Summer EBT agency must provide a telephone number to households selected for verification to call free of charge to obtain information about the verification process. The telephone number must be prominently displayed on the letter to households selected for verification.

(7) *Follow-up attempts.* The Summer EBT agency must make at least two attempts, at least one week apart, to contact any household that does not respond to a verification request. The attempt may be through a telephone call, email, or mail, and must be documented. Non-response to the initial request for verification includes no response and incomplete or ambiguous responses that do not permit the Summer EBT agency to resolve the children's eligibility for Summer EBT benefits.

(8) *Eligibility changes.* The Summer EBT agency must complete the following activities if there is an eligibility change as a result of verification:

(i) Make appropriate modifications to the initial eligibility determinations.

(ii) Notify the household of any change in eligibility as a result of verification.

(iii)(A) The notice must advise the household of:

(*1*) The change;

(*2*) The reasons for the change;

(*3*) Notification of the right to appeal and when the appeal must be filed;

(*4*) Instructions on how to appeal; and

(*5*) The right to reapply at any time during the instructional year or summer operational period.

(B) Properly document and retain on file at the Summer EBT agency the reasons for ineligibility.

(9) *Issuance of benefits.* Benefits cannot be issued for applications selected for verification until the verification process is completed with the exception of verification for cause, as described in paragraph (a)(1) of this section.

(10) *Timing of verification for continuous school calendars.* In the case of children who are enrolled in a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the timing of conducting verification, in accordance with the State or ITO's approved POM.

(11) *Verification after benefit issuance.* If a Summer EBT agency is alerted to a questionable application after initial approval or issuance of benefits, no further benefits should be issued until verification for cause, as outlined in paragraph (a)(1) of this section is complete and eligibility is confirmed.

(12) *Nondiscrimination.* The verification efforts must be applied without regard to race, sex, color, national origin, age, or disability.

(g) *Verification of alternative income applications in 2024.* In 2024, Summer EBT agencies or LEAs should, on a case-by-case basis, verify for cause any questionable Summer EBT application or alternate income applications used to confer Summer EBT eligibility and follow the procedures in paragraphs (e) and (f) of this section.

Subpart D—Issuance and Use of Program Benefits

§ 292.15 General standards.

(a) *Timing.* Summer EBT benefits are intended for use during the summer operational period, in accordance with the Summer EBT agency's approved POM.

(b) *Continuous school calendar.* In the case of children who attend a school operating on a continuous school calendar, the Summer EBT agency must receive approval from USDA for any alternative plans for the periods during which Summer EBT benefits must be issued and used, in accordance with the State or ITO's approved POM.

(c) *Benefit issuance*–(1) *Providing benefits to participants.* (i) The Summer EBT agency shall ensure the timely and accurate issuance of benefits.

(A) For children who can be streamline certified or who have an approved Summer EBT application on file, benefits must be issued and available for participants to use at least seven calendar days and not more than 14 calendar days before the start of the summer operational period. When the Summer EBT agency does not have sufficient data to issue a benefit to an eligible child, the agency must work to resolve the case and issue the benefit as expeditiously as possible.

(B) For eligible children who apply after the summer operational period begins, benefits must be issued and available to spend not later than 15 operational days after a complete application is received by the Summer EBT agency, so that participants may use their benefits during the summer.

(ii) If the Summer EBT agency issues benefits after the summer operational period, the Summer EBT agency must submit to FNS a corrective action plan outlining the reasons benefits were not issued in a timely manner, and steps the Summer EBT agency will take to ensure timely issuance in the future.

(iii) The Summer EBT agency's issuance schedule does not need to align with the start of calendar months and may include staggered benefit issuance across multiple days. Regardless of the issuance schedule, Summer EBT agencies may only issue a full three months of benefits for the summer operational period.

(iv) Children on applications that are selected for verification must not be issued benefits until verification is complete and eligibility is confirmed. Additional information about the verification requirements for Summer EBT applications can be found at § 292.14.

(v) Summer EBT agencies must aid households with eligible children who do not reside in a permanent dwelling or have a fixed mailing address in obtaining Summer EBT benefits by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(2) *Method of issuance.* Benefits may be issued:

(i) In the form of an EBT card;

(A) Into an existing EBT account associated with an existing EBT card; or

(B) Into a new EBT account associated with a new EBT card;

(ii) Through other electronic methods, as determined by the Secretary; or

(iii) In the case of a Summer EBT agency that does not issue nutrition assistance program benefits electronically, using the same methods by which that Summer EBT agency issues benefits under the nutrition assistance program of that State.

(d) *Dual participation.* (1) Dual participation in Summer EBT in the same summer operational period is not allowed.

(2) Summer EBT agencies must develop procedures to detect and prevent dual participation across multiple States and/or ITOs, and must describe these procedures in their POMs, as explained in § 292.8(e)(9).

(e) *Benefit amount.* (1) In 2024, the benefit will be $40 per month in the summer operational period for each eligible child, and will be adjusted in subsequent years to reflect changes in the cost of food as measured by the Thrifty Food Plan (TFP). Any year-to-year decrease of the TFP will not be implemented.

(2) In Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates to reflect the differences between the costs of foods in those

States and the costs of foods in all other States.

(3) Benefit amounts will be issued in an amount equal to the unrounded benefit amount from the prior year, adjusted to the nearest lower dollar increment to reflect changes to the cost of the diet described in section 3(u) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year and rounded to the nearest lower dollar increment. Rates will be effective January 1 through December 31 of each year.

(4) Summer EBT agencies may not prorate benefits for partial months and must issue the full three months of summer benefits to each eligible child.

(f) *Benefit allotments.* (1) The Summer EBT agency may issue benefit allotments to a child in a single issuance prior to the start of the summer operational period, or multiple issuances provided that the first issuance occurs before the start of the summer operational period.

(2) In providing benefit allotments Summer EBT agencies:

(i) May stagger issuance throughout the month.

(ii) Must establish an availability date for household access to their benefits and inform households of this date.

(iii) Must issue the full benefit amount for all summer months to each eligible child who applies before the last day of the summer period, independent of the date of application submission or eligibility determination.

(iv) Must adhere to the reporting requirements specified by USDA, regardless of the issuance schedule used.

(g) *Participant support*—(1) *Household training.* The Summer EBT agency must provide written training materials to each eligible household prior to Summer EBT benefit issuance and as needed during ongoing operation of the Summer EBT Program. At a minimum, the household training must include:

(i) Content which will familiarize each eligible household with:

(A) Where benefits can be used;

(B) What benefits can be used to purchase; and

(C) Unallowable uses of benefits, and penalties for misuse;

(ii) The appropriate utilization and security of the personal identification number (PIN);

(iii) The established procedures to provide customer service during non-business hours that enable participants or proxies to report a lost, stolen, or damaged card, report other card or benefit issues, receive information on the EBT food balance, and receive the current benefit end date;

(iv) Eligibility criteria for the Program;

(v) Written materials and other information, including the specific rights to benefits. This must include the USDA statement of non-discrimination. Written materials must be prepared at an educational reading level suitable for participant households; and

(vi) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(2) *EBT cards and PINs.* Summer EBT agencies which issue EBT cards by mail must, at a minimum, use first class mail and sturdy non-forwarding envelopes or packages to send Summer EBT cards to households.

(i) The Summer EBT agency must permit a Summer EBT eligible household to select their PIN.

(ii) PIN assignment procedures must be permitted in accordance with industry standards as long as PIN selection is available to households if they so desire and households are informed of this option.

(iii) If assigning a PIN by mail in conjunction with card issuance, Summer EBT agencies must mail the PIN separate from the card one business day after the card is mailed.

(3) *Adjustments.* The Summer EBT agency:

(i) May make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) Must make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(4) *Providing replacement EBT cards or PINs.* The Summer EBT agency must make replacement EBT cards available for pick up or place the card in the mail within two business days following notice by the household to the Summer EBT agency that the card has been lost, stolen or damaged.

(i) The Summer EBT agency must ensure a duplicate account is not established which would permit households to access more than one account in the system.

(ii) An immediate hold must be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The Summer EBT agency must implement a reporting system which is continually operative. Once a household reports their EBT card has been lost or stolen, the agency must assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The Summer EBT agency must maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(5) *Providing replacement EBT benefits.* The Summer EBT agency must make replacement EBT benefits available to a household when the household reports that food purchased with Summer EBT benefits was destroyed in a household misfortune or disaster.

(h) *Expungement*—(1) *General expungement procedures*—(i) Summer EBT agencies shall expunge Summer EBT benefits 122 calendar days after their issuance.

(ii) No less than 30 days before benefit expungement is scheduled to begin, Summer EBT agencies must provide notice to the household of the expungement date and amount that is scheduled for expungement.

(iii) Expunged benefits shall not be reinstated.

(2) *Procedures to adjust Summer EBT accounts.* The Summer EBT agency shall establish procedures to adjust Summer EBT benefits that have already been posted to an EBT account prior to the household accessing the account, or to remove benefits from inactive accounts for expungement.

(i) Whenever benefits are expunged, the Summer EBT agency must document the date and amount of the benefits in the household case file.

(ii) Issuance reports must reflect the adjustment to the Summer EBT agency issuance totals to comply with reporting requirements in § 292.23.

(i) *Expungement Procedures specific to States that administer the supplemental nutrition assistance program (SNAP).* (1) Summer EBT agencies that load Summer EBT benefits onto existing SNAP accounts must draw down Summer benefits prior to drawing from the household's SNAP benefits.

(2) Expunged benefits must be returned to the State's Summer EBT account and must not be co-mingled with SNAP funds.

§ 292.16 Issuance and adjustment requirements specific to States that administer SNAP.

(a) *Basic issuance requirements.* State Summer EBT agencies must establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that Program benefits are timely distributed in the correct amounts; and that benefit

issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(1) *On-line issuance of electronic benefits.* State Summer EBT agencies may issue benefits to households through an on-line EBT system in which Program benefits are stored in a central computer database and electronically accessed by households at the point of sale via reusable plastic cards.

(2) *Alternative benefit issuance system.* (i) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State Summer EBT agency to issue or deliver benefits using another method.

(ii) The cost of documents or systems which may be required as a result of a permanent alternative issuance system must not be imposed upon retail food firms participating in the Program.

(3) *Contracting or delegating issuance responsibilities.* State Summer EBT agencies may assign to others such as banks, savings and loan associations, and other commercial businesses, the responsibility for the issuance of benefits. State Summer EBT agencies may permit contractors to subcontract assigned issuance responsibilities.

(i) Any assignment of issuance functions must clearly delineate the responsibilities of both parties. The State Summer EBT agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State Summer EBT agency is strictly liable to FNS for all losses of benefits, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(ii) All issuance contracts must follow procurement standards set forth in § 292.27.

(iii) The State Summer EBT agency must not assign the issuance of benefits to any retail food firm.

(4) *EBT system administration.* (i) The State Summer EBT agency must be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State Summer EBT agency upon a finding that the State Summer EBT agency or its contracted representative has failed to comply with the requirements of this part.

(ii) The State Summer EBT agency must indicate how it plans to incorporate additional programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the EBT system. The State Summer EBT agency must also consult with the State agency officials responsible for administering the WIC prior to submitting the Planning APD for FNS approval.

(5) *Master issuance file.* (i) The State Summer EBT agency must establish a master issuance file which is a composite of the issuance records of all eligible children. The master issuance file must contain all the information needed to identify eligible children, issue Summer EBT benefits, record the participation activity for each household, and supply all information necessary to fulfill the reporting requirements in § 292.23.

(ii) The master issuance file must be kept current and accurate. It must be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(iii) Before entering an eligible child's data on the master issuance file, the State Summer EBT agency must review the master issuance file to ensure that the child is not currently participating in, or disqualified from, the Program.

(6) *Shared responsibility of issuance activities.* State Summer EBT agencies may divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, the posting of benefits to an EBT account, and preparation of EBT cards and PINs for mailing. If issuance functions in an office are handled by one person, a second-party review must be made to verify card inventory, the reconciliation of the mail log, and the number of mailings prepared.

(7) *Summer EBT monitoring, examinations, and audits.* State Summer EBT agency's accountability system monitoring procedures must be included in the monitoring procedures for SNAP as described at § 274.1(i) of this chapter.

(8) *Compliance investigations.* State Summer EBT agencies must provide on-line read-only access to State EBT systems for compliance investigations.

(i) The State Summer EBT agency is required to provide software and telecommunications capability as necessary to FNS Retailer Investigation Branch Area offices, Regional offices, and Field offices so that FNS compliance investigators, other appropriate FNS personnel, and USDA OIG investigators have access to the system in order to conduct investigations of program abuse and alleged violations; and

(ii) The State Summer EBT agency must ensure that FNS compliance investigators and USDA OIG investigators have access to EBT cards and accounts that are updated as necessary to conduct SNAP investigations.

(9) *Federal financial participation.* Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements.

(b) *Disclosure.* (1) Use or disclosure of information obtained from Summer EBT recipients must be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of section 13A of the Richard B. Russell National School Lunch Act, the Food and Nutrition Act of 2008, or regulations in this chapter, other Federal assistance programs, or federally-assisted State programs providing assistance on a means-tested basis to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the NSLA, Food and Nutrition Act of 2008, or regulations in this chapter. The written request shall include the identity of the individual requesting the information and their authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(2) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free and reduced price meals under the School Lunch and School Breakfast programs.

(3) Recipients of information released under this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section.

(4) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review

material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the Summer EBT agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(5) Copies of regulations, plans of operation, State Summer EBT agency manuals, State Summer EBT agency corrective action plans, and Federal procedures may be obtained from FNS in accordance with 7 CFR part 295.

(c) *Program administration*—(1) *Automation of Summer EBT operations.* All State Summer EBT agencies are required to sufficiently automate their Summer EBT operations and computerize their systems for obtaining, maintaining, utilizing, and transmitting information concerning Summer EBT.

(2) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the Summer EBT agencies must establish an organizational structure which divides the responsibility for eligibility determinations and benefit issuance among certification, data management, and issuance units within coordinating or partnering Summer EBT agencies.

(3) *Court suit reporting*—(i) *State Summer EBT agency responsibility.* (A) In the event that a State Summer EBT agency is sued by any person(s) in a State or Federal Court in any matter which involves the State Summer EBT agency's administration of Summer EBT, the Summer EBT agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. Summer EBT agencies involved in suits shall, upon request of FNS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FNS, as parties to the suit. FNS may request to join the following types of suits:

(*1*) Class action suits;

(*2*) A suit in which an adverse decision could have a national impact;

(*3*) A suit challenging Federal policy such as a provision of the NSLA, Food and Nutrition Act of 2008, or regulations in this part or an interpretation of the regulations in this part; or,

(*4*) A suit based on an empirical situation that is likely to recur.

