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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1083

Civil Penalty Inflation Adjustments

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is adjusting for inflation the maximum amount of each civil penalty within the CFPB's jurisdiction. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

DATES: This final rule is effective January 15, 2024.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act,[1] as amended by the Debt Collection Improvement Act of 1996 [2] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[3] directs Federal agencies to adjust the civil penalty amounts within their jurisdictions for inflation not later than July 1, 2016, and then not later than January 15 every year thereafter.[4] Each agency was required to make the 2016 one-time catch-up adjustments through an interim final rule published in the **Federal Register**. On June 14, 2016, the CFPB published its interim final rule (IFR) to make the initial catch-up adjustments to civil penalties within the CFPB's jurisdiction.[5] The June 2016 IFR created a new part 1083 and in § 1083.1 established the inflation-adjusted maximum amounts for each civil penalty within the CFPB's jurisdiction.[6] The CFPB finalized the IFR on January 31, 2019.[7]

The Inflation Adjustment Act also requires subsequent adjustments to be made annually, not later than January 15, and notwithstanding section 553 of the Administrative Procedure Act (APA).[8] The CFPB annually adjusted its civil penalty amounts, as required by the Act.[9]

Specifically, the Inflation Adjustment Act directs Federal agencies to adjust annually each civil penalty provided by law within the jurisdiction of each agency by the ''cost-of-living adjustment.'' [10] The ''cost-of-living adjustment'' is defined as the percentage (if any) by which the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, exceeds the CPI–U for October of the prior year.[11] The Director of the Office of Management and Budget (OMB) is required to issue guidance (OMB Guidance) every year by December 15 to agencies on implementing the annual civil penalty inflation adjustments. Pursuant to the Inflation Adjustment Act and OMB Guidance, agencies must apply the multiplier reflecting the ''cost-of-living adjustment'' to the current penalty amount and then round that amount to the nearest dollar to determine the annual adjustments.[12] The adjustments are designed to keep pace with inflation so that civil penalties retain their deterrent effect and promote compliance with the law.[13]

For the 2024 annual adjustment, the multiplier reflecting the ''cost-of-living adjustment'' is 1.03241.

II. Adjustment

Pursuant to the Inflation Adjustment Act and OMB Guidance, the CFPB multiplied each of its civil penalty amounts by the ''cost-of-living adjustment'' multiplier and rounded to the nearest dollar.[14] The new penalty amounts that apply to civil penalties assessed after January 15, 2024 are as follows:

[1] Public Law 101–410, 104 Stat. 890.

[2] Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373.

[3] Public Law 114–74, sec. 701, 129 Stat. 584, 599.

[4] Section 1301(a) of the Federal Reports Elimination Act of 1998, Public Law 105–362, 112 Stat. 3293, also amended the Inflation Adjustment Act by striking section 6, which contained annual reporting requirements, and redesignating section 7 as section 6, but did not alter the civil penalty adjustment requirements; 28 U.S.C. 2461 note.

[5] 81 FR 38569 (June 14, 2016). Although the CFPB was not obligated to solicit comment for the interim final rule, the CFPB invited public comment and received none.

[6] *See* 12 CFR 1083.1.

[7] 84 FR 517 (Jan. 31, 2019).

[8] Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note. As discussed in guidance issued by the Director of the Office of Management and Budget (OMB), the APA generally requires notice, an opportunity for comment, and a delay in effective date for certain rulemakings, but the Inflation Adjustment Act provides that these procedures are not required for agencies to issue regulations implementing the annual adjustment. *See* Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 19, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

[9] *See* 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018); 84 FR 517 (Jan. 31, 2019); 85 FR 2012 (Jan. 14, 2020); 86 FR 3767 (Jan. 15, 2021); 87 FR 2314 (Jan. 14, 2022); 88 FR 1 (Jan. 3, 2023).

[10] Inflation Adjustment Act sections 4 and 5, codified at 28 U.S.C. 2461 note.

[11] Inflation Adjustment Act sections 3 and 5, codified at 28 U.S.C. 2461 note.

[12] Inflation Adjustment Act section 5, codified at 28 U.S.C. 2461 note; *see also* Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 19, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

[13] *See* Inflation Adjustment Act section 2, codified at 28 U.S.C. 2461 note.

[14] Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

Law	Penalty description	Penalty amounts established under 2023 final rule	OMB "cost-of-living adjustment" multiplier	New penalty amount [15]
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty	$6,813	1.03241	$7,034
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty	34,065	1.03241	35,169
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty	1,362,567	1.03241	1,406,728
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation	2,374	1.03241	2,451
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap	2,372,677	1.03241	2,449,575
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure	111	1.03241	115
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap	223,229	1.03241	230,464
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional	223	1.03241	230
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	34,401	1.03241	35,516
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	13,627	1.03241	14,069
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	27,252	1.03241	28,135

III. Procedural Requirements

A. Administrative Procedure Act

Under the APA, notice and opportunity for public comment are not required if the CFPB finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[16] The adjustments to the civil penalty amounts are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts. These adjustments are required by the Inflation Adjustment Act. Moreover, the Inflation Adjustment Act directs agencies to adjust civil penalties annually notwithstanding section 553 of the APA,[17] and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.[18] For these reasons, the CFPB has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments therefore are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.[19] At minimum, the CFPB believes the annual adjustments to the civil penalty amounts in § 1083.1(a) fall under the third exception to section 553(d). The CFPB finds that there is good cause to make the amendments effective on January 15, 2024. The amendments to § 1083.1(a) in this final rule are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts and follow the statutory directive to make annual adjustments each year. Moreover, the Inflation Adjustment Act directs agencies to adjust the civil penalties annually notwithstanding section 553 of the APA,[20] and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.[21]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[22] As noted previously, the CFPB has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[23] the CFPB reviewed this final rule. The CFPB has determined that this rule does not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

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

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends 12 CFR part 1083 as set forth below:

[15] Numbers may not multiply to totals shown because of rounding.

[16] 5 U.S.C. 553(b)(B).

[17] Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

[18] Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 19, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

[19] 5 U.S.C. 553(d).

[20] Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

[21] Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 19, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

[22] 5 U.S.C. 603(a), 604(a).

[23] 44 U.S.C. 3506; 5 CFR part 1320.

PART 1083—CIVIL PENALTY ADJUSTMENTS

■ 1. The authority citation for part 1083 continues to read as follows:

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

■ 2. Section 1083.1 is revised to read as follows:

§ 1083.1 Adjustment of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461 note), as follows:

TABLE 1 TO PARAGRAPH (a)

Law	Penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	$7,034
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	35,169
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,406,728
15 U.S.C. 1717a(a)(2)	Per violation	2,451
15 U.S.C. 1717a(a)(2)	Annual cap	2,449,575
12 U.S.C. 2609(d)(1)	Per failure	115
12 U.S.C. 2609(d)(1)	Annual cap	230,464
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	230
12 U.S.C. 5113(d)(2)	Per violation	35,516
15 U.S.C. 1639e(k)(1)	First violation	14,069
15 U.S.C. 1639e(k)(2)	Subsequent violations	28,135

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2024, whose associated violations occurred on or after November 2, 2015.

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

[FR Doc. 2024–00456 Filed 1–10–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2114; Airspace Docket No. 23–AEA–17]

RIN 2120–AA66

Amendment of Class E Airspace; Bedford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Bedford, PA. This action is the result of an airspace review conducted due to the decommissioning of the St. Thomas very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Bedford County Airport, Bedford, PA, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2114 in the **Federal Register** (88 FR 76155; November 6, 2023) proposing to amend the Class E airspace at Bedford, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this

document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within an 8-mile (decreased from a 12.5-mile) radius of Bedford County Airport, Bedford, PA; and within 2 miles each side of the 128° bearing from the airport extending from the 8-mile radius to 13 miles southeast of the airport; and within 2 miles each side of the 308° bearing from the airport extending from the 8-mile radius to 14. 8 miles northwest of the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Bedford, PA [Amended]

Bedford County Airport, PA
(Lat 40°05′10″ N, long 78°30′49″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Bedford County Airport; and within 2 miles each side of the 128° bearing from the airport extending from the 8-mile radius to 13 miles southeast of the airport; and within 2 miles each side of the 308° bearing from the airport extending from the 8-mile radius to 14.8 miles northwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on January 3, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–00193 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1548; Airspace Docket No. 22–ANM–62]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–302 in the Vicinity of Acequia, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–302 in the vicinity of Acequia, ID to increase the RNAV route's lateral separation from restricted area 3203 (R–3203) and from parachute activities at Nampa Municipal Airport (MAN) and Caldwell Executive Airport in Idaho (EUL).