(B) FNS may advise a Summer EBT agency to seek a settlement agreement of a court suit if the Summer EBT agency is being sued because it misapplied Federal policy in administering the Summer EBT Program.

(C) State Summer EBT agencies shall notify FNS when court cases have been dismissed or otherwise settled. State Summer EBT agencies shall also provide FNS with information that is requested regarding the State Summer EBT agency's compliance with the requirements of court orders or settlement agreements.

(4) *Notification of lawsuits.* FNS shall notify all Summer EBT agencies of any suits brought in Federal court that involve FNS' administration of the Program and which have the potential of affecting many Summer EBT agencies' Program operations. Summer EBT agencies may not be notified of suits brought in Federal Court involving FNS' administration of the Program which may only affect Program operations in one or two States or ITOs. The notification provided to Summer EBT agencies shall contain a description of the Federal policy that is affected.

(d) *Procedures for program administration in Alaska*—(1) *Purpose.* To achieve the efficient and effective administration of Summer EBT in rural areas of Alaska, FNS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this paragraph (d) apply only in those areas of Alaska designated as ''rural'' in § 272.7(b) of this chapter. All regulations in this part not specifically modified by this paragraph (d) shall remain in effect.

(2) *Fee agents. Fee agent* means a paid agent who, on behalf of the State Summer EBT agency, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State Summer EBT agency, and provide other services as required by the State Summer EBT agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(3) *Application processing.* The State Summer EBT agency may modify the application processing requirements in this part as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(4) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt.

(5) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency.

(6) *Expedited service.* (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State Summer EBT agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the benefits no later than the close of business of the second working day following the date the application was received by the State Summer EBT agency.

(ii) If the signed application is submitted directly to the State Summer EBT agency in person by a rural resident or its authorized representative or by mail, the State Summer EBT agency shall process the application and issue benefits to households eligible for expedited service in accordance with the time standards contained in this part.

(iii) If an incomplete application is submitted directly to the State Summer EBT agency by mail, the State Summer EBT agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radio-phone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State Summer EBT agency shall complete the application and process the case. Because of the mailing time in rural areas, the State Summer EBT agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(7) *Social Security insurance (SSI) joint processing.* Social Security Administration (SSA) workers shall mail all jointly processed applications to the appropriate Summer EBT agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State Summer EBT agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed

application was received by the SSA worker.

(8) *Fair hearings, fraud hearings, and agency conferences.* The Summer EBT agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in this part.

(e) *Disqualification.* (1) The Summer EBT agency shall be responsible to investigate cases of alleged intentional Program violation, and to ensure that appropriate cases are acted upon The State Summer EBT agency must ensure investigations are consistent with § 273.16(a) of this chapter.

(2) The penalties for intentional Summer EBT Program violations specified at § 273.16(b) of this chapter as well as the definition of intentional program violations at § 273.16(c) of this chapter are applicable to individuals 18 years of age or over who:

(i) Allegedly committed an intentional Summer EBT Program violation; or

(ii) Allegedly ordered, coerced, persuaded, encouraged, or otherwise induced a person under the age of 18 to commit an intentional Summer EBT Program violation.

(3) Requirements for notifying households about disqualification penalties that are specified at § 273.16(d) of this chapter apply to Summer EBT.

(4) Disqualification hearing procedures for individuals accused of intentional Program violation specified at § 273.16(e)(f) through (h) of this chapter also apply to Summer EBT.

(5) Each State Summer EBT agency must report to FNS information concerning individuals disqualified for an intentional Program violation in accordance with § 273.16(i) of this chapter for Summer EBT.

(6) In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency must reinstate the individual in the program if the household is eligible.

(f) *Restoration of lost benefits*—(1) *Entitlement.* (i) The Summer EBT agency must restore benefits which were lost whenever the loss was caused by an error by the Summer EBT agency or by an administrative disqualification for intentional Program violation which was subsequently reversed, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in this part that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(A) The date the Summer EBT agency receives a request for restoration from a household; or

(B) The date the Summer EBT agency is notified or otherwise discovers that a loss to a household has occurred.

(ii) The Summer EBT agency must restore benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits must be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a Summer EBT agency action, the benefits must be restored for a period of not more than twelve months from the first of the following dates:

(A) The date the Summer EBT agency receives a request for restoration.

(B) If no request for restoration is received, the date the fair hearing action was initiated; but

(C) Never more than one year from when the Summer EBT agency is notified of, or discovers, the loss.

(D) Benefits must be restored even if the child is currently ineligible.

(2) *Errors discovered by the Summer EBT agency.* If the Summer EBT agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the Summer EBT agency must automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits must not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(3) *Disputed benefits.* (i) If the Summer EBT agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the Summer EBT agency or any other action taken by the Summer EBT agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the Summer EBT agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the Summer EBT agency must restore the lost benefits in accordance with that decision.

(ii) If a household believes it is entitled to restoration of lost benefits but the Summer EBT agency, after reviewing the case file, does not agree, the household has 90 days from the date of the Summer EBT agency determination to request a fair hearing. The Summer EBT agency must restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the Summer EBT agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(4) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of Summer EBT agency notification, only if the decision which resulted in disqualification is subsequently reversed.

(5) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the Summer EBT agency must restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive.

(6) *Accounting procedures.* The Summer EBT agency shall be responsible for maintaining an accounting system for documenting a child's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored. The Summer EBT agency must at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system must be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(g) *Retailers.* Retail food operations authorized to participate as a SNAP retailer must also accept State Summer EBT benefits.

(h) *Record retentions and forms of security.* The State Summer EBT agency must maintain issuance, inventory, reconciliation, and other accountability records related to Summer EBT.

(1) *Availability of records.* (i) The State Summer EBT agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years. This period may be extended at the written request of FNS.

(ii) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(2) *Control of issuance documents.* The State Summer EBT agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State Summer EBT agency. The State Summer EBT agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(3) *Accountable documents.* (i) EBT cards shall be considered accountable documents. The State Summer EBT agency shall provide the following minimum security and control procedures for these documents:

(A) Secure storage;

(B) Access limited to authorized personnel;

(C) Bulk inventory control records;

(D) Subsequent control records maintained through the point of issuance or use; and

(E) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(ii) For notices of change which initiate, update or terminate the master issuance file, the State Summer EBT agency shall, at a minimum, provide secure storage and shall limit access to authorized personnel.

(i) *Benefit redemption by eligible households*—(1) *Eligible food.* Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household from SNAP-authorized retailers, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

(2) *Prior payment prohibition.* Program benefits must not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Benefits must not be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(3) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions can be established. In addition, no transaction fees can be imposed on Summer EBT households utilizing the EBT system to access their benefits.

(4) *Access to balances.* (i) Households shall be permitted to determine their Summer EBT account balances without making a purchase or standing in a checkout line.

(ii) The Summer EBT agency must ensure that the EBT system is capable of providing a transaction history for a period of up to 2 calendar months to households upon request.

(iii) Households must be provided printed receipts at the time of transaction. At a minimum this information must:

(A) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the Summer EBT account;

(B) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(C) Identify the Summer EBT households member's account number using a truncated number or coded transaction number. The child's name must not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(5) *Equal treatment.* The EBT system must be implemented and operated in a manner that maintains equal treatment for Summer EBT households. Summer EBT benefits must be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request voluntary use of Summer EBT benefits from homeless Summer EBT recipients and may not request such household using Summer EBT benefits to pay more than the average cost of the food purchased by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, ''average cost'' is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by Summer EBT recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source must not be considered in determining the amount to be requested from Summer EBT recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, Summer EBT recipients must be provided the same option of eating free or making a donation in money or Summer EBT benefits. No retail food store may single out Summer EBT recipients for special treatment in any way. The following requirements for the equal treatment of Summer EBT households must directly apply to EBT systems:

(i) Retailers must not establish special checkout lanes which are only for Summer EBT households. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, Summer EBT customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) Checkout lanes equipped with POS devices shall be made available to Summer EBT households during all retail store hours of operation.

(6) *Households eligible for prepared meals*—(i) *Meals-on-wheels.* Eligible guardians of Summer EBT recipients 60 years of age or over or guardians who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare meals may use Summer EBT benefits to purchase meals for the participant that are prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(ii) *Communal dining facilities.* Eligible guardians of Summer EBT recipients 60 years of age or over may use Summer EBT benefits issued to purchase meals for the participant that are prepared at communal dining facilities authorized by FNS for that purpose.

(iii) *Residents of certain institutions.* (A) Eligible residents of a group living arrangement may use Summer EBT benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem Summer

EBT benefits in accordance with paragraph (g) of this section.

(B) Residents of shelters for battered women and children may use their Program benefits to purchase meals prepared especially for the participant at a shelter which is authorized by FNS to redeem benefits in accordance with paragraph (g) of this section.

(iv) *Homeless households.* (A) Homeless Summer EBT households may use their benefits to purchase prepared meals for the participant from authorized homeless meal providers.

(B) Eligible homeless Summer EBT households may use their benefits to purchase meals for the participant from restaurants authorized by FNS for such purpose.

(7) *Allowable purchase of equipment for hunting and fishing.* Eligible Summer EBT households residing in areas of Alaska determined by FNS as areas where access to authorized retailers is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of their benefits issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use benefits to purchase firearms, ammunition, and other explosives.

(8) *Limiting hunting and fishing purchases to eligible households.* State Summer EBT agencies shall implement a method to ensure that access to prepared meals and hunting and fishing equipment is limited to eligible households as described in paragraphs (i)(6) and (7) of this section.

(9) *Container deposit fees.* Program benefits may not be used to pay for deposit fees in excess of the amount of the State fee reimbursement required to purchase any food or food product contained in a returnable bottle or can, regardless of whether the fee is included in the shelf price posted for item. The returnable container type and fee must be included in State law in order for the customer to be able to pay for the upfront deposit with Summer EBT benefits. If a Summer EBT eligible product has a State deposit fee associated with it, the product remains eligible for purchase with Summer EBT benefits, and the State deposit fee may be paid with Summer EBT benefits as well; however, any fee in excess of the State deposit fee must be paid in cash or other form of payment other than with Summer EBT benefits.

(j) *Reconciliation.* State Summer EBT agencies must account for all issuance through a reconciliation process as described by USDA.

§ 292.17 Retailer integrity requirements specific to States that administer SNAP.

(a) *Participation of retail food stores and wholesale food concerns, and redemption of Summer EBT benefits.* Requirements and restrictions on the participation of retail food stores and wholesale food concerns and the redemption of benefits described at §§ 278.2, 278.3 and 278.4 of this chapter, including the acceptance of benefits for eligible food at authorized firms, also apply to activities involving Summer EBT benefits.

(b) *Firm eligibility standards.* A firm may be subject to the following actions described at § 278.1 of this chapter for noncompliance or violations involving Summer EBT benefits:

(1) The requirements described at § 278.1(b)(4) of this chapter regarding a collateral bond or irrevocable letter of credit for applicant firms with certain sanctions apply to applicant firms with sanctions imposed for violations involving Summer EBT benefits. The amount of the collateral bond or irrevocable letter of credit shall be calculated in accordance with § 278.1(b)(4)(i)(D) and shall also include the amount of Summer EBT benefit redemptions when calculating the average monthly benefit redemption volume.

(2) Authorization shall be denied or withdrawn based on a determination by the Food and Nutrition Service (FNS) that a firm lacks or fails to maintain necessary business integrity and reputation, in accordance with the standards and time periods described at § 278.1(b)(3), (k)(3), and (l)(1)(iv) of this chapter. When making such determinations, FNS shall consider the criteria referred to in § 278.1(b)(3), (k)(3), and (l)(1)(iv) where the underlying activities involve Summer EBT benefits.

(3) Firm authorization shall be denied or withdrawn for failure to pay any claims, fines, or civil money penalties in the manner described at § 278.1(k)(7) and (l)(1)(v) and (vi) of this chapter where such sanctions were imposed for violations involving Summer EBT benefits.

(c) *Penalties.* For firms that commit certain violations described at §§ 278.6 and 278.2 of this chapter where such violations involve Summer EBT benefits, FNS shall take the corresponding action prescribed at § 278.6 or § 278.2 for that violation. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. Specifically, FNS shall:

(1) Disqualify a firm permanently, as described at § 278.6(e)(1)(i) of this chapter, for trafficking, as defined at § 284.1(b)(1) of this chapter, or impose a civil money penalty in lieu of permanent disqualification, as described at § 278.6(i) of this chapter, where such compliance policy and program is designed to prevent violations of the regulations in this section;

(2) Disqualify a firm permanently, as described at § 278.6(e)(1)(ii) of this chapter, for any violation involving Summer EBT benefits committed by a firm that had already been sanctioned at least twice before under this section or 7 CFR part 278;

(3) Disqualify the firm for 5 years, as described at § 278.6(e)(2)(v) of this chapter, or for 3 years, as described at § 278.6(e)(3)(iv) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits, and impose fines, as described at § 278.6(m) of this chapter, for unauthorized acceptance violations involving Summer EBT benefits;

(4) Disqualify the firm for 5 years in circumstances described at § 278.6(e)(2) of this chapter when the amount of redemptions, which shall also include the amount of Summer EBT redemptions, exceed food sales for the same period of time, as described at § 278.6(e)(2)(ii) through (iv);

(5) Disqualify the firm for 3 years as described at § 278.6(e)(3)(ii) of this chapter for situations described at § 278.6(e)(2) of this chapter involving Summer EBT benefits;

(6) Disqualify the firm for 1 year for credit account violations as described at §§ 278.6(e)(4)(ii) and 278.2(f) of this chapter, where such violations involve Summer EBT benefits;

(7) Disqualify the firm for ineligibles violations for such circumstances and corresponding time periods as described at § 278.6(e)(2)(i), (e)(3)(i), (e)(4)(i), and (e)(5) of this chapter, where such violations involve Summer EBT benefits;

(8) Double the appropriate period of disqualification for a violation, as described at § 278.6(e)(6) of this chapter, where such violation involves Summer EBT benefits, when the firm has once before been assigned a sanction under this section or 7 CFR part 278;

(9) Issue a warning letter to the violative firm when violations are too limited to warrant a period of disqualification, as described at § 278.6(e)(7) of this chapter, where such violations involve Summer EBT benefits;

(10) Impose a civil money penalty for hardship or transfer of ownership, as described at § 278.6(g) of this chapter, in amounts calculated using the described formula at § 278.6(g), which shall also

include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions; and

(11) Impose a civil money penalty in lieu of permanent disqualification for trafficking as described at § 278.6(j) of this chapter in an amount calculated using the described formula at § 278.6(j), which shall also include the relevant amount of Summer EBT redemptions when calculating the average monthly benefit redemptions.

(d) *Claims.* The standards for determination and disposition of claims against retail food stores and wholesale food concerns described at § 278.7 of this chapter apply to Summer EBT benefits.

(e) *Administrative and Judicial review.* Firms aggrieved by administrative action under 7 CFR parts 271, 278, and 279 may request administrative review of the administrative action with USDA in accordance with 7 CFR part 279, subpart A. Firms aggrieved by the determination of such an administrative review may seek judicial review of the determination under 5 U.S.C. 702 through 706.

§ 292.18 Requirements specific to States that administer Nutrition Assistance Program (NAP) programs.

Summer EBT benefits issued by a Territory that administers the Nutrition Assistance Program in lieu of SNAP may only be used by the eligible household that receives such summer benefits to purchase eligible foods from retail food stores that have been approved for participation in the Nutrition Assistance Program in American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. States that administer NAP shall establish issuance and accountability systems which ensure that only certified eligible households receive Summer EBT benefits.

§ 292.19 Requirements specific to ITO Summer EBT agencies.

(a) The ITO Summer EBT Agency must ensure that Summer EBT Program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from retailers that have been approved for participation in the WIC Program. The ITO Summer EBT agency must:

(1) Use the same benefit delivery model for all participants throughout its service area, in accordance with its FNS-approved POM:

(i) For ITOs using a CVB-only benefit delivery model, issue a benefit level equal to the amount set forth in § 292.15(e); and

(ii) For ITOs using a food package benefit delivery model, a combination CVB and food package benefit delivery model, or an alternate benefit delivery model, issue a benefit not to exceed the amounts set forth in § 292.15(e);

(2) Ensure vendors charge prices for eligible food items which are reasonable for the area(s) served and are at the current price or less than the current price charged to other customers. Vendors may not charge Summer EBT participants more for an item than the price in the retail environment for all other customers;

(3) Provide participants supplemental foods deemed eligible for Summer EBT via an FNS-approved POM. Supplemental foods authorized for the WIC Program by the applicable WIC ITO must meet the requirements set forth in this paragraph (a)(3). The POM must identify a list of supplemental foods that:

(i) Contain nutrients determined by nutritional research to be lacking in the diets of children, and promote the health of the population served by the program, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns; and

(ii) Do not include infant formula and infant foods.

(b) ITO Summer EBT procedures and operations related to basic issuance requirements, reconciliation, benefit redemption, and functional and technical EBT system requirements, should be consistent with WIC regulations at § 246.12 of this chapter as applicable to the benefit delivery model used, to the extent such requirements do not conflict with the requirements set forth for ITO Summer EBT agencies in this part.

(c) To ensure effective vendor integrity, the ITO Summer EBT agency must set forth a system which ensures:

(1) Requirements and restrictions on the participation of vendors and the transaction of food benefits described at § 246.12 of this chapter, apply to activities involving Summer EBT benefits; and

(2) Vendors are subject to the actions and penalties described at § 246.12 of this chapter for noncompliance or violations involving Summer EBT benefits; and

(3) The standards for determination and disposition of claims against vendors described at § 246.12 of this chapter apply to Summer EBT benefits; or

(4) Set forth an alternate system to ensure effective vendor management and vendor integrity.

Subpart E—General Administrative Requirements

§ 292.20 Payments to Summer EBT agencies and use of administrative program funds.

(a) *General requirements for grant awards.* Grant awards are all subject to procedures established by USDA in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(b) *Program benefit funds.* FNS shall provide a grant to the Summer EBT agency that administers the EBT benefit issuance in an amount equal to 100 percent of issued eligible benefit funds as reflected in the final POM. Summer EBT benefits must be tracked separately from SNAP benefits, or other benefit types.

(c) *State administrative funds.* FNS must pay to each Summer EBT agency an amount equal to 50 percent of the administrative expenses incurred by the Summer EBT agency in operating the program under this section, including the administrative expenses of LEAs and other agencies in each State or ITO, as applicable, relating to the operation of the program under this section. Summer EBT agencies will report their incurred administrative expenses on a financial status report. Generally, Summer EBT agencies must cover the balance of their administrative costs, *i.e.,* their ''match,'' with non-Federal funds.

(d) *Applicable terms and conditions on grant awards.* All grant awards described in paragraphs (a) through (c) of this section shall be subject to terms and conditions and standard reporting requirements of the Federal grant and Federal-State Agreement.

(e) *Use of State administrative funds*—(1) *Matching funds.* Summer EBT agency costs for Federal matching funds may consist of:

(i) Charges reported on a cash or accrual basis by the Summer EBT agency as project costs.

(ii) Project costs financed with cash contributed or donated to the Summer EBT agency.

(iii) Project costs represented by services and real or personal property donated to the Summer EBT agency.

(2) *Cash and in-kind contributions.* All cash or in-kind contributions except as provided in paragraph (f) of this section must be allowable as part of the Summer EBT agency's share of program costs when such contributions:

(i) Are verifiable;

(ii) Are not contributed for another federally assisted program, unless authorized by Federal legislation;

(iii) Are necessary and reasonable for accomplishment of project objectives;

(iv) Are charges that would be allowable under this part;

(v) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs; and

(vi) Are in the approved budget.

(f) *Volunteer services.* The value of services rendered by volunteers is unallowable for reimbursement purposes.

(g) *Recovery of funds.* The Summer EBT agency must return any Federal funds made available under this part which are in excess of obligations reported at the end of each fiscal year, in accordance with the reconciliation procedures specified in paragraph (h) of this section. The Summer EBT agency shall reflect such recoveries by a related adjustment in the Summer EBT agency's Letter of Credit.

(h) *Substantiation and reconciliation process.* The Summer EBT agency must maintain Program records necessary to support administrative costs claimed and the reports submitted to USDA under this paragraph (h). The Summer EBT agency must ensure such records are retained for a period of 3 years or as otherwise specified in § 292.23. Partnering agencies must also meet these requirements consistent with the inter-agency agreement with the Summer EBT agency.

§ 292.21 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the Summer EBT agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in Summer EBT must provide for the following. The standards in this paragraph (b) also apply to subagencies or contractors involved with program funding.

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements in § 292.23.

(2) Records which identify the source and application of funds for FNS or Summer EBT agency activities supporting the administration of the Program. These records must show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the Summer EBT agency, its sub-agencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations and the disposition of these amounts. Accounting procedures must be in effect to prevent a Summer EBT agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the Summer EBT agency for all program funds, property, and other assets acquired with program funds. Summer EBT agencies must adequately safeguard all such assets and must assure that they are used solely for program-authorized purposes unless disposition has been made in accordance with paragraph (b)(3) of this section.

(5) If necessary, Summer EBT agencies will be expected to complete an Automated Standard Application for Payment (ASAP) setup form so that FNS may set up a Letter of Credit by which Summer EBT funds will be made available.

(6) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the Summer EBT agency must make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(7) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415.

(8) Support and source documents for costs.

(9) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(10) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 292.24(a).

(11) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(12) The standards in this paragraph (b) also apply to subagencies, or contractors involved with program funding.

(13) Identification in Summer EBT agency accounts of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

§ 292.22 Performance criteria.

The Summer EBT agency must monitor and document data on each of the following performance criteria:

(a) Performance Criteria 1—Percentage of children eligible for Summer EBT benefits who participated by using their benefits at least once.

(b) Performance Criteria 2—Percentage of Summer EBT benefits that are issued to children not eligible for Summer EBT.

(c) Performance Criteria 3—Percentage of children issued benefits who receive their first issuance before the start of the summer operational period.

(d) Performance Criteria 4—Percentage of eligible children who can be identified through streamlined certification who are enrolled without further application.

§ 292.23 Records and reports.

(a) Summer EBT agencies and LEAs may retain necessary records in their original or electronic form.

(b) Summer EBT agency records must be retained for a period of 3 years after the date of submission of the final Financial Reports for the fiscal year. If audit and investigation findings have not been resolved, the records must be retained beyond the 3-year period as long as is required for the resolution of the issues raised by the audit or investigation.

(c) Summer EBT agencies receiving Federal awards will be required to submit periodic financial management planning and reporting documentation in the Food Program Reporting System (FPRS), on standard schedules that will be announced annually.

(d) For Summer EBT Administrative Grants, Summer EBT agencies will be required to submit an expenditure plan for State expenditure planning by August 15th, prior to the beginning of each fiscal year. Regional approval for those documents will set funding levels for the Summer EBT agency. These documents may be amended on a rolling basis throughout the year as agency needs evolve.

(e) State Administrative Grant expenditures will be reported to FNS

quarterly on a Summer EBT financial status report.

(f) Summer EBT agencies must report participation and issuance on a monthly basis.

§ 292.24 Audits and management control evaluations.

(a) *Audits.* Summer EBT agencies must arrange for audits of their own operations to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. Unless otherwise exempt, LEAs must arrange for audits to be conducted in accordance with 2 CFR part 200, subpart F, and USDA implementing regulations in 2 CFR parts 400 and 415. Summer EBT agencies must provide the USDA Office of the Inspector General (OIG) with full opportunity to audit the Summer EBT agency and LEAs. Unless otherwise exempt, audits at the Summer EBT agency and LEA levels must be conducted in accordance with 2 CFR part 200, subpart F and appendix XI, and USDA implementing regulations in 2 CFR parts 400 and 415. While OIG must rely to the fullest extent feasible upon Summer EBT agency-sponsored or LEA-sponsored audits, it must, when considered necessary:

(1) Make audits on a State or ITO-wide basis;

(2) Perform on-site test audits; and

(3) Review audit reports and related working papers of audits performed by or for Summer EBT agencies.

(b) *Management control evaluations.* Summer EBT agencies must provide USDA with full opportunity to conduct management control evaluations of all operations of the Summer EBT agency and must provide OIG with full opportunity to conduct audits of all Summer EBT agency Program operations. The Summer EBT agency must make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by USDA.

(c) *Error reduction strategies.* USDA may omit designated areas of review, in part or entirely, where a Summer EBT agency has implemented FNS-approved error reduction strategies.

§ 292.25 Investigations.

The Summer EBT agency must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and must take appropriate action to correct any irregularities. The Summer EBT agency must maintain on file all evidence relating to such investigations and actions. The Summer EBT agency must inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The Department may make investigations at the request of the Summer EBT agency, or where the Department determines investigations are appropriate.

§ 292.26 Hearing procedure for families and Summer EBT agencies.

(a) Each Summer EBT agency must establish a fair hearing procedure that is applicable to the State or ITO program as a whole. Fair hearing procedures must:

(1) Allow a household to appeal, within 90 days after the end of the summer operational period, a decision made with respect to:

(i)(A) An application the household has made for Summer EBT benefits;

(B) A streamlined certification for Summer EBT benefits; or

(C) A verification process or procedure.

(ii) Any adverse action taken against the household by the Summer EBT agency.

(2) Require the State to provide a household with back-benefits for Summer EBT if the fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family, an administrative disqualification for intentional Program violation was subsequently reversed, or if there is a statement elsewhere in this part specifically stating that the household is entitled to restoration of lost benefits.

(b) In response to an appeal, the Summer EBT agency may defend its initial decision to deny the eligibility of the child for Summer EBT benefits or take an adverse action against a household. The fair hearing procedure must provide for both the household and the Summer EBT agency:

(1) A simple, publicly announced method to make an oral or written request for a hearing;

(2) An opportunity to be assisted or represented by an attorney or other person;

(3) An opportunity to examine, prior to and during the hearing, any documents and records presented to support the decision under appeal;

(4) That the hearing must be held with reasonable promptness and convenience, and that adequate notice must be given as to the time and place of the hearing;

(5) An opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

(6) An opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(7) That the hearing must be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or in any previously held conference;

(8) That the decision of the hearing official must be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

(9) That the parties concerned and any designated representative must be notified in writing of the decision of the hearing official;

(10) That a written record must be prepared with respect to each hearing, which must include the challenge or the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

(11) That the written record of each hearing must be preserved for a period of 3 years and must be available for examination by the parties concerned or their representatives at any reasonable time and place during that period.

(12) That the household may request a conference to provide the opportunity for the household to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference must not in any way prejudice or diminish the right to a fair hearing. The Summer EBT agency must promptly schedule a fair hearing, if requested.

(13) Any communication with households related to fair hearings must be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and guardians can understand.

§ 292.27 Claims.

(a) *Basis for claims.* Summer EBT agencies are responsible to ensure that program benefits are provided only to eligible children and in the correct amount in accordance with program regulations in this part. Erroneous issuances include, but are not limited to:

(1) Benefits issued to ineligible children or in the incorrect amount.

(2) Duplicate benefit issuances, including situations where the Summer EBT agency allows an eligible household to access more than one

Summer EBT account for the same time period, or an eligible household receives program benefits from more than one State or ITO for the same time period.

(b) *Claims against Summer EBT agencies.* (1) USDA may hold Summer EBT agencies liable for erroneous payments. USDA may pursue erroneous claims in the aggregate when merited, based on the nature of the error that gave rise to the over-issuance, the size of the error, and whether such action would advance program purposes.

(2) Summer EBT agencies must develop a process to allow households to submit a claim for benefits that were not issued or issued in the incorrect amount.

(c) *Claims against households.* (1) Summer EBT agencies must develop a process to manage cases of erroneous issuances and pursue claims against a household, as appropriate.

(2) Summer EBT agencies have the discretion to determine when to pursue a claim based on cost effectiveness or the individual circumstances. To the maximum extent practicable, Summer EBT agencies should limit claims against households to situations where there is evidence that the household knowingly obtained benefits through fraudulent activities.

(i) Summer EBT agencies must include in their POM submission a proposed plan for identifying instances of fraudulent activity for use in pursuing claims against households.

(ii) Procedures described in paragraph (c)(2)(i) of this section must outline steps the Summer EBT agency will take to ensure that Civil Rights provision at § 292.29(a) are upheld.

(3) Summer EBT agencies must not reclaim Summer EBT benefits by reducing a household's SNAP, NAP, or WIC benefit.