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would increase the efficiency and safety of the flow of air traffic within the National Airspace System (NAS).

History

The FAA published a NPRM for Docket No. FAA–2023–1548 in the **Federal Register** (88 FR 46121; July 19, 2023), proposing to amend RNAV route T–302 in the vicinity of Acequia, ID. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

Differences From the NPRM

The NPRM published for Docket No. FAA–2023–1548 in the **Federal Register** (88 FR 46121; July 19, 2023) contained a typographical error in the table listing the route points that describe the airway. The table stated that the UKAYI waypoint (WP) was in Idaho (ID). The UKAYI WP is in Oregon (OR). This rule corrects this error.

Incorporation by Reference

United States Area Navigation routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–302 in the vicinity of Acequia, ID, to increase the RNAV route's lateral separation from R–3203 and from parachute activities at Nampa Municipal Airport and Caldwell Executive Airport in Idaho. The amendment is described below.

T–302: This rule adds the ALKAL, ID, Fix to the airway description. Additionally, the CANEK, ID, Fix is added between the ADEXE, ID, WP and the ALKAL, ID, Fix. Lastly, this rule removes the PARMO, ID, Fix from the airway. As amended T–302 extends between the CUKIS, OR, WP and the GRIFT, IL, WP.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of amending RNAV route T–302 in the vicinity of Acequia, ID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–302 CUKIS, OR to GRIFT, IL

CUKIS, OR	WP	(Lat. 45°20′59.59″ N, long. 122°21′49.41″ W)
JJETT, OR	WP	(Lat. 44°56′35.43″ N, long. 121°40′56.36″ W)
CUPRI, OR	FIX	(Lat. 44°37′03.76″ N, long. 121°15′13.89″ W)
ZUDMI, OR	WP	(Lat. 44°19′59.29″ N, long. 120°28′10.92″ W)
Wildhorse, OR (ILR)	VOR/DME	(Lat. 43°35′35.27″ N, long. 118°57′18.18″ W)
JOSTN, OR	WP	(Lat. 43°34′16.92″ N, long. 117°53′51.34″ W)
UKAYI, OR	WP	(Lat. 43°46′57.60″ N, long. 117°05′24.14″ W)
ADEXE, ID	WP	(Lat. 43°30′16.79″ N, long. 116°26′53.72″ W)
CANEK, ID	FIX	(Lat. 43°18′57.88″ N, long. 115°48′28.06″ W)
ALKAL, ID	FIX	(Lat. 43°00′58.35″ N, long. 115°19′41.26″ W)
FEVDO, ID	WP	(Lat. 42°53′48.88″ N, long. 115°02′00.30″ W)
TOXEE, ID	FIX	(Lat. 42°41′41.81″ N, long. 114°27′13.10″ W)
JADUP, ID	WP	(Lat. 42°44′32.00″ N, long. 113°42′15.22″ W)
MIKAE, WY	WP	(Lat. 42°06′36.88″ N, long. 110°35′59.28″ W)
BXTER, WY	WP	(Lat. 41°53′13.97″ N, long. 110°04′52.38″ W)
EEBEE, WY	WP	(Lat. 41°44′07.05″ N, long. 109°35′10.21″ W)
REGVE, WY	WP	(Lat. 41°38′35.07″ N, long. 109°20′30.96″ W)

Rock Springs, WY (OCS)	VOR/DME	(Lat. 41°35′24.76″ N, long. 109°00′55.18″ W)
FIKLA, WY	WP	(Lat. 41°56′20.50″ N, long. 106°57′11.03″ W)
Medicine Bow, WY (MBW)	VOR/DME	(Lat. 41°50′43.88″ N, long. 106°00′15.42″ W)
Scottsbluff, NE (BFF)	VORTAC	(Lat. 41°53′38.99″ N, long. 103°28′55.31″ W)
WAKPA, NE	WP	(Lat. 42°03′21.64″ N, long. 103°04′57.99″ W)
Alliance, NE (AIA)	VOR/DME	(Lat. 42°03′20.27″ N, long. 102°48′16.00″ W)
MARSS, NE	FIX	(Lat. 42°27′48.92″ N, long. 100°36′15.32″ W)
PUKFA, NE	WP	(Lat. 42°22′59.52″ N, long. 099°59′36.42″ W)
GIYED, NE	FIX	(Lat. 42°30′22.02″ N, long. 099°08′05.55″ W)
LLUKY, NE	WP	(Lat. 42°29′20.26″ N, long. 098°38′11.44″ W)
KAATO, IA	WP	(Lat. 42°35′06.89″ N, long. 095°58′53.08″ W)
ROKKK, IA	WP	(Lat. 42°37′00.00″ N, long. 094°04′03.00″ W)
Waterloo, IA (ALO)	VOR/DME	(Lat. 42°33′23.39″ N, long. 092°23′56.13″ W)
Dubuque, IA (DBQ)	VORTAC	(Lat. 42°24′05.29″ N, long. 090°42′32.68″ W)
JOOLZ, IL	WP	(Lat. 42°20′41.49″ N, long. 090°12′12.00″ W)
GRIFT, IL	WP	(Lat. 42°17′28.14″ N, long. 088°53′41.42″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00070 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2116; Airspace Docket No. 23–AGL–29]

RIN 2120–AA66

Amendment of Class E Airspace; Hutchinson, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Hutchinson, MN. This action is the result of an airspace review conducted due to the decommissioning of the Darwin very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name of the airport is also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Hutchinson Municipal Airport/Butler Field, Hutchinson, MN, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2116 in the **Federal Register** (88 FR 76153; November 6, 2023) proposing to amend the Class E airspace at Hutchinson, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.6-mile) radius of Hutchinson Municipal Airport/Butler Field, Hutchinson, MN; and updates the name (previously Hutchinson Municipal Airport-Butler Field) of airport to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MN E5 Hutchinson, MN [Amended]

Hutchinson Municipal Airport/Butler Field, MN
(Lat 44°51′36″ N, long 94°22′57″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hutchinson Municipal Airport/Butler Field.

* * * * *

Issued in Fort Worth, Texas, on January 3, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–00195 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1006; Airspace Docket No. 22–AWP–65]

RIN 2120–AA66

Modification of Class E Airspace; Minden-Tahoe Airport, Minden, NV; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that published in the **Federal Register** on December 22, 2023. The final rule modified Class E airspace extending upward from 700 feet above the surface at Minden-Tahoe Airport, Minden, NV. This action corrects an error in the airspace legal description.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11H, and subsequent amendments, can be viewed online at *www.faa.gov//air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 88528; December 22, 2023) for Docket FAA–2023–1006, which modified Class E airspace extending upward from 700 feet above the surface at the Minden-Tahoe Airport, Minden, NV. Subsequent to publication, the FAA identified that line one of the Class E airspace legal description contained the two-letter abbreviation for the state as ''CA'', which was incorrect. The two-letter abbreviation of the state in line one of the legal description should be ''NV''. This action corrects the error.

Correction to the Final Rule

In FR Doc 2023–28228 at 88529, published in the **Federal Register** on December 22, 2023, the FAA makes the following corrections:

■ 1. On page 88529, in the second column, correct the first line of the legal description for E5 Minden, NV to read as follows:

AWP NV E5 Minden, NV [Corrected]

Issued in Des Moines, Washington, on January 5, 2024.

B.G. Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2024–00352 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1338; Airspace Docket No. 22–AWP–86]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–401 in the Vicinity of Paynesville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–401 in the vicinity of Paynesville, CA.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations

Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in California and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground-based navigation.

History

The FAA published a NPRM for Docket No. FAA–2023–1338 in the **Federal Register** (88 FR 39382; June 16, 2023), establishing RNAV route T–401 in the vicinity of Paynesville, CA. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. One comment was received in support of this action. The commentor stated ''I support this action because establishing more low altitude airways within the NAS enhances the safety of general aviation pilots who would otherwise have to operate at higher altitudes off airways when IFR.''