§ 292.28 Procurement standards.

(a) *Applicability of the Advance Planning Document (APD) process.* If an EBT services contract established for the purpose of benefit issuance includes Summer EBT, the State Systems Advance Planning Document (APD) process must be followed in accordance with § 292.11(b)(3) for States and § 292.11(u) for ITOs, respectively.

(b) *General requirements on the procurement of goods and services with Federal funds.* All other Summer EBT agency and local agency costs, including eligibility systems, must comply with the requirements of this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, which implement the applicable requirements concerning the procurement of all goods and services with Federal funds.

(c) *Contractual responsibilities.* The standards contained in this part and 2 CFR part 200, subpart D, and USDA implementing regulations in 2 CFR parts 400 and 415, as applicable, do not relieve any Summer EBT agency or local agency of any contractual responsibilities under its contracts. The Summer EBT agency or local agency is the responsible authority, without recourse to USDA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(d) *Procedures.* The Summer EBT agency must follow either the State or ITO laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 200.326. Regardless of the option selected, Summer EBT agencies must ensure that all contracts include any clauses required by Federal statutes and Executive orders and that the requirements in 2 CFR 200.236 and 2 CFR part 200, appendix II, are followed.

§ 292.29 Miscellaneous administrative provisions.

(a) *Civil rights.* In the operation of the Program, no child may be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex, or disability. Summer EBT agencies and LEAs must comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b).

(b) *Program evaluations.* States, ITOs, Summer EBT agencies, LEAs, schools, and contractors must cooperate in studies and evaluations conducted by or on behalf of the Department related to programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966.

(c) *General responsibilities.* The criminal penalties and provisions established in section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)) provide that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under the Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*), whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud must, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, must be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 292.30 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

§ 292.31 [Reserved]

Cynthia Long,

Administrator, Food and Nutrition Service.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

Statement of Need

The Consolidated Appropriations Act of 2023 (Pub. L. 117–328) requires the Secretary of Agriculture to make available an option to States to provide summer meals for non-congregate meal service in rural areas with no congregate meal service and to establish a permanent summer electronic benefits transfer for children program (Summer EBT) for the purpose of ensuring continued access to food when school is not in session for the summer. This interim final rule amends the Summer Food Service (SFSP) and National School Lunch Program's Seamless Summer Option (SSO) regulations in 7 CFR parts 210, 220, and 225 to codify the flexibility for rural program operators to provide non-congregate meal service in the SFSP and SSO. This rule also establishes 7 CFR part 292 and codifies the Summer EBT Program in this part.

Background

Ample research supports the effectiveness of programs like the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in improving food security of participating children during the school year.[16] [17] [18] Despite substantial expansion of summer meal programs in recent years, just 1 in 6 children who eat free or reduced-price school meals participates in summer meal programs in a typical year.[19] There is evidence to suggest that food insecurity among children increases in the summer months and that participation in nutrition programs such as the SFSP can reduce rates of food insecurity, and particularly its most severe forms.[20] [21] [22] [23] [24]

Since 2011, the USDA has administered Summer EBT demonstration projects in collaboration with State agencies [25] and Indian Tribal Organizations [26] with the goals of reducing or eliminating food insecurity and hunger and improving nutritional status among participating children. Authorized and funded by the 2010 Agriculture Appropriations Act (Pub. L. 111–80), these demonstration projects have been rigorously evaluated over the course of a decade and have proven successful at mitigating food insecurity and improving diet quality. Evaluation findings show that Summer EBT benefits reduce the most severe category of food insecurity by one-third among participating children, compared with those receiving no benefits, and indicate that this model could be effectively implemented in a wide variety of communities.[27] [28]

The USDA has also initiated other demonstration projects to improve the reach and impact of summer meal programs under section 749(g) of the Agriculture, Rural Development, Food and Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80; 123 Stat. 2132). One demonstration project was the Enhanced Summer Food Service Program (eSFSP), which tested changes to the existing structure and delivery mechanism of SFSP for the purpose of determining effects on program participation. The eSFSP included the Meal Delivery demonstration which offered breakfast and lunch delivery to homes of eligible children in rural areas, as well as the Food Backpack demonstration which provided weekend and holiday meals to SFSP participants for consumption when SFSP sites were not open.

In 2013, Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excess Heat was implemented, allowing SFSP and Seamless Summer Option (SSO) sponsors operating approved outdoor meal sites without temperature-controlled alternate sites to operate as non-congregate sites during conditions of excessive heat.[29] In 2019, this demonstration was expanded to allow sites in four States to operate as non-congregate due to smoke and air quality concerns. In more recent years, USDA implemented Meals-to-You (MTY) under the demonstration authority. MTY was developed in response to stakeholder feedback about the challenges and difficulties of serving summer meals in sparsely populated communities and remote areas. Through MTY, food boxes were mailed directly to families of children who were eligible for free or reduced price school meals. Each eligible child received a weekly box, which contained five breakfast meals, five snacks, and five lunch/supper meals.

These non-congregate meal service projects offered potential solutions to some of the most common challenges related to summer meal service, including transportation and geographical access issues, that can act as barriers to sustained participation in summer meal programs. USDA research has shown that access to meal sites is a significant challenge to participation and is often exacerbated in rural areas where fewer sites and more limited transportation options exist.[30] [31]

During the COVID–19 public health emergency, many requirements pertaining to child nutrition programs were waived to protect public health and ensure continued access to healthy foods for children and families. The availability of such waivers, including those that permitted non-congregate meal service and the ability to provide more than one meal at a time, were cited by State agencies as an important factor in reducing barriers for kids and families to access meals and increasing program participation.[32] [33] Also introduced in

[16] Arteaga, Irma, and Colleen Heflin (2014). Participation in the National School Lunch Program and food security: An analysis of transitions into kindergarten. *Children and Youth Services Review, 47,* 224–230. *http://dx.doi.org/10.1016/j.childyouth.2014.09.014.*

[17] Gunderson, C., Kreider, B., & and Pepper, J. (2012). The impact of the National School Lunch Program on child health: A nonparametric bounds analysis. *Journal of Econometrics 166*(1): 79–91. *https://doi.org/10.1016/j.jeconom.2011.06.007.*

[18] Bartfeld, J., & Ryu, J. (2011). The School Breakfast Program and Breakfast-Skipping among Wisconsin Elementary School Children. *Social Service Review 85*(4):619–634. *https://doi.org/10.1086/663635.*

[19] Food and Nutrition Service. (2019). USDA Highlights Importance of Keeping Kids Fed During Summer Months. U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/pressrelease/2019/fns-000719#:~:text=During%20the%20academic%20year%2C%20approximately,in%20the%20summer%20meal%20programs.*

[20] Huang, J., Barnidge, E., & Kim, Y. (2015). Children Receiving Free or Reduced Price Meals Have Higher Food Insufficiency Rates in Summer. *The Journal of Nutrition 145:* 2161–2168. *https://doi.org/10.3945/jn.115.214486.*

[21] Nord, M., & Romig, K. (2006). Hunger in the Summer: Seasonal Food Insecurity and the National School Lunch and Summer Food Service Programs. *Journal of Children & Poverty 12*(2): 141–158. *https://doi.org/10.1080/10796120600879582.*

[22] Miller, D.P. (2016). Accessibility of summer meals and the food insecurity of low-income households with children. *Public Health Nutrition 19*(11): 2079–2089. *https://doi.org/10.1017/S1368980016000033.*

[23] Food and Nutrition Service. (2021). USDA Summer Meals Study Summary. U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/resource-files/SummerMealsStudy-2018-SummaryofFindings.pdf.*

[24] Turner, L., & Calvert, H.G. (2019). *The Academic, Behavioral, and Health Influence of Summer Child Nutrition Programs: A Narrative Review and Proposed Research and Policy Agenda.* Journal of the Academy of Nutrition and Dietetics *119*(6): 972–983. *https://doi.org/10.1016/j.jand.2019.02.006.*

[25] For the purpose of this analysis, State agency refers to State agencies administering the SFSP and Summer EBT agencies, including Indian Tribal Organizations (ITOs) administering Summer EBT.

[26] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

[27] Food and Nutrition Service. (2016). *Summer Electronic Benefit Transfer for Children (SEBTC) Demonstration: Summary Report.* U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/ops/sebtcfinalreport.pdf.*

[28] Food and Nutrition Service. (2020). Summer Electronic Benefit Transfer for Children Evaluation: Final Report. U.S. Department of Agriculture, Food and Nutrition Service.

[29] Food and Nutrition Service. (2019, May 29). *Demonstration Project for Non-Congregate Feeding for Outdoor Summer Meal Sites Experiencing Excessive Heat with Questions & Answers.* Policy memo SP 28–2019, SFSP 13–2019. U.S. Department of Agriculture, Food and Nutrition Services. *https://www.fns.usda.gov/cn/demonstration-project-non-congregate-feeding-outdoor-summer-meal-sites#:~:text=Non%2Dcongregate%20meal%20service%20shall,outdoor%20meal%20site%20is%20located.*

[30] Miller, D.P. (2016). Accessibility of summer meals and the food insecurity of low-income households with children. *Public Health Nutrition 19*(11): 2079–2089. *https://doi.org/10.1017/S1368980016000033.*

[31] Food and Nutrition Service. (2019). *SFSP Characteristics Study.* U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/sfsp/summer-food-service-program-characteristics-study.*

[32] Food and Nutrition Service. (2023). Child Nutrition Program Operations During the COVID–19 Pandemic, March through September 2020: School Meals Operations Study, Year 1 Report. U.S. Department of Agriculture, Food and Nutrition Service. *https://www.mathematica.org/publications/child-nutrition-program-operations-during-the-covid-19-pandemic-march-through-september-2020-school.*

[33] Food and Nutrition Service. (2022). *Summer Food Service Program Integrity Study.* U.S.

Continued

response to the pandemic was Pandemic EBT, a program which successfully provided food benefits through EBT to families of eligible school children when children missed school due to COVID–19 related illness or when schools were closed or operating with reduced hours.

Due in part to the precedent set by demonstration projects, the favorable findings of rigorous evaluations, and the positive impact of regulatory waivers exercised during the COVID–19 pandemic, the Consolidated Appropriations Act of 2023 (Pub. L. 117–328) authorized both a non-congregate meal service option at SFSP and SSO sites in rural areas and a permanent Summer EBT program.

Summary of Impacts

In total, the 10-year cost of the interim final rule is estimated at approximately $40.3 billion, with $7.4 billion attributed to non-congregate meal option implementation ($7.35 billion for program meals and $43.2 million for provision administration) and $32.9 billion in costs attributed to Summer EBT implementation ($28.0 billion for program benefits and $5.0 billion for program implementation and administration) (see Table 1). These costs represent the operation of both provisions over a ten-year period between Fiscal Years (FY) 2023 and 2032, though it should be noted that Summer EBT will not be implemented until 2024 and therefore all analyses pertaining to Summer EBT represent only nine years of program operation. Though some States may have already incurred costs in FY 2023 preparing for the implementation of Summer EBT in FY 2024, it is assumed that the administrative costs estimated in FY 2024 are representative of the total cost of program implementation occurring either during or prior to Summer EBT rollout.

The non-congregate meal provision is expected to increase participation among eligible populations in rural sites by 4.25 million children by 2027 (Year 5) at a cost of $1.0 billion in associated meal reimbursements, for a total increase in Federal Summer Food Service Program reimbursements of $7.35 billion over the course of ten years. Annual administrative burden to households adds only marginally to these costs—between $0.2 million and $4.7 million annually, for a total of $29.3 million over ten years. In addition, we estimate one-time costs for modifying State systems to accommodate non-congregate meal service. We estimate those costs will average $250,000 per State agency based on past internal analyses of regulatory changes with similar implementation mechanisms, totaling $14.0 million across all 56 State agencies in Year 1 (2023).[34]

It is expected that 25.0 million children out of approximately 30.1 million considered eligible will receive Summer EBT benefits, resulting in between $2.8 and $3.4 billion in benefits distributed each summer period for a total cost of $28.0 billion in benefits over nine years.[35] Program implementation and administration costs, which include initial start-up costs equal to 30% of benefits administered and ongoing administrative costs equal to 7% of benefits administered, are expected to peak at $1.0 billion in the first year of program operation (2024) and level off at $366 million by 2028. This includes expected administrative burden for Summer EBT retailers due to reporting and recordkeeping at $8.9 million, while the expected household burden of administrative tasks required for program participation (*e.g.,* applications) for children not already certified as Free and Reduced-Price eligible is estimated at $149 million. The retailer costs are expected to be incurred primarily in Year 1 (2024) and are reflected as such in Table 1. Total annual costs for Summer EBT benefits and administration are estimated at between $3.5 and $3.8 billion annually for a total nine-year cost of $32.9 billion.

This rule is expected to yield substantial public benefit, including improvements in nutrition security and diet quality and economic growth via retail transactions. These benefits are discussed further in section V. (*Benefits of the Interim Final Rule*).

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TABLE 1. TOTAL 10-YEAR COST ESTIMATES, NON-CONGREGATE MEALS AND SUMMER EBT

	Annual Cost ($ Millions)†										
	2023	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**Total**
Non-Congregate Meal Costs	$52.3	$95.4	$140	$571	$1,022	$1,045	$1,069	$1,094	$1,119	$1,145	$7,354
Non-Congregate Administrative Costs	$14.2	$0.4	$0.5	$2.2	$4.0	$4.1	$4.2	$4.4	$4.5	$4.7	$43.2
Non-Congregate Total	**$66.5**	**$95.7**	**$141**	**$573**	**$1,026**	**$1,049**	**$1,073**	**$1,098**	**$1,124**	**$1,150**	**$7,397**
Summer EBT Benefit Costs		$2,831	$2,896	$2,963	$3,031	$3,101	$3,172	$3,245	$3,320	$3,396	$27,955
Summer EBT Administrative Costs		$1,007	$851	$697	$535	$366	$371	$376	$381	$387	$4,973
Summer EBT Total		**$3,838**	**$3,748**	**$3,660**	**$3,567**	**$3,467**	**$3,543**	**$3,621**	**$3,701**	**$3,783**	**$32,928**
Summer EBT and Non-Congregate Total	**$66.5**	**$3,934**	**$3,889**	**$4,234**	**$4,592**	**$4,516**	**$4,617**	**$4,720**	**$4,825**	**$4,932**	**$40,324**

†All costs adjusted for inflation. Non-congregate meal reimbursement costs adjusted using forecasts of the Consumer Price Index for Food Away from Home; these forecasts were used in preparing the FY 2024 President's Budget. Summer EBT benefit costs adjusted using forecasts of the cost of the Thrift Food Plan; these forecasts were used in preparing the FY 2024 President's Budget. Costs may not add to total due to rounding.

As required by OMB Circular A–4, in Table 2 below the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this rule. Meal costs and Summer EBT

Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/sfsp/integrity-study.*

[34] Food and Nutrition Service. (July 24, 2019.) (AE62) Revision of Categorical Eligibility in SNAP Regulatory Impact Analysis (FNS–2018–0037–0002). U.S. Department of Agriculture Food and Nutrition Service. *https://www.regulations.gov/document/FNS-2018-0037-0002.*

[35] Students attending schools operating year-round may also receive Summer EBT during other breaks occurring outside of typical summer months, subject to USDA approval.

benefit payments are categorized as transfers in the table below. The next section provides an impact analysis for each change.

TABLE 2: ACCOUNTING STATEMENT

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Qualitative: Potential benefits associated with the interim final rule include reductions in food insecurity, improvements in diet quality, and economic activity generated through increased retail transactions. These benefits have not been quantified due to the limitations and uncertainty of analyzing the associated economic impacts.					
Annualized Monetized ($millions/year)			2023	7%	FY 2023-2032
			2023	3%	
Costs	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Quantitative: Costs include administrative and implementation costs incurred primarily by the Federal Government and State agencies for rural non-congregate option and Summer EBT program.					
Annualized Monetized ($millions/year)	Total	$486.8	2023	7%	FY 2023-2032
		$478.6	2023	3%	
Transfers	**Range**	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Quantitative: Transfers include Federal reimbursements for meals served in non-congregate settings due to the interim final rule and Summer EBT benefit payments.					
Annualized Monetized ($millions/year)	Total	$2,971.6	2023	7%	FY 2023-2032
		$3,062.3	2023	3%	

Section by Section Analysis

The Consolidated Appropriations Act of 2023 (Pub. L. 117–328) provides flexibility for summer meal sites in rural areas to provide a non-congregate meal service, which means allowing children to take meals off-site, for example, to their homes. The Act also authorized an entirely new method for offering additional summer nutrition assistance for children. The new Summer EBT program will provide benefits on EBT cards so that families can purchase food for their children to eat. Together, these changes will revolutionize how our nation supports the nutritional needs of children during the summer months when school is not in session. Because the Act directed the Summer EBT program to begin operation in 2024 and the non-congregate meal service option in rural areas was made available in 2023, there has not been a formal opportunity for public comment prior to the development of the interim final rule. However, the Food and Nutrition Service (FNS) hosted 24 listening sessions on Summer EBT and 21 listening sessions on non-congregate summer meals with external stakeholders and gathered input from school food authorities and summer meal program sponsors, advocacy groups, program participants, and State agencies administering the Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and Child Nutrition Programs. FNS also consulted with Tribal leaders on Summer EBT in May 2023 and attended two conferences to meet with and hear from ITOs administering WIC.

Key Assumptions

Baseline

Non-Congregate Meal Service

The baseline year providing data to predict the 1, 5, and 10-Year costs associated with non-congregate meal service implementation is FY 2022, as this is the most recent year for which complete data on SFSP and SSO participation is available. Peak program participation from July 2022 was used as a proxy for total participation in summer meal programs, as this month sees the highest participation level across summer months.[36] Total rural participation was estimated by applying the percentage of total students enrolled in rural schools, as calculated in a dataset produced by the most recent FNS School Nutrition and Meal Cost Study.[37] Estimated SSO meals, total meals, and rural meals were calculated based on the ratio of participation to meals served in SFSP.[38] Participation in SFSP has largely returned to pre-pandemic levels (see Table 3) and there is not sufficient evidence to suggest that participation would change in any predictable way over the course of the next five to 10 years in the absence of the rule. For this reason, peak (July) SFSP and SSO participation, meals served, and the proportion of eligible children who live in rural areas are assumed to remain constant in the baseline scenario (see Table 3).

[36] Food and Nutrition Service. (2023). *Child Nutrition Tables*. U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/pd/child-nutrition-tables*.

[37] Food and Nutrition Service. (2019). *School Nutrition and Meal Cost Study*. U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS_Summary-Findings.pdf*.

[38] Though data was adjusted to exclude any months in which schools may have been utilizing summer meals programs during the regular school year, the 2022 baseline estimate may marginally overestimate participation and meals served due to the waivers and regulatory flexibilities afforded by the Keep Kids Fed Act, including the Area Eligibility waivers. For example, in FY 2019, peak (July) SFSP participation was 2,685,000 and peak (July) SSO participation was 1,053,641 children, compared with 2,727,000 and 1,425,872 children, respectively, in FY 2022.

TABLE 3. BASELINE ESTIMATES OF SUMMER MEALS PARTICIPATION (2022-2026)

Fiscal Year	2022	2023	2024	2025	2026
Peak (July) SFSP participation	2,727,000	2,727,000	2,727,000	2,727,000	2,727,000
Peak (July) SSO participation	1,425,872	1,425,872	1,425,872	1,425,872	1,425,872
Estimated total participation	**4,152,872**	**4,152,872**	**4,152,872**	**4,152,872**	**4,152,872**
Estimated rural participation	**1,119,175**	**1,119,175**	**1,119,175**	**1,119,175**	**1,119,175**
SFSP meals served	150,800,000	150,800,000	150,800,000	150,800,000	150,800,000
Estimated SSO meals served	78,849,101	78,849,101	78,849,101	78,849,101	78,849,101
Estimated total meals served	**229,649,101**	**229,649,101**	**229,649,101**	**229,649,101**	**229,649,101**
Estimated rural meals served	**61,889,105**	**61,889,105**	**61,889,105**	**61,889,105**	**61,889,105**

Summer EBT

The baseline year providing data to predict the 1, 5, and 10-Year costs associated with Summer EBT implementation is FY 2023. The number of students certified as eligible for free meals and the number certified as eligible for reduced-price meals FY 2023 is reported on form FNS–10: Report of School Program Operations.[39] The total number of students certified as free or reduced-price eligible is largely consistent with pre-pandemic levels (FY 2019); as there is not sufficient evidence to suggest that they will change significantly over the course of the next five to ten years, they are assumed to remain constant for the sake of the analysis (see Table 4). However, factors that could affect this assumption are the increased adoption of State policies providing school meals to all children at no charge and the expansion of the Community Eligibility Provision in September 2023. These are discussed further in section VI. (*Uncertainties/Limitations*).

TABLE 4. BASELINE ESTIMATES OF FREE AND REDUCED-PRICE CERTIFIED STUDENTS (2023-2027)

Fiscal Year	2023	2024	2025	2026	2027
Certified Free Students	28,118,331	28,118,331	28,118,331	28,118,331	28,118,331
Certified Reduced-Price Students	1,964,199	1,964,199	1,964,199	1,964,199	1,964,199
Total Free and Reduced-Price	**30,082,530**	**30,082,530**	**30,082,530**	**30,082,530**	**30,082,530**

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Non-Congregate Meal Service

Meal Reimbursement Costs

FNS expects to see a substantial increase in reimbursements for meals served to children during the summer due to increased participation among populations eligible for non-congregate meals. Because July 2023 SFSP and SSO participation data were unavailable at the time of this analysis, expected participation was estimated using alternate methods. Estimated increases in participation through Year 3 (2025) are based in part on the increase in participation that occurred during the COVID–19 pandemic, when waivers—most notably, the Child Nutrition Area Eligibility Waivers, which allowed States to waive summer meal programs requirements limiting ''open site'' meal service to areas in which at least half of all children are from low-income households—were implemented across all summer meals sites (see Table 5).[40]

[39] Food and Nutrition Service. (2023). *FNS–10: Report of School Program Operations.* U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/form/report-school-program-operations.*

[40] Food and Nutrition Service. (2020). *Child Nutrition Area Eligibility Waivers.* U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/cn/child-nutrition-area-eligibility-waiver.*

TABLE 5. CHANGES IN SUMMER MEALS PARTICIPATION AND MEALS SERVED, FY 2018-2022

Fiscal Year	2018	2019	2020†	2021†	2022
Peak (July) SFSP participation	2,688,000	2,685,000	5,591,000	5,135,000	2,727,000
Peak (July) SSO participation	1,075,662	1,053,641	2,000,236	2,223,674	1,425,872
Estimated total participation	**3,763,662**	**3,738,641**	**7,591,236**	**7,358,674**	**4,152,872**
Estimated rural participation	**1,014,285**	**1,007,542**	**2,045,794**	**1,983,120**	**1,119,175**
Meals served through SFSP	**145,800,000**	**142,000,000**	**378,300,190**	**314,093,522**	**150,800,000**

†Indicates pandemic year in which non-congregate waivers were available to all summer meals sites.

The observed increase in participation between 2019 and 2021 (96.8%) is used as a proxy for the expected increase in participation in newly eligible rural areas only during the first three years of the non-congregate option availability (FY 2023–2025).[41] This estimate is considered an upper bound, as the increases in participation during the pandemic may have been due in part to increased levels of financial hardship and food insecurity that were present during this time. It should also be noted that other waivers in place during this time, such as Area Eligibility waivers, which served a purpose distinct from non-congregate meal service and are no longer in effect, may have increased participation rates.[42] For this reason, we predict this participation increase will happen more gradually than the increase observed during the COVID–19 pandemic.

From Year 1 of implementation (2023), we assume it will take until Year 3 (2025) to reach the expected increase of 96.8% and it will take until Year 5 (2027) to reach expected maximum participation. Expected maximum participation is based on the estimated total number of children eligible for non-congregate meal service (see Table 6). Of all eligible children, we estimate that about 65 percent will participate on an average day. This take-up rate is somewhat higher than general take-up of school meals, measured as the ratio of average daily participation to total enrollment in NSLP schools, but consistent with the percentage of students who choose to take meals when they are made available at no charge to all students via the Community Eligibility Provision (CEP).[43]

Based on this percentage, the maximum number of eligible students who might be expected to participate in non-congregate summer meals is 4.88 million, and the number of eligible students expected to *newly* participate in summer meals (accounting for the 631,000 students who would be considered eligible but are already participating at baseline) is 4.25 million. See Table 6 for the full list of estimates and assumptions based on program data and outputs from the FNS School Nutrition and Meal Cost Study dataset.[18] For the purpose of the analysis, the cost of meals served is based on Federal SFSP reimbursement rates, rather than SSO reimbursement rates, as SFSP meal pattern requirements are more conducive to ''grab and go'' packaged meals and will likely be used by most sites choosing to serve non-congregate meals.

TABLE 6. NON-CONGREGATE MEAL SERVICE ELIGIBILITY AND PARTICIPATION ESTIMATES†

Percent of all students in rural schools with >=50% FRP out of rural student enrollment	39.8%
Percent of FRP students in rural schools with <50% FRP out of rural student enrollment	16.5%
Percent eligible for non-congregate meal service out of rural student enrollment	**56.4%**
Percent of rural student enrollment out of total student enrollment	26.9%
Percent eligible for non-congregate meal service out of total student enrollment	**15.2%**
School Year 2021 enrollment††	49,433,092
Estimated number of eligible students under proposed rule	7,509,822
Estimated participation among eligible students (maximum)	65%
Estimated maximum eligible students participating under proposed rule	**4,881,384**
Estimated maximum eligible students newly participating under proposed rule	**4,250,484**

† Percentages based on nationally representative dataset from FNS School Nutrition and Meal Cost Study.

††National Center for Education Statistics 2021 enrollment is the most recent data available at the time of analysis.

[41] Though there is a comparable increase in summer meal program participation between FY 2019 and FY 2020, the first year non-congregate waivers were available, data from FY 2020 is generally considered less reliable due to extenuating circumstances surrounding the COVID–19 public health emergency. For practical purposes, the calculated participation increase of 96.8% is assumed to occur over the span of one to two years.

[42] Food and Nutrition Service. (2022). Nationwide Waiver to Extend Area Eligibility Waivers for Summer 2022 Operators—Extension 5. U.S. Department of Agriculture Food and Nutrition Service. *https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-107*.

[43] Food and Nutrition Service. (2022). *Summer Food Service Program Integrity Study*. U.S. Department of Agriculture, Food and Nutrition Service. *https://www.fns.usda.gov/sfsp/integrity-study*.

Implementation and Administrative Costs

Administrative reporting and recordkeeping burdens for State agencies resulting from the non-congregate provision in Year 1 (2023) include State agency identification, pre-approval (when necessary), approval, reporting and documentation of eligible sites in rural areas. Sponsor burdens include submission of rural site documentation, information collection to determine child eligibility, conduction of pre-operational site visits for new sites, and reporting on meals distributed. Household burdens, which are expected to be minimal, include providing written consent to participate in the home delivery option of non-congregate meal service. Reporting and recordkeeping costs associated with administering the non-congregate option are based on the household burden estimates discussed in the Paperwork Reduction Act section of the interim final rule (see Table 7).[44] Costs attributable to household burden are prorated in Years 1–4 to reflect expected participation levels.

TABLE 7: HOUSEHOLD BURDEN FOR RURAL NON-CONGREGATE OPTION

	Year 1 (2023)	Year 5 (2027)	10 Years (2023-32)
Burden hours	20,378	363,400	
Wage rate	$7.25		
Estimated Cost (millions)	$0.1	$3.0	$22.0
Total with fringe (0.33)	**$0.2**	**$4.0**	**$29.2**

In addition, there are estimated one-time costs of $14.0 million associated with shifting State systems to accommodate non-congregate meal service in Year 1 (2023). These costs are based on previous Regulatory Impact Analyses conducted on the proposed revision of Categorical Eligibility in SNAP and are expected to be borne primarily by State agencies.[45]

Summer EBT

Benefit Costs

Projected 1, 5, and 10-year costs of Summer EBT benefits are primarily dependent upon State or ITO participation, the participant take-up rate, and the participant benefit redemption rate. This analysis assumes that all State agencies will implement Summer EBT in the first year of the program (2024) and that participation is sustained at this level through the time horizon of this analysis (2032) resulting in a State agency take-up rate of 100 percent for all years 2024–2032. Although not all States may implement the program in the first year, the analysis presents the full potential impact of the rule as all States are statutorily permitted to implement the program.