Differences From the NPRM

The NPRM published for Docket No. FAA–2023–1338 in the **Federal Register** (88 FR 39382; June 16, 2023) contained an error in the table listing the route points that describe the airway. The table listed the route points in order of north to south, this rule corrects this error and lists the route points in order of south to north.

Incorporation by Reference

United States Area Navigation routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–401 in the vicinity of Paynesville, CA. The amendment is described below.

T–401: T–401 extends between EXTRA, CA, Fix and MARRI, CA, Fix.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–401 in the vicinity of Paynesville, CA, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–401 EXTRA, CA to MARRI, CA [New]

EXTRA, CA	FIX	(Lat. 36°19′39.06″ N, long. 119°13′06.84″ W)
ALTTA, CA	FIX	(Lat. 36°33′08.91″ N, long. 119°19′36.45″ W)

NOHIT, CA	WP	(Lat. 37°08′36.00″ N, long. 119°23′02.00″ W)
BNAKI, CA	WP	(Lat. 37°53′25.61″ N, long. 119°40′02.43″ W)
UNDRR, CA	WP	(Lat. 38°05′31.13″ N, long. 119°45′59.22″ W)
OVRRR, CA	WP	(Lat. 38°32′14.57″ N, long. 119°46′21.21″ W)
MARRI, CA	FIX	(Lat. 38°45′47.21″ N, long. 119°42′00.31″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Airspace and Rules Group.

[FR Doc. 2024–00069 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1528; Airspace Docket No. 23–ASW–9]

RIN 2120–AA66

Amendment of VOR Federal Airways V–20, V–222, V–289, V–552, V–569 and V–574, and Establishment of United States Area Navigation (RNAV) Routes T–483 and T–485 in the Vicinity of Beaumont, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establishes United States Area Navigation (RNAV) routes T–483 and T–485. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Beaumont, TX (BPT), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Beaumont VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–1528 in the **Federal Register** (88 FR 44744; July 13, 2023), proposing to amend VOR Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establish United States RNAV routes T–483 and T–485 due to the planned decommissioning of the VOR portion of the Beaumont, TX, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establishing RNAV routes T–483 and T–485. The ATS route amendments and establishments are due to the planned decommissioning of the VOR portion of the Beaumont, TX, VOR/DME. The ATS route actions are described below.

V–20: Prior to this final rule, V–20 extended between the Mc Allen, TX, VOR/DME and the Palacios, TX, VOR/Tactical Air Navigation (VORTAC); between the Beaumont, TX, VOR/DME and the Montgomery, AL, VORTAC; and between the Athens, GA, VOR/DME and the Richmond, VA, VORTAC. The airspace on the main airway above 14,000 feet MSL from Mc Allen to 49 miles northeast and the airspace within Mexico was excluded. The airway segment between the Beaumont VOR/DME and the Lake Charles, LA, VORTAC is removed. Additionally, the exclusion for the airspace on the main airway above 14,000 feet MSL from Mc Allen to 49 miles northeast is also removed as it has not been required since the V–20 south alternate airway was removed in 1994 and there is no operational requirement to retain it. Further, the exclusion for the airspace within Mexico is removed as the airway does not extend into Mexico's airspace. As amended, the airway now extends between the Mc Allen VOR/DME and the Palacios VORTAC, between the Lake Charles VORTAC and the Montgomery VORTAC, and between the Athens VOR/DME and the Richmond VORTAC.

V–222: Prior to this final rule, V–222 extended between the El Paso, TX, VORTAC and the intersection of the LaGrange, GA, VORTAC 048° and Rome, GA, VORTAC 166° radials (TIROE fix). The airway segment between the Humble, TX, VORTAC and

the Lake Charles, LA, VORTAC is removed. As amended, the airway now extends between the El Paso VORTAC and the Humble VORTAC and between the Lake Charles VORTAC and the intersection of the LaGrange VORTAC 048° and Rome VORTAC 166° radials (TIROE fix).

V–289: Prior to this final rule, V–289 extended between the Beaumont, TX, VOR/DME and the Vichy, MO, VOR/DME. The airway segment between the Beaumont VOR/DME and the Lufkin, TX, VORTAC is removed. As amended, the airway now extends between the Lufkin VORTAC and Vichy VOR/DME.

V–552: Prior to this final rule, V–552 extended between the Beaumont, TX, VOR/DME and the Monroeville, AL, VORTAC. The airspace within restricted area R–4403F was excluded during its times of use. The airway segment between the Beaumont VOR/DME and the Lake Charles, LA, VORTAC is removed. As amended, the airway now extends between the Lake Charles VORTAC and the Monroeville VORTAC.

V–569: Prior to this final rule, V–569 extended between the Beaumont, TX, VOR/DME and the Cedar Creek, TX, VORTAC. The airway segment between the Beaumont VOR/DME and the Lufkin, TX, VORTAC is removed. As amended, the airway now extends between the Lufkin VORTAC and the Cedar Creek VORTAC.

V–574: Prior to this final rule, V–574 extended between the Centex, TX, VORTAC and the Lake Charles, LA, VORTAC. The airway segment between the Daisetta, TX, VORTAC and the Lake Charles VORTAC is removed. As amended, the airway now extends between the Centex VORTAC and the Daisetta VORTAC.

T–483: T–483 is established as a RNAV route extending between the SHWNN, TX, waypoint (WP), located near the Beaumont, TX, VOR/DME and the Lufkin, TX, VORTAC. The new T–483 provides mitigation for the removal of the V–289 airway segment between the Beaumont VOR/DME and the Lufkin VORTAC. The full T–483 route description is listed in the amendments to part 71 as set forth below.

T–485: T–485 is established as a RNAV route extending between the SHWNN, TX, WP, located near the Beaumont, TX, VOR/DME and the Lufkin, TX (LFK), VORTAC. The new T–485 provides mitigation for the removal of the V–569 airway segment between the Beaumont VOR/DME and the Lufkin VORTAC. The full T–485 route description is listed in the amendments to part 71 as set forth below.

The NAVAID radials listed in the VOR Federal airway descriptions in The Amendment section below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–20, V–222, V–289, V–552, V–569, and V–574, and establishing RNAV routes T–483 and T–485, due to the planned decommissioning of the VOR portion of the Beaumont, TX, VOR/DME NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–20 [Amended]

From Mc Allen, TX; INT Mc Allen 038° and Corpus Christi, TX, 178° radials; 10 miles 8 miles wide, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; to Palacios. From Lake Charles, LA; Lafayette, LA; Reserve, LA; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; Semmes, AL; INT Semmes 048° and Monroeville, AL, 231° radials; Monroeville; to Montgomery, AL. From Athens, GA; Electric City, SC; Sugarloaf Mountain, NC; Barretts Mountain, NC; South Boston, VA; to Richmond, VA.

* * * * *

V–222 [Amended]

From El Paso, TX; Salt Flat, TX; Fort Stockton, TX; 20 miles, 116 miles, 55 MSL, Junction, TX; Stonewall, TX; INT Stonewall 113° and Industry, TX, 267° radials; Industry; INT Industry 101° and Humble, TX, 259° radials; to Humble. From Lake Charles, LA; McComb, MS; Eaton, MS; Monroeville, AL;

Montgomery, AL; LaGrange, GA; to INT LaGrange 048° and Rome, GA, 166° radials.

* * * * *

V–289 [Amended]

From Lufkin, TX; Gregg County, TX; Texarkana, AR; Fort Smith, AR; Harrison, AR; Dogwood, MO; INT Dogwood 058° and Vichy, MO, 204° radials; to Vichy.

* * * * *

V–552 [Amended]

From Lake Charles, LA; INT Lake Charles 064° and Lafayette, LA, 281° radials; Lafayette; Tibby, LA; Harvey, LA; Picayune, MS; Semmes, AL; INT Semmes 063° and Monroeville, AL, 216° radials; to Monroeville. The airspace within restricted area R–4403F is excluded during its times of use.

* * * * *

V–569 [Amended]

From Lufkin, TX; Frankston, TX; to Cedar Creek, TX.