Meanwhile, the best estimates of participation among ITOs are derived from demonstration projects and other engagement of ITOs, which indicate that a limited number of ITOs will independently implement Summer EBT in the first year. Best estimates indicate that four ITOs will participate in Year 1 (2024), increasing to 15 ITOs participating by the end of the period of analysis (2032). For the purpose of this analysis, this has minimal impact on overall administrative costs, as administrative costs are calculated as a percentage of benefits distributed, which reflect student participation independent of which entity is administering the program. A sensitivity analysis around these assumptions is included elsewhere in this analysis, which accounts for a more gradual phase-in of the Summer EBT program among States (see section VI. (*Uncertainties and Limitations*), Tables 14–15).

Participant take-up (*i.e.,* the share of eligible children who are enrolled and participate by spending any amount of Summer EBT benefits) is estimated based on two studies of Summer EBT demonstration projects.[46] The first study of Summer EBT demonstration projects occurring between 2011 and 2014 provided a range of participant take-up rates of children who are enrolled in Summer EBT via passive enrollment and a separate range for those enrolled via active enrollment.[47] This study showed that the average participant take-up rate via passive enrollment was 93.5% (ranging from 90% to 97% in demonstration projects) and the average participant take-up rate via active enrollment was 40% (ranging from 23% to 57%).[48] It is expected that streamline certification will account for 80% of Summer EBT enrollment and enrollment through Summer EBT applications will account for the remaining 20% of enrollment, which is reflective of the approximate ratio of students who are certified free or reduced-price to those who are eligible but must apply (*e.g.,* students who have not been certified or submitted applications for the NSLP because they are able to receive free meals through CEP or are enrolled in Provision 2 or 3 schools). Combining the passive enrollment take-up rate (93.5% for the passive enrollment children) and the active enrollment take-up rate (40% for the active enrollment children) results in a weighted average participant take-up of 83%.

The second study of the Summer EBT demonstration projects occurring between 2015 and 2018 yielded an overall participant take-up rate of 84.5%.[49] Though similar to the estimate generated by the prior study, this does not account for the small number of students that may participate via ITOs and will therefore utilize a food package model (rather than electronic benefits), which yields lower participation rates. For this reason, the lower. estimate of 83% is used in the analysis. Alternative scenarios presented in section VI. (*Uncertainties and Limitations*), Tables 14–15 estimate the potential impacts of lower participant up-take rates.

Finally, the study of Summer EBT demonstration projects occurring between 2011 and 2014 found that among enrolled participants, between 92 and 93 percent of all benefits issued are redeemed, resulting in an average benefit redemption rate of 92.5

[44] Costs exclude ongoing reporting and recordkeeping for State agencies as those costs will be absorbed through normal funding streams. Costs also exclude administrative burden for sponsors and program operators as those costs are factored into per meal reimbursements.

[45] Food and Nutrition Service. (July 24, 2019.) (AE62) Revision of Categorical Eligibility in SNAP Regulatory Impact Analysis (FNS–2018–0037–0002). U.S. Department of Agriculture Food and Nutrition Service. *https://www.regulations.gov/document/FNS-2018-0037-0002.*

[46] While demonstration projects were not nationally representative, they were implemented in a broad set of communities in numerous States (Connecticut, Michigan, Missouri, Oregon, and Texas beginning in 2011; Delaware, Nevada, and Washington beginning in 2012) and ITOs (Cherokee Nation and Chickasaw Nation beginning in 2012).

[47] During the SEBT demonstrations, grantees chose a process to enroll eligible children. Grantees with active enrollment asked households to return a form indicating they wanted to participate in the demonstration. Households that did not return the form were excluded from the demonstration. Under permanent SEBT, eligible children who are not individually certified as such, including those enrolled in CEP or Provision 2 or 3 schools, can submit a Summer EBT application to indicate their interest in participating. For passive enrollment under the demonstrations, eligible children were automatically included in the demonstration unless they returned a form saying that they did not want to be included. Similarly, in permanent SEBT, many eligible children will be enrolled through administrative data (streamlined certification) and can then choose to opt out of receiving benefits.

[48] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

[49] Food and Nutrition Service. (2016). *Summer Electronic Benefit Transfer for Children (SEBTC) Demonstration: Summary Report.* U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/ops/sebtcfinalreport.pdf.*

percent.[50] Benefits not redeemed are expunged according to the procedural methods and timelines determined by State agencies, in accordance with the regulations provided within the rule, and are therefore not included in the total benefit cost.

The total annual cost of benefits to the Federal Government is then calculated as follows:

(Number of free and reduced-price participants) × (% State take-up rate) × (% Participant take-up rate) × (% Benefit redemption rate) × ($ Monthly benefit) × (Months of benefits)

All estimates assume participating children receive three months of benefits. For FY 2024, benefit amounts are $40 per month. These estimates are adjusted for inflation according to the Thrifty Food Plan estimates in the 2024 President's Budget.[51]

Implementation and Administrative Costs

The anticipated implementation and administrative costs of the Summer EBT program were estimated based on programs serving similar populations and operating with similar systems and technology, including the Summer EBT demonstration projects, Pandemic EBT benefit program, and SNAP. Estimates assume that Year 1 (2024) implementation costs will be higher, equal to 30% of total benefits issued, due to the wider scope of activities required to set up Summer EBT, including establishing or modifying data systems to identify eligible children and process Summer EBT benefits, developing Summer EBT applications and establishing procedures to determine eligibility, developing new promotional materials and communication plans to reach families with eligible children, developing and implementing training for staff and partners, and entering into written agreements with the Federal Government and partner State agencies. The first-year implementation cost estimate of 30% is based on evidence from the most recent Summer EBT demonstration project, which found a first-year cost equal to 43% of benefits issued, and has been scaled down to 30% account for the fact that demonstration projects (a) Served smaller populations, with evidence that administrative costs decrease with increases in population size; and (b) Included the cost of demonstration project evaluation in administrative costs, which will not be the case for the Summer EBT program. This was scaled down based on the assumption that the cost of demonstration project evaluations accounted for approximately one third of total administrative costs.

By Year 3 (2027), only recurring administrative costs will remain, causing administrative costs to level off at 7% of benefits issued. Ongoing administrative burdens for State, local, and Tribal governments will include submitting an annual Plan for Operations and Management, program budget, State Systems Advance Planning Document, and other data reporting requirements, as well as notification, verification, and enrollment of eligible children and maintenance of systems required for benefit issuance. The anticipated ongoing administrative cost estimate of 7% was determined to be a reasonable midpoint estimate between calculated Pandemic EBT administrative costs as a share of benefits issued (1.4%) and the proportion of EBT-related SNAP administrative costs as a share of benefits issued (11.3%).

The ratio of Pandemic EBT administrative costs to benefits was calculated using State reporting data on total Federal share of administrative costs (form FNS–425) and total benefit issuance (form FNS–388).[52] Data were compiled from School Year (SY) 2020–2021 and SY 2021–2022, cleaned to remove missing data and outliers, and used to generate average administrative costs as a percentage of benefits issued (1.4%). Pandemic EBT administrative costs were covered by Federal funds at 100%. Because implementation and administrative costs were calculated as a percentage of benefits issued in the 1, 5, and 10-Year cost estimates of the Summer EBT program, it was not necessary to apply an additional inflation factor to these costs.

The EBT-related SNAP costs represented in the ratio of administrative costs to benefits issued (11.3%) include certification, issuance, Automated Data Processing development costs, as well as Automated Data Processing operations costs, and exclude costs related to Employment and Training programs or workfare programs and fraud control.[53] For reference, the total administrative cost to benefits issued ratio for SNAP was 14.8% in FY 2019.

In addition to State and Federal costs for implementation and ongoing operation of Summer EBT, retailers and households will incur costs related to administrative burden. Administrative costs to retailers due to verification and reporting requirements are estimated at $8.92 million in Year 1 (2024), based on the product of a total burden of 479,000 hours, an average hourly rate of $14.01, and an overhead factor of 0.33. Administrative costs to households who need to complete applications for free and reduced-price eligible students and who are not already certified as such through school meal programs are estimated at $149 million, based on the product of a total burden of 15.4 million hours, an average hourly rate of $7.25, and an overhead factor of 0.33.

Impacts

Children and Households Affected

Non-Congregate Meal Service

By Year 5 (2027) of rule implementation, an estimated 4.25 million children in 2.36 million households in rural areas will be newly participating in summer meal programs during peak as a result of the rule (assuming 1.8 participating children per household, based on FNS administrative data). At this time, there will be a total of 4.88 million children participating in eligible rural areas—631,000 of whom were already participating at eligible sites before the rule—and a total of 8.40 million children participating in SFSP and SSO in both rural and non-rural areas nationwide. It is expected that these participation levels will be sustained through Year 10 (2032) following implementation of the rule (see Table 8).

Summer EBT

There are an estimated 25.0 million children in 13.4 million households who will receive Summer EBT benefits each year beginning in FY 2024 as a result of the rule (based on an average 1.87 children per household in Summer EBT demonstration projects). The number of children receiving benefits is not expected to change over the period of analysis (FY 2024–2032), as the overall number of children certified as free and reduced-price is not expected to change significantly (see Table 10). Participation in Summer EBT would hypothetically increase or decrease with a corresponding increase or decrease in certification for free and reduced-price meals; see section VI. (*Uncertainties/Limitations*) for further discussion of this and other factors that could affect Summer EBT participation estimates.

Costs

Benefit and Meal Costs

Non-Congregate Meal Service

Federal reimbursements for summer meals resulting from increased participation in rural areas under the non-congregate meal service option are expected to total $7.35 billion over the course of ten years (FY 2023–2032). Annual Federal reimbursements attributable to the rule are estimated at $1.02 billion by Year 5 (2027), when peak participation is reached, and are estimated at $1.14 billion by Year 10 (2032) due to inflation. See Table 9 for annual estimates of meal reimbursement costs attributable to the rule over the ten-year period of analysis.

Summer EBT

The total cost of benefit payments administered through the Summer EBT program between FY 2024–2032 is estimated at $28.0 billion. Annual cost of benefit payments range from $2.8 billion in 2024 (Year 1) to $3.4 billion in 2032 (Year 9); as participation is expected to remain consistent, annual increases in costs are due to inflation only. See Table 11 for annual estimates of benefit payment costs attributable to the Summer EBT program over the nine-year period of analysis.

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[50] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

[51] White House, United States. (2023). *The 2024 Mid-Session Review.* White House, United States. *https://www.whitehouse.gov/omb/briefing-room/2023/07/28/the-2024-mid-session-review/.*

[52] Food and Nutrition Service. (2023). *National Data Bank (NDB).* U.S. Department of Agriculture, Food and Nutrition Service. *https://afnazre3ws08.usda.net/NDB8/Home/Home.aspx.*

[53] Food and Nutrition Service. (2019). *Exploring the Causes of State Variation in SNAP Administrative Costs.* U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/media/file/SNAP-State-Variation-Admin-Costs-FullReport.pdf.*

TABLE 8. INCREASES IN SUMMER MEAL PROGRAM PARTICIPATION DUE TO RURAL NON-CONGREGATE OPTION, FY 2023-2032

	Number of Children (Millions)									
Fiscal Year	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**
Estimated Participation in SFSP and SSO	4.39	4.58	4.76	6.58	8.40	8.40	8.40	8.40	8.40	8.40
Estimated Participation in eligible rural areas	0.87	1.06	1.24	3.06	4.88	4.88	4.88	4.88	4.88	4.88
Increase due to non-congregate provision	0.24	0.42	0.61	2.43	4.25	4.25	4.25	4.25	4.25	4.25

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TABLE 9. MEAL REIMBURSEMENT COSTS AND ADMINISTRATIVE COSTS RELATED TO RURAL NON-CONGREGATE OPTION, FY 2023-2032

	Annual Cost ($ Millions)										
Fiscal Year	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**Total**
Reimbursement costs due to rule	$52.3	$93.1	$134	$533	$932	$932	$932	$932	$932	$932	$6,405
Inflation†		2.4%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	
Total costs, meal reimbursements	**$52.3**	**$95.3**	**$140**	**$571**	**$1,022**	**$1,045**	**$1,069**	**$1,094**	**$1,119**	**$1,145**	**$7,354**
Administrative costs (SFSP and SSO)											
State agencies††	$14.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$14.0
Households	$0.2	$0.4	$0.5	$2.2	$4.0	$4.1	$4.2	$4.4	$4.5	$4.7	$29.2
Total costs, administrative	$14.2	$0.4	$0.5	$2.2	$4.0	$4.1	$4.2	$4.4	$4.5	$4.7	$43.2
Total annual cost	$66	$96	$141	$573	$1,026	$1,049	$1,073	$1,098	$1,124	$1,150	$7,397

† Benefit costs are inflated based on estimated increases in the value of the Consumer Price Index for Food Away From Home, used in preparation of the FY 2024 President's Budget.

†† Sum of $83.58 in administrative reporting and recordkeeping costs (Table 7) and $14.0 million in one-time State agency costs for systems changes (pg. 17).

Implementation and Administrative Costs

Non-Congregate Meal Service

Implementation and administrative costs attributable to the non-congregate meal service provision are expected to total $43.2 million over the course of ten years (FY 2023–2032). Annual administrative costs are largely reflective of the requirement for households to provide written consent to participate in the home delivery option of non-congregate meal service, while a one-time cost to State agencies in Year 1 (2023) accounts for systems changes required to accommodate shifting to increased non-congregate meal service operation. The administrative burden estimates are discussed in more detail in the Paperwork Reduction Act section of this interim final rule. See Table 9 for annual estimates of administrative costs attributable to the non-congregate provision.

Summer EBT

Federal and State implementation and administrative costs are estimated at a total of $3.6 billion over the nine-year period of analysis (FY 2024–2032). In accordance with statute, these costs will be shared equally (50%) between States and the Federal Government. Implementation and administrative costs are highest during the first year of program implementation (2024) due to anticipated start-up costs, reaching a steady state by the fifth year of program operation. Total State and Federal implementation and administrative costs are estimated at $849 million in 2024, $217 million in 2028, and $238 million in 2032, including inflation.

See Table 11 for annual estimates of administrative costs attributable to the Summer EBT program. As previously discussed, additional administrative costs to retailers due to verification and reporting requirements are estimated at $8.9 million in the first year, while administrative costs to households who need to complete Summer EBT applications are estimated at $149 million annually. Retailer costs will be primarily limited to the first year of program implementation.

TABLE 10. PROJECTED ANNUAL SUMMER EBT PROGRAM PARTICIPATION BASED ON FREE AND REDUCED-PRICE CERTIFICATION, FY 2024-2032

	Number of Children (Millions)								
Fiscal Year	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**
Certified Free	28.1	28.1	28.1	28.1	28.1	28.1	28.1	28.1	28.1
Certified Reduced-Price	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Total Free and Reduced-Price	**30.1**	**30.1**	**30.1**	**30.1**	**30.1**	**30.1**	**30.1**	**30.1**	**30.1**
State Take-up Rate	100%	100%	100%	100%	100%	100%	100%	100%	100%
Participant Take-up Rate	83%	83%	83%	83%	83%	83%	83%	83%	83%
Estimated Summer EBT Participants	**25.0**	**25.0**	**25.0**	**25.0**	**25.0**	**25.0**	**25.0**	**25.0**	**25.0**

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TABLE 11. PROJECTED STATE AND FEDERAL 9-YEAR BENEFIT AND ADMINISTRATIVE COSTS OF SUMMER EBT PROGRAM, FY 2024-2032

	Annual Cost ($ Millions)									
Fiscal Year	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**Total**
Federal benefit costs	$2,765	$2,765	$2,765	$2,765	$2,765	$2,765	$2,765	$2,765	$2,765	
Inflation†	2.4%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%	
Inflation-adjusted benefit costs	**$2,831**	**$2,896**	**$2,963**	**$3,031**	**$3,101**	**$3,172**	**$3,245**	**$3,320**	**$3,396**	**$27,955**
Administrative costs										
State costs	$425	$351	$274	$193	$109	$111	$114	$116	$119	$1,811
Federal costs	$425	$351	$274	$193	$109	$111	$114	$116	$119	$1,811
Retailer costs	$8.9									
Household costs	$149	$149	$149	$149	$149	$149	$149	$149	$149	$1,341
Total administrative costs	**$1,007**	**$851**	**$697**	**$535**	**$366**	**$371**	**$376**	**$381**	**$386**	**$4,973**
Total annual costs	**$3,838**	**$3,747**	**$3,660**	**$3,567**	**$3,467**	**$3,564**	**$3,621**	**$3,701**	**$3,783**	**$32,927**

† Benefit costs are inflated based on estimated increases in the value of the Thrifty Food Plan, used in preparation of the FY 2024 President's Budget.

Benefits of the Interim Final Rule

Food Security and Diet Quality

Though food insecurity among households with children has returned to pre-pandemic levels, it remains significant: In 2022, about one in six (17.3%) households with children were affected by food insecurity.[54] Broadly speaking, the economic consequences of food insecurity include higher average health care costs, lost productivity, increased crime rates, and costs associated with lower educational outcomes. The sum of these costs has been estimated at more than $160 billion each year in the United States.[55] There is evidence to suggest that the introduction of both the non-congregate option in rural areas and the Summer EBT Program will help to address this challenge. The option to provide non-congregate meal service in rural areas may reduce food insecurity among children by way of increasing participation in summer meal programs, as previous research has shown summer meal programs are likely to be effective in reducing food insecurity.[56] The provision of Summer EBT has also been found to generate substantial and statistically significant reductions in food insecurity. In Summer EBT demonstration projects, a $60 monthly benefit reduced the prevalence of food insecurity among children by one-fifth and reduced the most severe form of food insecurity (Very Low Food Security, or VLFS) among children by one-third.[57] A smaller $30 benefit was found to have similar impact on VLFS. The ability to use Summer EBT concurrently with other summer meal programs may prove particularly protective against food insecurity in periods of severe economic downturn or other social and environmental disruptions that may otherwise increase food insecurity rates.

Summer EBT has also been shown to improve diet quality among participating children. Demonstration projects providing a $60 monthly benefit increased daily fruit and vegetable intake during summer months by one-third of a cup per day, whole grains intake by one-half ounce equivalent per day, and decreased intake of sugar-sweetened beverages. A $30 monthly benefit level was also found to produce statistically significant improvements in diet quality across the same measures.[58]

Economic Benefits From EBT Retail

Because the redemption of Summer EBT benefits largely mirrors the redemption of traditional SNAP benefits, we expect the economic impacts of SNAP benefit redemption will apply to the Summer EBT program. USDA research has consistently shown that SNAP spending helps to stabilize the economy during economic downturn and generates income for individuals and businesses producing, transporting, and marketing food purchased by SNAP recipients. The impact of each SNAP dollar spent is also multiplied throughout the economy; recent estimates indicate that for each $1 in government spending, the Gross Domestic Product increases between $0.80 and $1.50, depending on current economic conditions.[59] The multiplier effect may be greater when spending is focused on low-income households, such as those eligible for SNAP, because these households tend to spend more of the money received soon after receiving it compared with higher-income households. In this way, government spending on programs such as SNAP and Summer EBT generate economic benefit not only for program participants, but also for individuals who participate in the economies in which program dollars are spent.

Program Integrity

The provisions that are described as follows were included to address program integrity concerns either identified during COVID P–EBT operations or mentioned during listening sessions.

Summer EBT benefits are subject to integrity requirements found in the Food and Nutrition Act of 2008 established for SNAP. USDA has determined that the SNAP regulations implementing sections 12, 14, and 15 of the Food and Nutrition Act are also appropriate for Summer EBT, and adopting these same requirements is preferable to developing different requirements for Summer EBT. This approach is also the least burdensome for administering agencies because it does not require agencies to develop new implementation approaches.

The ITO Summer EBT Agencies must also ensure that Summer EBT program benefits are used by the eligible household that receives such benefits to transact for supplemental foods from Summer EBT-enrolled vendors that have been approved for participation in the WIC Program.

To ensure effective vendor integrity, the ITO Summer EBT agency must set forth a system which ensures:

—Requirements and restrictions on the participation of vendors and the transaction of food benefits described in IFR apply to activities involving Summer EBT benefits;
—Vendors are subject to the actions and penalties described in the IFR for noncompliance or violations involving Summer EBT benefits; and
—The standards for determination and disposition of claims described at IFR apply to Summer EBT benefits; or
—Set forth an alternate system to ensure effective vendor management and vendor integrity.

In order to ensure program quality and integrity, Summer EBT agencies must also have adequate processes to correctly determine the eligibility of children for Summer EBT benefits. As with NSLP/SBP applications, the Summer EBT verification process will align with the typical Child Nutrition Program approach to verification, which is conducted after the eligibility determination. USDA heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State Agencies that implemented P–EBT that up-front verification (verification of income at the time of application) was burdensome for both program administrators and households. In contrast, other child nutrition programs like NSLP, SBP, and CACFP do not require up-front household income verification but rather they require verification on a subset of applications after certification. Summer EBT applications (or alternative income applications for Summer 2024) will be subject to verification for cause, a process through which questionable applications are verified on a case-by-case basis.

Integrity Measures for Non-Congregate Feeding

Based on stakeholder feedback, experience gained under COVID–19 operations, and summer 2023 implementation, USDA is codifying the use of several meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components to meet the needs of children in rural areas. While USDA is codifying the use of these meal service options, integrity safeguards have been added around the permittance and use of these options to ensure Program access for eligible children while maintaining Program accountability. Through the listening sessions, USDA received varied feedback from stakeholders regarding the different meal service options when used for non-congregate feeding during the COVID–19 pandemic. Many of the comments focused on the difficulty of balancing Program integrity with Program access. Some stakeholders, including a few State agencies, stated that that these options are essential for providing non-congregate meals in rural areas and praised the benefits to the community, such as the ability to provide children meals for the weekend.

Under this IFR, the meal service options mentioned above may only be used by sponsors considered to be in good standing, as determined by the State agency. In addition, a State agency may only prohibit sponsors from using these meal service options on a case-by-case basis and without regard to sponsor type if the State agency determines that a sponsor does not have the capability to operate or oversee non-congregate meal service at their sites.

[54] Economic Research Service. (2023.) Household Food Security in the United States in 2022. U.S. Department of Agriculture, Economic Research Service. *https://www.ers.usda.gov/webdocs/publications/107703/err-325.pdf?v=9638.3.*

[55] Cook, J., & Poblacion, A.P. (2015). *Estimating the Health-Related Costs of Food Insecurity and Hunger.* Bread for the World Institute. *https://www.hungerreport.org/costofhunger/fullstudy.html.*

[56] Food and Nutrition Service. (2021). USDA Summer Meals Study Summary. U.S. Department of Agriculture, Food and Nutrition Service. *https://fns-prod.azureedge.us/sites/default/files/resource-files/SummerMealsStudy-2018-SummaryofFindings.pdf.*

[57] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

[58] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

[59] Economic Research Service. (2019.) *The Supplemental Nutrition Assistance Program and the Economy: New Estimates of the SNAP Multiplier.* U.S. Department of Agriculture, Economic Research Service. *https://www.ers.usda.gov/publications/pub-details/?pubid=93528.*

Integrity safeguards for multi-day meal issuance and parent or guardian meal pick-up includes requiring sponsors to provide documented procedures to ensure the proper number of meals are distributed to each eligible child and duplicate meals are not distributed. Lastly, integrity safeguards have been codified for bulk foods to ensure the safety of the children who consume Program meals. Sponsors are required to ensure that food items meet the meal pattern requirements, foods are clearly identifiable, menus must be provided to indicate the food items and portion sizes for all meals provided, and only minimal to no preparation is required. In addition, any sponsor using bulk foods can only provide a maximum of 5 days' worth of meals at a time, or less if the State agency establishes a shorter calendar period on a case-by-case basis.

Finally, it is worth noting that all program regulations, including existing compliance and oversight requirements of the SFSP and NSLP, apply to non-congregate meals served under the Summer Nutrition Programs. Under this rule, with a few exceptions, the basic monitoring requirements will not change. However, to ensure all Program operations, both congregate and non-congregate, are properly adhering to Program requirements, USDA is amending the regulations to incorporate operational changes to reflect the introduction of non-congregate meal service and ensure that such meal services are adequately reviewed for compliance.

Uncertainties/Limitations

There are numerous uncertainties and limitations inherent to this analysis. The limitations most likely to affect the analysis are noted below, accompanied by sensitivity analyses where relevant. Some of these uncertainties and limitations result from the interim final rule being developed in a time immediately following the COVID–19 public health emergency, which introduced challenges collecting timely and accurate data due to other urgent priorities and numerous disruptions to trends in Child Nutrition Program participation. Both of these challenges present unique complexities in the projections of participation and costs.

Program Participation

Non-Congregate Meal Service

There are several limitations to the calculated increase in summer meal program participation following the implementation of the non-congregate meal service provision.

The projected increase in participation is guided by two key data points. The first data point is the 96.8% increase in summer meal participation that was observed between FY 2019 and FY 2021, when waivers provided all SFSP and SSO sites with the ability to utilize non-congregate meal service during the COVID–19 pandemic. Table 6 demonstrates that peak (July) participation and meals served approximately doubled during this time, and then returned to pre-pandemic levels in FY 2022 following the expiration of the non-congregate waivers. However, the COVID–19 public health emergency ushered in a variety of other waivers and regulatory changes related to Child Nutrition Program operations, including Area Eligibility waivers,[24] making it difficult to isolate the impact of the non-congregate waiver on SFSP and SSO participation. In addition, many households were experiencing higher than usual levels of financial hardship and food insecurity during this time, which may have increased their likeliness to utilize programs providing meals at no cost. Our analysis partially addresses these external factors by assuming that this 98.6% increase will occur more gradually, over a period of three years (FY 2023–2025), as opposed to the period of one to two years observed during the COVID–19 pandemic.

The second data point guiding the analysis is the expected maximum participation in SFSP and SSO among eligible rural sites, which is estimated at 4.88 million children (see Table 7). As described in the Key Assumptions Section of section IV. (*Section by Section Analysis*), the expected maximum participation among eligible sites is the product of the total number of rural students eligible for non-congregate meal service (7.51 million) and the percentage of students who choose to receive school meals via NSLP (65%) when meals are available at no charge (*e.g.,* through CEP). Accounting for the 631,000 children already participating in school meals at eligible rural sites prior to the rule, the expected maximum number of new SFSP and SSO participants is 4.25 million, representing a substantial 574% increase in the number of children participating in eligible areas. Although this increase is significant, conversations with State agencies, sponsors, and other stakeholders suggest that this increase may be achievable with robust communications efforts and technical assistance on behalf of FNS. As such, the analysis projects that expected maximum participation in eligible rural sites will occur at Year 5 (2027).

Due to these uncertainties, sensitivity analyses were conducted to assess the cost implications of more gradual or more rapid participation increases (Tables 12–13). The first scenario assumes more rapid increase in participation, in which maximum expected participation is achieved by Year 3 (2025), resulting in a 24% increase in Federal reimbursements over the course of 10 years as compared to the primary estimates. The second scenario assumes a more gradual increase in participation in which maximum expected participation is achieved by Year 10 (2032), resulting in a 43.8% decrease in Federal reimbursements over 10 years as compared to the primary estimates. The third scenario assumes a more gradual increase in participation in which only half of maximum expected participation is achieved by Year 10 (2032), resulting in a 70.8% decrease in Federal reimbursements over 10 years. Note that participation increases are not linear, as each scenario assumes that early increases in participation are more gradual and achieve the 96.8% participation increase observed during the COVID–19 pandemic by either Year 1 (2023), Year 3 (2025), or Year 5 (2027), depending on the scenario.

Summer EBT

As previously described, participant take-up (*i.e.,* the share of eligible children who are enrolled and participate in the Summer EBT program) is estimated at 83% based on results from Summer EBT demonstration studies.

The Summer EBT demonstration studies completed by FNS show that the average participant take-up rate via passive enrollment is 93.5% (ranging from 90% to 97% in demonstration projects) and the average participant take-up rate via active enrollment is 40% (ranging from 23% to 57%).[11] Combining the passive enrollment take-up rate (93.5% for the passive enrollment children) and the active enrollment take-up rate (40% for the active enrollment children) results in a weighted average participant take-up of 83%. However, it is possible that the participant take-up rate will be lower than expected, as a growing number of States are offering school meals to all students at no cost and households may be less incentivized to submit applications for free and reduced-price meals, thereby lowering the percentage of students that would be enrolled in Summer EBT via active enrollment. For this reason, a sensitivity analysis was conducted assuming participant take-up was at the low end of the ranges provided in the Summer EBT Demonstration Study, resulting in a participant take-up of 23% via active enrollment and 90% via passive enrollment for an overall participant take-up rate of 77% in Year 1 (2024). This would result in an 2.1% decrease in Summer EBT benefit costs over the period of analysis (2024–2032) compared to the primary estimates (see Tables 13–14).