* * * * *

V–574 [Amended]

From Centex, TX; INT Centex 116° and Navasota, TX, 258° radials; Navasota; Humble, TX; to Daisetta, TX.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–483 SHWNN, TX to Lufkin, TX (LFK) [New]

SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
HONEE, TX	FIX	(Lat. 30°24′21.96″ N, long. 094°24′59.99″ W)
Lufkin, TX (LFK)	VORTAC	(Lat. 31°09′44.79″ N, long. 094°43′00.60″ W)

* * * * *

T–485 SHWNN, TX to Lufkin, TX (LFK) [New]

SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
ROMER, TX	FIX	(Lat. 30°44′47.33″ N, long. 094°23′33.01″ W)
Lufkin, TX (LFK)	VORTAC	(Lat. 31°09′44.79″ N, long. 094°43′00.60″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00150 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2365; Airspace Docket No. 23–ACE–7]

RIN 2120–AA66

Amendment of United States RNAV Route T–251 in the Vicinity of Bowling Green, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the United States (U.S.) Area Navigation (RNAV) route T–251 Part 71 description. The FAA is changing the type of point for the RIVRS, IL, route point from being listed as a ''Fix'' to a ''Waypoint (WP)'' to match the FAA National Airspace System Resource (NASR) database information. This is an editorial amendment only and does not alter the alignment, dimensions, or operating requirements of T–251.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

On June 15, 2023, the FAA decommissioned the Quincy, IL, Very High Frequency Omnidirectional Range (VOR) as part of the VOR Minimum Operational Network (MON) Program. As a result of the Quincy VOR being decommissioned, the RIVRS, IL, Fix was changed in the FAA NASR database to a WP and on all associated Instrument Flight Rules (IFR) enroute, Visual Flight Rules (VFR) sectional, and controller charts. The Part 71 editorial amendment of the T–251 description was overlooked at that time and the RIVRS, IL, route point is still reflected as a Fix. The correct type of point for the RIVRS, IL, route point is WP. This rule corrects that difference by changing the type of point for the RIVRS, IL, route point listed in the T–251 route description from ''Fix'' to ''WP.''

Incorporation by Reference

United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective

September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending U.S. RNAV route T–251 to change the type of point of the RIVRS, IL, route point from ''Fix'' to ''WP.'' This change to the T–251 description will match the FAA NASR database information and charted depiction of the point.

Since this action merely involves an editorial amendment in the Part 71 description of U.S. RNAV route T–251, and does not involve a change in the alignment, dimensions, or operating requirements of that route, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this editorial amendment action of U.S. RNAV route T–251, to reflect the RIVRS, IL, route point as a WP and match the FAA NASR database information and charts, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points; and paragraph 5–6.5k, which categorically excludes from further environmental impact review publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitudes, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–251 FRNIA, MO to KOETZ, WI [Amended]

FRNIA, MO	WP	(Lat. 36°33′18.69″ N, long. 089°54′40.47″ W)
Farmington, MO (FAM)	VORTAC	(Lat. 37°40′24.46″ N, long. 090°14′02.62″ W)
Foristell, MO (FTZ)	VORTAC	(Lat. 38°41′39.60″ N, long. 090°58′16.57″ W)
RIVRS, IL	WP	(Lat. 39°25′21.41″ N, long. 090°55′56.70″ W)
KAYUU, MO	WP	(Lat. 40°19′05.81″ N, long. 091°41′36.59″ W)
MERKR, IA	WP	(Lat. 40°49′16.02″ N, long. 092°08′26.88″ W)
AGENS, IA	FIX	(Lat. 41°01′43.78″ N, long. 092°20′50.25″ W)
PICRA, IA	WP	(Lat. 41°35′00.72″ N, long. 092°32′34.29″ W)
HAVOS, IA	WP	(Lat. 42°04′16.32″ N, long. 092°28′29.38″ W)
Waterloo, IA (ALO)	VOR/DME	(Lat. 42°33′23.39″ N, long. 092°23′56.13″ W)
ZEZDU, IA	FIX	(Lat. 42°49′29.02″ N, long. 092°04′58.05″ W)
FALAR, MN	FIX	(Lat. 43°34′26.04″ N, long. 091°30′18.32″ W)
KOETZ, WI	WP	(Lat. 44°13′15.00″ N, long. 091°28′14.00″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00072 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2115; Airspace Docket No. 23–ASO–40]

RIN 2120–AA66

Amendment of Class E Airspace; Natchez, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Natchez, MS. This action is the result of an airspace review conducted due to the decommissioning of the Natchez very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Hardy-Anders Field/Natchez-Adams County Airport, Natchez, MS, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2115 in the **Federal Register** (88 FR 76150; November 6, 2023) proposing to amend the Class E airspace at Natchez, MS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

The NPRM stated that the geographic coordinates of the airport would be updated, however that update was omitted. The geographic coordinates are updated in this action.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (decreased from a 7-mile) radius of Hardy-Anders Field/Natchez-Adams County Airport, Natchez, MS; updates the name (previously Hardy-Anders Field Natchez-Adams County Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport from the header to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting

Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Natchez, MS [Amended]

Hardy-Anders Field/Natchez-Adams County Airport, MS
(Lat 31°36′49″ N, long 91°17′50″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Hardy-Anders Field/Natchez-Adams County Airport.

* * * * *

Issued in Fort Worth, Texas, on January 8, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–00399 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1352; Airspace Docket No. 23–ASO–55]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Ozark, AL and Columbus, GA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that published in the **Federal Register** on December 12, 2023. The final rule amended Class D and Class E surface airspace for Fort Novosel, Ozark, AL, and Fort Moore, Columbus, GA. This action corrects errors in the Class E legal descriptions for both Air Fields.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** on December 12, 2023 (88 FR 86039), for Docket No. FAA–2023–1352, updating the Class D airspace and Class E airspace for Fort Novosel, Ozark, AL, and Fort Moore, Columbus, GA, by updating each airport's name and replacing Notice to Airmen with Notice to Air Missions, and replacing the term Airport/Facility Directory with Chart Supplement in the appropriate descriptions. After publication, the FAA found the Class E surface description for Fort Novosel was inadvertently transposed. Also, the Class E airspace extending upward from 700 feet above the surface for Columbus, GA, was incorrectly transposed with the Columbus, MS description. This action corrects these errors.

Correction to the Final Rule

In FR Doc 2023–27195 at 86039, published in the **Federal Register** on December 12, 2023, the FAA makes the following corrections:

■ 1. On page 86040, in the first column, correct the ASO AL E2 description for Fort Novosel (Ozark), AL, to read as follows:

ASO AL E2 Fort Novosel (Ozark), AL [Corrected]

Cairns Army Air Field (Fort Novosel), AL
(Lat. 31°16′33″ N, long 85°42′48″ W)

That airspace extending upward from the surface within a 5-mile radius of lat. 31°18′30″ N, long. 85°42′20″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

■ 2. On page 86040, beginning in the first column under Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth, correct the Class E Airspace Areas description to read as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth [Corrected]

* * * * *

ASO GA E5 Columbus, GA [Amended]

Columbus Airport, GA
(Lat. 32°30′59″ N, long 84°56′20″ W)
Lawson AAF (Fort Moore), GA
(Lat. 32°19′54″ N, long 84°59′14″ W)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Columbus Airport, within a 9.3-mile radius of Lawson AAF (Fort Moore), and 3.8 miles each side of Lawson AAF (Fort Moore) 341° bearing from the AAF extending from the 9.3-mile radius to 15.2 miles northwest of the AAF, and 4.1 miles each side of the Lawson AAF (Fort Moore) 145° bearing from the AAF extending from the 9.3-mile radius to 10.6 miles southeast of the AAF.

Issued in College Park, Georgia, on December 19, 2023.

Andreese C. Davis,

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

[FR Doc. 2023–28314 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2113; Airspace Docket No. 23–AGL–28]

RIN 2120–AA66

Amendment of Class E Airspace; Jackson, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Jackson, OH. This action is the result of an airspace review conducted due to the decommissioning of the York very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and

subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at James A. Rhodes Airport, Jackson, OH, to support IFR operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2023–2113 in the **Federal Register** (88 FR 76158; November 6, 2023) proposing to amend the Class E airspace at Jackson, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile (decreased from a 7.5-mile) radius of James A. Rhodes Airport, Jackson, OH; updates the geographic coordinates of airport to coincide with the FAA's aeronautical database; and removes the city associated with the airport from the header to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL OH E5 Jackson, OH [Amended]

James A. Rhodes Airport, OH
(Lat 38°58′53″ N, long 82°34′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the James A. Rhodes Airport.

* * * * *

Issued in Fort Worth, Texas, on January 3, 2024.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–00197 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2453; Airspace Docket No. 22–ANM–57]

RIN 2120–AA66

Amendment of Very High Frequency Omnidirectional Range Federal Airway V–4 in the Vicinity of Burley, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airway V–4 in the vicinity of Burley, ID. The FAA is taking this action to update one of the radials used in the airway description.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA

Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal Airway V–4 in the vicinity of Burley, ID. The FAA is taking this action to update one of the radials used in the airway description. During a review of VOR Federal Airway V–4, the FAA discovered that V–4 was established without the accuracy of the Terminal Area Route Generation and Traffic Simulation software tool used today. Because of this, there is a one-degree discrepancy in the airway description. The current airway description for V–4 includes the intersection of the Boise, ID, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 130° and the Burley, ID, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) 292° radials (ALKAL, Fix). However, the ALKAL Fix has been reviewed and is located at the intersection of the Boise VORTAC 130° and the Burley VOR/DME 293° radials. This action corrects the Burley VOR/DME radial used for defining the ALKAL Fix. The amendment is described below.

V–4: V–4 currently extends between the Tatoosh, WA, VORTAC and the Armel, VA, VOR/DME and includes the intersection of the INT Boise 130° and Burley, ID, 292° radials (ALKAL, Fix). This rule changes the component radials that makeup the ALKAL Fix to the intersection of the Boise VORTAC 130° and Burley VOR/DME 293° radials.

The radials in the V–4 airway description are listed in degrees True north.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending Federal Airway V–4 in the vicinity of Burley, ID qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050,1F, Environmental Impacts: Policies and Procedures, paragraph 5–6–5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5.k., which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in in any potentially significant environmental impacts. In accordance with FAA Order 1050.1f, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant prepared of an environmental impact statement.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–4 [Amended]

From Tatoosh, WA; INT of Tatoosh 102° and Seattle, WA, 329° radials; Seattle; Yakima, WA; Pendleton, OR; Baker, OR;

Boise, ID; INT Boise 130° and Burley, ID, 293° radials; Burley; Malad City, ID; Rock Springs, WY; Cherokee, WY; Laramie, WY; Gill, CO; Thurman, CO; Goodland, KS; Hill City, KS; Salina, KS; Topeka, KS; Kansas City, MO; Hallsville, MO; St. Louis, MO; Troy, IL; Centralia, IL; Pocket City, IN; Louisville, KY; to Lexington, KY. From Charleston, WV; Elkins, WV; Kessel, WV; INT Kessel 097° and Armel, VA, 292° radials; to Armel.

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00071 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31523; Amdt. No. 4093]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 11, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 11, 2024.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a

''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on December 22, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 25 January 2024

Palm Springs, CA, PSP, VOR–B, Orig
Palm Springs, CA, PSP, VOR OR GPS–B, Amdt 3, CANCELED
Victorville, CA, VCV, LOC RWY 17, Amdt 3
Victorville, CA, KVCV, RNAV (GPS) RWY 17, Amdt 1
Victorville, CA, KVCV, RNAV (GPS) RWY 21, Orig
Victorville, CA, KVCV, RNAV (GPS) RWY 35, Orig
Eagle, CO, KEGE, RNAV (GPS) Y RWY 25, Orig
Eagle, CO, KEGE, RNAV (RNP) X RWY 25, Orig
Eagle, CO, KEGE, RNAV (RNP) Z RWY 25, Orig
Belleville, IL, BLV, ILS OR LOC RWY 14L, Orig-I
Casey, IL, 1H8, RNAV (GPS) RWY 4, Orig-C
Chicago/Rockford, IL, RFD, ILS OR LOC RWY 1, Amdt 30
Chicago/Rockford, IL, RFD, RNAV (GPS) RWY 1, Amdt 1E
Chicago/Rockford, IL, RFD, RNAV (GPS) RWY 7, Amdt 1E
Greenville, IL, GRE, RNAV (GPS) RWY 18, Amdt 1B
Greenville, IL, GRE, RNAV (GPS) RWY 36, Orig-B
Greenville, IL, KGRE, VOR–A, Amdt 3A, CANCELED
Jacksonville, IL, IJX, RNAV (GPS) RWY 13, Orig-D
Jacksonville, IL, IJX, RNAV (GPS) RWY 22, Orig-D
Shelbyville, IL, 2H0, NDB–A, Amdt 3A
Shelbyville, IL, 2H0, RNAV (GPS) RWY 36, Orig-E
Springfield, IL, SPI, VOR/DME RWY 31, Amdt 1B
Taylorville, IL, TAZ, RNAV (GPS) RWY 36, Orig-B
Vandalia, IL, VLA, RNAV (GPS) RWY 18, Orig-C
Vandalia, IL, VLA, RNAV (GPS) RWY 36, Orig-C
Vandalia, IL, VLA, VOR RWY 18, Amdt 12A, CANCELED
Saginaw, MI, MBS, ILS OR LOC RWY 5, Amdt 11A
Saginaw, MI, MBS, ILS OR LOC RWY 23, Amdt 5A
Saginaw, MI, MBS, VOR RWY 14, Amdt 14A
Fergus Falls, MN, FFM, RNAV (GPS) RWY 13, Orig-C
Jackson, MN, KMJQ, RNAV (GPS) RWY 13, Amdt 2, CANCELED
Jackson, MN, MJQ, RNAV (GPS) RWY 14, Orig
Jackson, MN, KMJQ, RNAV (GPS) RWY 31, Amdt 1B, CANCELED
Jackson, MN, MJQ, RNAV (GPS) RWY 32, Orig
Jackson, MN, KMJQ, Takeoff Minimums and Obstacle DP, Amdt 1
Drew, MS, M37, VOR–A, Amdt 5A
Beaufort, NC, KMRH, RNAV (GPS) RWY 21, Amdt 2C
Beaufort, NC, KMRH, RNAV (GPS) RWY 26, Amdt 3A
Greensboro, NC, KGSO, Takeoff Minimums and Obstacle DP, Amdt 1A
Norfolk, NE, OFK, RNAV (GPS) RWY 14, Amdt 2A
Norfolk, NE, OFK, RNAV (GPS) RWY 20, Amdt 2A
Minden, NV, MEV, RNAV (GPS) RWY 16, Orig
Minden, NV, MEV, RNAV (GPS) RWY 34, Orig
Minden, NV, KMEV, RNAV (GPS)-A, Amdt 1, CANCELED
Minden, NV, KMEV, RNAV (GPS)-B, Amdt 1, CANCELED
Philadelphia, PA, PHL, ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT II), Amdt 16
Philadelphia, PA, PHL, RNAV (GPS) RWY 27L, Amdt 4
Beaumont/Port Arthur, TX, BPT, ILS OR LOC RWY 12, Amdt 24
Beaumont/Port Arthur, TX, BPT, RNAV (GPS) RWY 12, Amdt 1
Beaumont/Port Arthur, TX, BPT, RNAV (GPS) RWY 16, Amdt 1
Beaumont/Port Arthur, TX, BPT, RNAV (GPS) RWY 30, Amdt 1
Beaumont/Port Arthur, TX, BPT, RNAV (GPS) RWY 34, Amdt 1
Beaumont/Port Arthur, TX, KBPT, VOR RWY 12, Amdt 9E, CANCELED
Beaumont/Port Arthur, TX, KPBT, VOR/DME RWY 34, Amdt 7F, CANCELED
Commerce, TX, 2F7, RNAV (GPS) RWY 18, Amdt 1A
Escalante, UT, 1L7, HASSL ONE, Graphic DP
Escalante, UT, 1L7, RNAV (GPS) RWY 31, Orig
Escalante, UT, 1L7, Takeoff Minimums and Obstacle DP, Orig

Rescinded: On December 5, 2023 (88 FR 84234), the FAA published an Amendment in Docket No. 31519, Amdt No. 4089, to part 97 of the Federal Aviation Regulations under § 97.20. The following entry for Hickory, NC, effective January 25, 2024, is hereby rescinded in its entirety:

Hickory, NC, KHKY, HICKORY THREE, Graphic DP, CANCELED

[FR Doc. 2024–00098 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31524; Amdt. No. 4094]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 11, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 11, 2024.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg 26, Room 217, Oklahoma City, OK 73099. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on December 22, 2023.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
25–Jan–24	FL	Orlando	Orlando Intl	3/8059	10/5/23	This NOTAM, published in Docket No. 31522, Amdt No. 4092, TL 24–03, (88 FR 87666, December 19, 2023) is hereby rescinded in its entirety.
25–Jan–24	CA	Mountain View	Moffett Federal Airfield	3/8470	11/9/23	This NOTAM, published in Docket No. 31522, Amdt No. 4092, TL 24–03, (88 FR 87666, December 19, 2023) is hereby rescinded in its entirety.
25–Jan–24	TN	Gallatin	Music City Exec	3/0406	12/4/23	TAKEOFF MINIMUMS AND OBSTACLE DP, Amdt 4A.
25–Jan–24	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	3/1410	11/29/23	ILS OR LOC RWY 36L, ILS RWY 36L (SA CAT II), Amdt 4.
25–Jan–24	MO	Kansas City	Charles B Wheeler Downtown.	3/2405	12/7/23	RNAV (GPS) RWY 4, Amdt 3B.
25–Jan–24	MO	Kansas City	Charles B Wheeler Downtown.	3/2407	12/7/23	ILS OR LOC RWY 4, Amdt 6.
25–Jan–24	IL	Decatur	Decatur	3/2454	12/8/23	RNAV (GPS) RWY 12, Orig-B.
25–Jan–24	UT	Provo	Provo Muni	3/3135	12/12/23	RNAV (GPS) RWY 13, Amdt 3.
25–Jan–24	CA	Salinas	Salinas Muni	3/6109	12/6/23	RNAV (GPS) RWY 8, Orig.
25–Jan–24	GA	Atlanta	Hartsfield-Jackson Atlanta Intl.	3/7626	12/7/23	ILS OR LOC RWY 10, ILS RWY 10 (SA CAT I), ILS RWY 10 (CAT II–III), Amdt 5B.
25–Jan–24	IL	Decatur	Decatur	3/8046	12/20/23	RNAV (GPS) RWY 6, Orig-C.
25–Jan–24	MI	Mason	Mason Jewett Fld	3/8373	12/11/23	RNAV (GPS) RWY 28, Orig-D.
25–Jan–24	LA	Galliano	South Lafourche Leonard Miller, Jr.	3/8422	12/4/23	RNAV (GPS) RWY 18, Amdt 2B.
25–Jan–24	MT	Livingston	Mission Fld	3/8454	12/6/23	RNAV (GPS) RWY 22, Orig–B.
25–Jan–24	NC	Greensboro	Piedmont Triad Intl	3/8520	11/30/23	ILS OR LOC RWY 5R, Amdt 7C.
25–Jan–24	NC	Greensboro	Piedmont Triad Intl	3/8524	11/30/23	RNAV (GPS) RWY 5L, Orig–D.
25–Jan–24	WI	Madison	Dane County Rgnl/Truax Fld.	3/8909	12/4/23	ILS OR LOC RWY 21, Orig–C.
25–Jan–24	NJ	Newark	Newark Liberty Intl	3/9488	12/14/23	RNAV (RNP) Y RWY 22L, Amdt 1.
25–Jan–24	OK	Ketchum	South Grand Lake Rgnl	3/9580	12/4/23	RNAV (GPS) RWY 18, Orig–A.
25–Jan–24	OK	Ketchum	South Grand Lake Rgnl	3/9581	12/4/23	RNAV (GPS) RWY 36, Orig–B.
25–Jan–24	AK	Koliganek	Koliganek	3/9584	12/6/23	RNAV (GPS) RWY 9, Amdt 1.
25–Jan–24	PR	Ponce	Mercedita	3/9586	12/4/23	RNAV (GPS) RWY 12, Orig–E.

[FR Doc. 2024–00099 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 250 and 385

[Docket No. RM24–3; Order No. 903]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this final rule.

DATES: This final rule is effective January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Colin Chazen, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Phone: (202) 502–8732; email: *Colin.Chazen@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. In this final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),[1] which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),[2] required the head of each Federal agency to issue a rule by July 2016 adjusting for inflation each ''civil monetary penalty'' provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.[3]

II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil

[1] Public Law 114–74, Sec. 701, 129 Stat. 584, 599.

[2] Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

[3] 28 U.S.C. 2461 note, at (4). The Commission made its January 2023 adjustment on January 6, 2023, in Docket No. RM23–3000. *See Civil Monetary Penalty Inflation Adjustments,* Order No. 886, 88 FR 1989 (Jan. 12, 2023), 182 FERC ¶ 61,002 (2023).

action in the federal courts.[4] This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),[5] the Natural Gas Act (NGA),[6] the Natural Gas Policy Act of 1978 (NGPA),[7] and the Interstate Commerce Act (ICA).[8]

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI–U) for October of the preceding year exceeds the CPI–U for October of the year before that.[9] The CPI–U for October 2023 exceeded the CPI–U for October 2022 by 3.241%.[10]

5. The second step requires multiplying the CPI–U percentage increase by the applicable existing maximum civil monetary penalty.[11] This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new adjusted maximum civil monetary penalty.[12]

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.[13]

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted maximum civil monetary penalty
16 U.S.C. 825o–1(b), Sec. 316A of the Federal Power Act	$1,496,035 per violation, per day	$1,544,521 per violation, per day.
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act	$27,017 per violation, per day	$27,893 per violation, per day.
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act	$3,529 per violation	$3,643 per violation.
15 U.S.C. 717t–1, Sec. 22 of the Natural Gas Act	$1,496,035 per violation, per day	$1,544,521 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	$1,496,035 per violation, per day	$1,544,521 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	$1,566 per offense and $78 per day after the first day.	$1,617 per offense and $81 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	$15,662 per violation, per day	$16,170 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	$1,566 per offense, per day	$1,617 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	$1,566 per offense, per day	$1,617 per offense, per day.

III. Administrative Findings

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA).[14] Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the APA, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

IV. Regulatory Flexibility Statement

10. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.[15] The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.[16] The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

V. Paperwork Reduction Act

11. This rule does not require the collection of information. The Commission is therefore not required to submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[17]

VI. Document Availability

12. 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 print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*).

13. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

14. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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, or email at *public.referenceroom@ferc.gov*.

VII. Effective Date and Congressional Notification

15. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA,[18] and therefore, the regulation is effective upon publication in the **Federal Register**.

16. The Commission has determined, with the concurrence of the Administrator of the Office of

[4] 28 U.S.C. 2461 note at (3).

[5] 16 U.S.C. 791a *et seq.*

[6] 15 U.S.C. 717 *et seq.*

[7] 15 U.S.C. 3301 *et seq.*

[8] 49 App. U.S.C. 1 *et seq.* (1988).

[9] 28 U.S.C. 2461 note at (5)(b)(1).

[10] *See, e.g.,* Memorandum from Shalanda D. Young, Office of Management and Budget, Implementation of the Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 19, 2023).

[11] 28 U.S.C. 2461 note at (5)(a).

[12] *Id.*

[13] *Id.* at (6).

[14] *Id.* at (3)(b)(2).

[15] 5 U.S.C. 601 *et seq.*

[16] 5 U.S.C. 603, 604.

[17] 44 U.S.C. 3507(d).

[18] 5 U.S.C. 553(d)(3).

Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

In consideration of the foregoing, the Commission amends parts 250 and 385, chapter I, title 18, *Code of Federal Regulations* as follows:

PART 250—FORMS

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 28 U.S.C. 2461 note.

■ 2. Amend § 250.16 by revising paragraph (e)(1) to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

* * * * *

(e) * * *

(1) Any person who transports gas for others pursuant to subpart B or G of part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5 of this chapter, this section, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $1,544,521 for any one violation.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Amend § 385.1504 by revising paragraph (a) to read as follows:

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $27,893 for each day that the violation continues.

* * * * *

■ 5. Revise § 385.1602 to read as follows:

§ 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978: $1,544,521 per violation, per day.

(b) 16 U.S.C. 823b(c), Federal Power Act: $27,893 per violation, per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: $3,643 per violation.

(d) 16 U.S.C. 825o–1(b), Federal Power Act: $1,544,521 per violation, per day.

(e) 15 U.S.C. 717t–1, Natural Gas Act: $1,544,521 per violation, per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: $1,617 per offense and $78 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: $16,170 per violation, per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: $1,617 per offense, per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: $1,617 per offense, per day.