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TABLE 12: SENSITIVITY ANALYSIS: PARTICIPATION INCREASES IN ELIGIBLE AREAS UNDER NON-CONGREGATE PROVISION SCENARIOS

	Number of Children Participating Due to Rule (Millions)									
Scenario	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**
Scenario 1 *Maximum participation by Year 3 (2025)*	0.61	2.43	4.25	4.25	4.25	4.25	4.25	4.25	4.25	4.25
Primary Estimate ***Maximum participation by Year 5 (2027)***	**0.24**	**0.42**	**0.61**	**2.43**	**4.25**	**4.25**	**4.25**	**4.25**	**4.25**	**4.25**
Scenario 2 *Maximum participation by Year 10 (2032)*	0.24	0.33	0.42	0.52	0.61	1.34	2.07	2.79	3.52	4.25
Scenario 3 *Half of max. participation by Year 10 (2032)†*	0.24	0.33	0.42	0.52	0.61	0.85	1.09	1.33	1.57	1.81

† Half of maximum participation in eligible rural areas is 4.88 * 0.50 = 2.44 million children. Accounting for children already participating in eligible areas prior to the rule, the maximum number of newly participating children is 2.44 – 610,000 = 1.8 million children.

TABLE 13: SENSITIVITY ANALYSIS: 1, 5, AND 10-YEAR REIMBURSEMENT COSTS UNDER NON-CONGREGATE PROVISION SCENARIOS

	Meal Reimbursement Cost ($ Millions)			
Scenario	**1-Year Cost**	**5-Year Cost**	**10-Year Cost**	**% Change (10-Year)**
Scenario 1 *Maximum participation by Year 3 (2025)*	$134	$3,677	$9,149	24.4%
Primary Estimate ***Maximum participation by Year 5 (2027)***	**$52.3**	**$1,881**	**$7,354**	
Scenario 2 *Maximum participation by Year 10 (2032)*	$52.3	$493	$4,134	-43.8%
Scenario 3 *Half of max. participation by Year 10 (2032)*	$52.3	$420	$2,147	-70.8%

State Participation in Program

Summer EBT

As previously noted, it is the expectation of FNS that all States will implement Summer EBT in the first year of the program (2024) and that participation is sustained at this level through the lifespan of this analysis (2032). However, there may be some States that are prevented from fully implementing the program in the initial year(s); for example, several States that plan to participate have noted that there may be challenges implementing the program beginning in 2024 due to the timing of budget cycles. For this reason, a sensitivity analysis has been conducted to assess the impact of delayed State take-up. A lagging State take-up rate starting at 75% in Year 1 (2024) and reaching 100% by Year 5 (2028) with annual linear increases would result in a 7.1% decrease in Summer EBT benefit costs over the nine-year period of analysis (2024–2032) (see Tables 14–15).

TABLE 14: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT PARTICIPATION DUE TO LAGGING STATE OR PARTICIPANT TAKE-UP

	Number of Children Participating In Summer EBT (Millions)								
Scenario	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**
Current estimate†	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0
Lagging participant take-up	23.2	23.6	24.1	24.5	25.0	25.0	25.0	25.0	25.0
Lagging State take-up	18.7	20.3	21.8	23.4	25.0	25.0	25.0	25.0	25.0

† Current estimate participant take-up rate: Y1: 83%, Y3: 83%, Y5: 83%; Current estimate State take-up rate: Y1: 100%, Y3: 100%, Y5: 100%
Lagging participant take-up rate: Y1: 77%, Y3: 80%, Y5: 83%; Lagging State take-up rate: Y1: 75%, Y3: 87.5%, Y5: 100%

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Implementation and Administrative Costs

Summer EBT

Because Summer EBT is a new program, there is some uncertainty inherent to the administrative costs the program will incur, particularly on behalf of State and Federal governments and Tribal Organizations. As previously described, the analysis assumes that implementation costs will equal 30% of benefits issued in year 1 of operation (2024), decreasing to a constant 7% of benefits issued by year 5 of operation (2028). However, because these estimates represent reasonable averages or midpoints among a range of potential values, the true cost may be higher or lower; therefore, a sensitivity analysis was conducted to assess the impact of potential variation in implementation and administrative costs (see Table 16). The results show that an initial start-up cost equal to 40% of benefits issued, decreasing to a constant 10% by 2028, would increase administrative costs by 29.7% over nine years compared to the primary estimate, while an initial start-up cost equal to 20% of

TABLE 15: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT BENEFIT COSTS DUE TO LAGGING STATE OR PARTICIPANT TAKE-UP

	Benefit Cost ($ Millions)			
Scenario	**1-Year Cost**	**5-Year Cost**	**9-Year Cost**	**% Change (9-Year)**
Current estimate†	**$3,680**	**$17,526**	**$31,578**	
Lagging participant take-up	$3,405	$16,852	$30,904	-2.1%
Lagging State take-up	$2,760	$15,278	$29,330	-7.1%

† Current estimate participant take-up rate: Y1: 83%, Y3: 83%, Y5: 83%; Current estimate State take-up rate: Y1: 100%, Y3: 100%, Y5: 100%
Lagging participant take-up rate scenario: Y1: 77%, Y3: 80%, Y5: 83%; Lagging State take-up rate scenario: Y1: 75%, Y3: 87.5%, Y5: 100%

benefits issued, decreasing to a constant 5% by 2028 would decrease administrative costs by 31.4% over nine years.

TABLE 16: SENSITIVITY ANALYSIS: CHANGES IN SUMMER EBT IMPLEMENTATION AND ADMINISTRATIVE COSTS

	Implementation and Administrative Cost ($ Millions)			
Scenario	**1-Year Cost**	**5-Year Cost**	**9-Year Cost**	**% Change (9-Year)**
Higher administrative cost	$1,132	$3,655	$4,968	29.7%
Current estimate†	**$849**	**$2,703**	**$3,623**	
Lower administrative costs	$566	$1,827	$2,484	-31.4%

† Current estimate of administrative costs: Y1: 30%, Y5: 7%; Higher administrative cost scenario: Y1: 40%, Y5: 10%; Lower administrative cost scenario: Y1: 20%, Y5: 5%. All scenarios assume linear increase between Y1 and Y5.

Alternative(s)

Throughout the development of the interim final rule, various regulatory options were weighed and discussed with the goal of identifying provisions that would optimize outcomes for all stakeholders. Alternatives to key provisions of the interim final rule are described below, along with the rationale favoring the provisions selected.

Coordinated Services Plan

Each State agency will need to establish a Coordinated Services Plan (CSP), to coordinate the statewide availability of services offered through the Summer Food Service Program (SFSP) and the Summer EBT Program (and the National School Lunch Program Seamless Summer Program, if appropriate). Initial plans will need to be submitted to FNS no later than January 1, 2025. They will need to be submitted annually when significant updates are made—otherwise, at least every three years. States will need to consult with other agencies (as applicable) on their plans and must share them publicly on a website.

The alternative would have been to include the CSP as part of a combined Management and Administration Plan (MAP) for SFSP and Summer-EBT. Due to the programs being on different planning schedules for summer operations and considering how different State agencies may administer the programs, a combined MAP would have required the same or greater time and effort as required for the CSP, despite condensing the number of required documents. States administering the SFSP will continue to submit a MAP, and a separate Plan for Operations and Management (POM) will be required for S–EBT. The CSP will give a general overview of statewide programming while keeping each program's operational details to the MAP/POM.

Non-Congregate Meal Service

Throughout the development of the non-congregate provisions for this interim final rule, various regulatory options were weighed and discussed with the goal of identifying provisions that would optimize outcomes for all stakeholders. Two such provisions were the regulatory definition of rural and the meal service options available for non-congregate feeding. The alternatives to these key provisions are discussed below.

The definition of ''rural'' under the Program was expanded to include other Federal classification schemes to create an approach that more expansively covers rural population and territory to the satisfaction of stakeholders while upholding established measures of rural. The alternative would have been to maintain the current regulatory definition of rural, which is based solely on metropolitan and non-metropolitan classification. This classification scheme presents identification challenges for the purposes of the Program as metropolitan and non-metropolitan areas are defined at the county level, and thus, the different levels of rurality within counties are not accurately delineated.

The current regulatory definition does provide discretion to designate any ''pocket'' within a Metropolitan Statistical Area that is determined to be geographically isolated from urban areas with FNS Regional Office (FNSRO) approval. However, this has led to inconsistent application of *rural pockets* across the States and resulted in increased burden on the State agencies to identify and receive approval for these designations. Incorporating additional Federal classification schemes into the regulatory definition to define what rural is under the Program will allow State agencies to more effectively identify and target rural populations and territories for outreach and non-congregate provision purposes and will ease administrative burden and streamline the site identification and approval process for State agencies and Program operators. Because using the current regulatory definition may have increased administrative burden, it may have also been associated with marginal increases in administrative costs.

Under this interim final rule, USDA will allow operators to use meal service options specific to non-congregate feeding including, but not limited to: multi-day meal issuance; parent or guardian meal pick-up; and bulk meal components to meet the needs of children in rural areas. Based on stakeholder feedback, experience gained under COVID–19 operations, and summer 2023 implementation, the use of these flexibilities is imperative to children in rural communities accessing meals during the summer months when school is out of session. The alternative to this provision would have been to require sites to distribute meals to children in-person, in limited quantities, for each meal service during the approved meal service times, similar to a congregate meal service. Such restrictions defeat the purpose and efficacy of non-congregate service in rural communities which may benefit from the use of these options where children would otherwise have to travel long distances to receive a meal, for instance. While the USDA is codifying these meal service options, integrity safeguards have been included around the use of these options to ensure Program access for eligible children while maintaining Program accountability. These integrity safeguards are discussed under the Program Integrity section of this Regulatory Impact Analysis.

Summer EBT

Structure of ITO Food Benefits

ITO Summer EBT agencies may choose the benefit delivery model they prefer: a cash-value benefit (CVB) model, a food package model, a combination of the two, or an alternate model. The alternative would have been to limit ITO Summer EBT agencies to only the food benefit models typically available to them through the WIC program. It is important to allow ITO choice of benefit delivery model so they may best serve their populations. Participants in the Summer EBT demonstration projects indicated they appreciated the greater flexibility and choice in the food package items and quantities.[60] The alternative would have likely been cost-neutral relative to the interim final rule provision, as there are not significant differences between the value of cash-value

[60] Food and Nutrition Service. (2023). *Evaluation of the 2019–2022 Summer EBT Demonstration (Draft Final Report).* U.S. Department of Agriculture, Food and Nutrition Service. Publication forthcoming.

Summer EBT benefits and the value of a food package.

ITO Enrollment Procedures

ITO Summer EBT agencies receive priority consideration to serve eligible children within their service areas, meaning that children from the ITO service area who can be enrolled through streamlined certification will automatically be enrolled in the ITO-administered Summer EBT program. If the eligible child wants to participate in the State-administered program, they must notify the ITO and the State and request this change. The alternative options would be to require all participants in ITO service areas to participate in the ITO-administered program, or to automatically enroll all children in the State Summer EBT Program. Households may prefer ITO or State-administered programs for a variety of reasons. Automatically enrolling children in ITO-service areas in the ITO program while allowing them to opt into the State-administered program permits households to decide how and from whom they want to receive benefits based on their individual circumstances. The selection of this alternative would not have impacted overall program costs, as the number of children served by the program would remain unchanged.

Structure of the Program

FNS will provide States with the flexibility to name which agency will have the written agreement with FNS (i.e., the coordinating Summer EBT agency) and to decide how Summer EBT responsibilities are delegated across their respective State and local agencies. The alternative option is for FNS to name which agency within a State will be responsible for the overall administration of the Summer EBT program, as well as the roles and responsibilities of each agency within a State. Allowing States maximum flexibility to delegate Summer EBT program responsibilities will ease program administration and facilitate the Federal grant process. This is expected to have little impact on overall program costs.

Expungement

FNS will require Summer EBT benefits to become unavailable to households 4 months after issuance. This approach will provide households a reasonable amount of time after the summer operational period to finish spending their benefits. With timely issuance, benefits will exist for the summer period and be expunged soon thereafter, consistent with congressional intent. The alternative model is ''expungement from last use,'' meaning Summer EBT benefits could exist well into the school year. This model would run counter to the congressional intent of the program: to provide food benefits during the summer to help reduce food insecurity while kids are out of school. The current requirement may result in slightly lower program costs than the alternative, due to the fact that unused benefits will be expunged in a more timely fashion.

Verification for Cause

FNS will allow States or LEAs to conduct verification for cause on all Summer EBT applications in FY2024. The guidance instituted for verification for cause means that States or LEAs will only need to target applications that they think present a higher than normal risk of error. The alternative option is requiring that States or LEAs verify three percent of all Summer EBT applications beginning in FY 2024. However, FNS heard from stakeholder engagement and listening sessions with Child Nutrition and SNAP State agencies that this requirement would place undue burden on Summer EBT agencies in the first year of program administration. FNS will require that three percent of all Summer EBT applications be verified beginning in FY 2025, in alignment with other school meal programs.

Required Statewide Database

FNS will require that States and ITOs administering the Summer EBT program implement a statewide database with school meal enrollment data by FY 2025. Requiring a statewide database will facilitate the data sharing and enrollment processes, detect and prevent duplicate benefit issuance, and increase data integrity across the Summer EBT program. One grantee under the Summer EBT demonstrations established a centralized database that contained households that were eligible for free and reduced price meals. This system annually compiled all household information from multiple sources for households that were already eligible for free and reduced-price meals into one file to upload to its benefit issuance system, thereby efficiently automating the benefit issuance process. Requiring a statewide database will also reduce burden on LEAs, although the burden will shift to State agencies. Delaying this requirement until FY 2025 will allow Summer EBT agencies time to acquire necessary funding and for database development.

Benefit Funds Process

In FY 2024, FNS will disburse benefit funds through the Federal grant process. The alternative option is to disburse Summer EBT benefit funds through the Account Management Agent (AMA) process. FNS decided on the grant process to give States more flexibility and to reduce the cost and administrative burden related to modifying the AMA process to support a separate, permanent program beginning in 2024. Additionally, Summer EBT benefits must be tracked separately from SNAP benefits, or other benefit types, but are subject to the same oversight, restrictions, and requirements as SNAP benefits. The Federal grant funding and issuance model supports these requirements.

[FR Doc. 2023–28488 Filed 12–28–23; 8:45 am]

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