[FR Doc. 2024–00425 Filed 1–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 24–01]

RIN 1515–AE87

Extension of Import Restrictions Imposed on Certain Archaeological Material From China

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to extend import restrictions on certain archaeological material from China. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determinations for extending the import restrictions, which were originally imposed by CBP Dec. 09–03 and last extended by CBP Dec. 19–02. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension through January 14, 2029.

DATES: Effective January 14, 2024.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrculturalproperty@cbp.dhs.gov.* For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (the Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on eligible archaeological and ethnological materials. Under the CPIA and the applicable U.S. Customs and Border Protection (CBP) regulations, found in § 12.104 of title 19 of the Code of Federal Regulations (19 CFR 12.104), the restrictions are effective for no more than five years beginning on the date on which an agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each extension not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

On January 14, 2009, the United States entered into a bilateral agreement with the People's Republic of China (China) to impose import restrictions on

certain archaeological material representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907), and monumental sculpture and wall art at least 250 years old. On January 16, 2009, CBP published a final rule (CBP Dec. 09–03) in the **Federal Register** (74 FR 2838), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, including a list designating the types of archaeological materials covered by the restrictions.

The import restrictions were subsequently extended two more times in accordance with 19 U.S.C. 2602(e) and 19 CFR 12.104g(a), and the designated list was amended once. On January 13, 2014, CBP published a final rule (CBP Dec. 14–02) in the **Federal Register** (79 FR 2088), which amended § 12.104g(a) to reflect the extension of these import restrictions for an additional five years. By request of China, this document also amended the Designated List to clarify that the restrictions as to monumental sculpture and wall art at least 250 years old were to be calculated as of January 14, 2009, the date the agreement became effective.

Subsequently, on January 10, 2019, the United States and China entered into a new memorandum of understanding (2019 MOU), that superseded and replaced the prior agreement, extending the import restrictions for an additional five years. The new MOU added a new subcategory of glass objects from the Zhou period through the Tang period and revised the Designated List of cultural property described in CBP Dec. 14–02. On January 14, 2019, CBP published a final rule (CBP Dec. 19–02) in the **Federal Register** (84 FR 107), which amended § 12.104g(a) to reflect the extension of these import restrictions for an additional five years and amended the Designated List to include the new subcategory of glass objects from the Zhou period through the Tang Period. These import restrictions are due to expire on January 14, 2024.

On May 19, 2023, the United States Department of State proposed in the **Federal Register** (88 FR 32264) to extend the 2019 MOU. On November 14, 2023, after considering the views and recommendations of the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, made the necessary determinations to extend the import restrictions for an additional five years. Following an exchange of diplomatic notes, the United States Department of State and the Government of the People's Republic of China have agreed to extend the restrictions for an additional five-year period, through January 14, 2029.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of these import restrictions. The restrictions on the importation of archaeological material from China will continue in effect through January 14, 2029. Importation of such material from China continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the material for ''China.''

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563

Executive Orders 12866 (as amended by Executive Order 14994) 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 (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. CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Orders 12866 and 13563 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and, by extension, Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of the Secretary's delegate) to approve regulations related to customs revenue functions.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, and Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for the People's Republic of China to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
People's Republic of China.	Archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old as of January 14, 2009.	CBP Dec. 19–02, extended by CBP Dec. 24–01.
* * * * * * *		

* * * * *

Robert F. Altneu,

Director, Regulations and Disclosure Law Division, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved:

Thomas C. West, Jr.,

Deputy Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2024–00394 Filed 1–10–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Office of Workers' Compensation Programs

20 CFR Parts 702, 725, and 726

Office of the Secretary

29 CFR Part 5

41 CFR Part 50–201

Wage and Hour Division

29 CFR Parts 500, 501, 503, 530, 570, 578, 579, 801, 810, and 825

Occupational Safety and Health Administration

29 CFR Part 1903

Mine Safety and Health Administration

30 CFR Part 100

RIN 1290–AA48

Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2024

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Employee Benefits Security Administration, and Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Department, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department's 2024 annual adjustments for inflation to its civil monetary penalties.

DATES: This final rule is effective on January 15, 2024. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 2, 2015, Congress enacted the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, sec. 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (collectively, the ''Prior Inflation Adjustment Act''), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment Act required agencies to (1) adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation no later than January 15 of each year.

On July 1, 2016, the Department published an IFR that established the initial catch-up adjustment for most civil penalties that the Department administers and requested comments. *See* 81 FR 43430 (DOL IFR). On January 18, 2017, the Department published the final rule establishing the 2017 Annual Adjustment for those civil monetary penalties adjusted in the DOL IFR. *See* 82 FR 5373 (DOL 2017 Annual

Adjustment). On July 1, 2016, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Labor (DOL) (collectively, ''the Departments'') jointly published an IFR that established the initial catch-up adjustment for civil monetary penalties assessed or enforced in connection with the employment of temporary nonimmigrant workers under the H–2B program. *See* 81 FR 42983 (Joint IFR). On March 17, 2017, the Departments jointly published the final rule establishing the 2017 Annual Adjustment for the H–2B civil monetary penalties. *See* 82 FR 14147 (Joint 2017 Annual Adjustment). The Joint 2017 Annual Adjustment also explained that DOL would make future adjustments to the H–2B civil monetary penalties consistent with DOL's delegated authority under 8 U.S.C. 1184(c)(14), Immigration and Nationality Act section 214(c)(14), and the Inflation Adjustment Act. *See* 82 FR 14147–48. On January 2, 2018, the Department published the final rule establishing the 2018 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 83 FR 7 (DOL 2018 Annual Adjustment). On January 23, 2019, the Department published the final rule establishing the 2019 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 84 FR 213 (DOL 2019 Annual Adjustment). On January 15, 2020, the Department published the final rule establishing the 2020 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 85 FR 2292 (DOL 2020 Annual Adjustment). On January 14, 2021, the Department published the final rule establishing the 2021 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 86 FR 2964 (DOL 2021 Annual Adjustment). On January 14, 2022, the Department published the final rule establishing the 2022 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 87 FR 2328 (DOL 2022 Annual Adjustment). The DOL 2022 Annual Adjustment also included the first annual adjustments for a newly enacted civil monetary penalty regarding retention of tips under the Fair Labor Standards Act (FLSA) and a newly established civil monetary penalty regarding whistleblower protections under the high-wage components of the labor value content requirements of the United States-Mexico-Canada Agreement Implementation Act (USMCA). On January 13, 2023, the Department published the final rule establishing the 2023 Annual Adjustment for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. *See* 88 FR 2210 (DOL 2023 Annual Adjustment).

This rule implements the 2024 annual inflation adjustments, as required by the Inflation Adjustment Act, for civil monetary penalties assessed or enforced by the Department, including H–2B civil monetary penalties. The Inflation Adjustment Act provides that the increased penalty levels apply to any penalties assessed after the effective date of the increase. Pursuant to the Inflation Adjustment Act, this final rule is published notwithstanding Section 553 of the APA.

This rule is not significant under Executive Order 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule,' as defined by 5 U.S.C. 804(2).

II. Adjustment for 2024

The Department has undertaken a thorough review of civil penalties administered by its various components pursuant to the Inflation Adjustment Act and in accordance with guidance issued by the Office of Management and Budget.[1]

The Department first identified the most recent penalty amount, which is the amount established by the 2023 annual adjustment as set forth in the DOL 2023 Annual Adjustment published on January 13, 2023.

The Department is required to calculate the annual adjustment based on the Consumer Price Index for all Urban Consumers (CPI–U). Annual inflation adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U; in this case, the percent change between the October 2023 CPI–U and the October 2022 CPI–U. The cost-of-living adjustment multiplier for 2024, based on the Consumer Price Index (CPI–U) for the month of October 2023, not seasonally adjusted, is 1.03241.[2] In order to compute the 2024 annual adjustment, the Department multiplied the most recent penalty amount for each applicable penalty by the multiplier, 1.03241, and rounded to the nearest dollar.

As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.[3] Accordingly, for penalties assessed after January 15, 2024, whose associated violations occurred after the applicable dates listed below, the higher penalty amounts outlined in this rule will apply. The tables below demonstrate the penalty amounts that apply:

CIVIL MONETARY PENALTIES FOR VIOLATIONS OF SECTION 3(m)(2)(B) OF THE FLSA (TIPS)

Violations occurring	Penalty assessed	Which penalty level applies
After March 23, 2018	After March 23, 2018 but on or before November 23, 2021	Consolidated Appropriations Act of 2018 amount.
After March 23, 2018	After November 23, 2021 but on or before January 15, 2022	November 23, 2021 level.
After March 23, 2018	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 level.
After March 23, 2018	After January 15, 2023 but on or before January 15, 2024	January 15, 2023 level.
After March 23, 2018	After January 15, 2024	January 15, 2024 level.

[1] M–24–07, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 19, 2023).

[2] OMB provided the year-over-year multiplier, rounded to 5 decimal points. *Id.* at 1.

[3] Appendix 1 consists of a table that provides ready access to key information about each penalty.

CIVIL MONETARY PENALTIES FOR USMCA VIOLATIONS

Violations occurring	Penalty assessed	Which penalty level applies
After July 1, 2020	After July 1, 2020 but on or before January 15, 2022	2020 USMCA IFR amount.
After July 1, 2020	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 level.
After July 1, 2020	After January 15, 2023 but on or before January 15, 2024	January 15, 2023 level.
After July 1, 2020	After January 15, 2024	January 15, 2024 level.

CIVIL MONETARY PENALTIES FOR THE H–2B TEMPORARY NON-AGRICULTURAL WORKER PROGRAM

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before March 17, 2017	August 1, 2016 levels.
After November 2, 2015	After March 17, 2017 but on or before January 2, 2018	March 17, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023 but on or before January 15, 2024	January 15, 2023 level.
After November 2, 2015	After January 15, 2024	January 15, 2024 level.

CIVIL MONETARY PENALTIES FOR OTHER DOL PROGRAMS

Violations occurring	Penalty assessed	Which penalty level applies
On or before November 2, 2015	On or before August 1, 2016	Pre-August 1, 2016 levels.
On or before November 2, 2015	After August 1, 2016	Pre-August 1, 2016 levels.
After November 2, 2015	After August 1, 2016, but on or before January 13, 2017	August 1, 2016 levels.
After November 2, 2015	After January 13, 2017 but on or before January 2, 2018	January 13, 2017 levels.
After November 2, 2015	After January 2, 2018 but on or before January 23, 2019	January 2, 2018 levels.
After November 2, 2015	After January 23, 2019 but on or before January 15, 2020	January 23, 2019 levels.
After November 2, 2015	After January 15, 2020 but on or before January 15, 2021	January 15, 2020 levels.
After November 2, 2015	After January 15, 2021 but on or before January 15, 2022	January 15, 2021 levels.
After November 2, 2015	After January 15, 2022 but on or before January 15, 2023	January 15, 2022 levels.
After November 2, 2015	After January 15, 2023 but on or before January 15, 2024	January 15, 2023 level.
After November 2, 2015	After January 15, 2024	January 15, 2024 level.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule does not require any collection of information.

IV. Administrative Procedure Act

The Inflation Adjustment Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding section 553 of the APA. Additionally, the Inflation Adjustment Act provides a nondiscretionary cost-of-living formula for annual adjustment of the civil monetary penalties. For these reasons, the requirements in sections 553(b), (c), and (d) of the APA, relating to notice and comment and requiring that a rule be effective 30 days after publication in the **Federal Register**, are inapplicable.

V. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866 (as supplemented by E.O. 14094) requires that regulatory agencies assess both the costs and benefits of significant regulatory actions. Under the Executive Order, a ''significant regulatory action'' is one meeting any of a number of specified conditions, including the following: having an annual effect on the economy of $200 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues.

The Department has determined that this final rule is not a ''significant'' regulatory action and a cost-benefit and economic analysis is not required. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the Inflation Adjustment Act, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the incentive for the regulated community to comply with the laws enforced by the Department, and not allowing the incentive to be diminished by inflation.

Executive Order 13563 directs 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, reducing costs, harmonizing rules, and promoting flexibility to minimize burden.

The Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. In that context, Congress has already determined that any possible increase in costs is justified

by the overall benefits of such adjustments. This final rule makes only the statutory changes outlined herein; thus there are no alternatives or further analysis required by Executive Order 13563.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). This final rule is exempt from the requirements of the APA because the Inflation Adjustment Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notices of proposed rulemaking, 5 U.S.C. 603, do not apply to this rule. Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

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. This Final Rule will not result in such an expenditure. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Executive Order 13132: Federalism

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 667) requires Occupational Safety and Health Administration (OSHA)-approved State Plans to have standards and an enforcement program that are at least as effective as Federal OSHA's standards and enforcement program. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as Federal OSHA's, per section 18(c)(2) of the OSH Act. *See also* 29 CFR 1902.4(c)(2)(xi); 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases to maintain at least as effective penalty levels.

State Plans are not required to impose monetary penalties on state and local government employers. *See* § 1956.11(c)(2)(x). Six (6) states and one territory have State Plans that cover only state and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands. Therefore, the requirements to increase the penalty levels do not apply to these State Plans. Twenty-one states and one U.S. territory have State Plans that cover both private sector employees and state and local government employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. They must increase their penalties for private-sector employers.

Other than as listed above, this final rule does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

C. Executive Order 13175: Indian Tribal Governments

This final rule does not have ''tribal implications'' because it does not 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. Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

List of Subjects

20 CFR Part 655

Immigration, Labor, Penalties.

20 CFR Part 702

Administrative practice and procedure, Longshore and harbor workers, Penalties, Reporting and recordkeeping requirements, Workers' compensation.

20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Coal miners, Penalties, Reporting and recordkeeping requirements.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Coal miners, Mines, Penalties.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Law enforcement, Minimum wages, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 503

Administrative practice and procedure, Aliens, Employment, Housing, Immigration, Labor, Penalties, Transportation, Wages.

29 CFR Part 530

Administrative practice and procedure, Clothing, Homeworkers, Indians—arts and crafts, Penalties, Reporting and recordkeeping requirements, Surety bonds, Watches and jewelry.

29 CFR Part 570

Child labor, Law enforcement, Penalties.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

29 CFR Part 810

Labor, Wages, Hours of work, Trade agreement, Motor vehicle, Tariffs, Imports, Whistleblowing.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor

management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.

29 CFR Part 1903

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Penalties.

30 CFR Part 100

Mine safety and health, Penalties.

41 CFR Part 50–201

Child labor, Government procurement, Minimum wages, Occupational safety and health, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 20 CFR chapters VI and VII, 29 CFR subtitle A and chapters V, XVII, and XXV, 30 CFR chapter I, and 41 CFR chapter 50 are amended as follows.

DEPARTMENT OF LABOR

Employment and Training Administration

Title 20—Employees' Benefits

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); and 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–128, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

§§ 655.620, 655.801, and 655.810 [Amended]

■ 2. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 655.620(a)	$11,162	$11,524
§ 655.801(b)	9,086	9,380
§ 655.810(b)(1) introductory text	2,232	2,304
§ 655.810(b)(2) introductory text	9,086	9,380
§ 655.810(b)(3) introductory text	63,600	65,661

Office of Workers' Compensation Programs

PART 702—ADMINISTRATION AND PROCEDURE

■ 3. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

§§ 702.204, 702.236, and 702.271 [Amended]

■ 4. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the section or paragraph and add in its place the dollar amount or date indicated in the right column.

Section/paragraph	Remove	Add
§ 702.204	$28,304	$29,221
§ 702.204	January 15, 2023	January 15, 2024
§ 702.236	$345	$356
§ 702.236	January 15, 2023	January 15, 2024
§ 702.271(a)(2)	January 15, 2023	January 15, 2024
§ 702.271(a)(2)	$2,830	$2,922
§ 702.271(a)(2)	$14,149	$14,608

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 5. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

§ 725.621 [Amended]

■ 6. In § 725.621, amend paragraph (d) by removing ''January 15, 2023'' and adding in its place ''January 15, 2024'' and by removing ''$1,724'' and adding in its place ''$1,780''.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 7. The authority citation for part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.,* 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 8. In § 726.302:

■ a. In paragraph (c)(2)(i) introductory text, remove ''January 15, 2023'' and add ''January 15, 2024'' in its place;

■ b. Revise the Table 1 to paragraph (c)(2)(i); and

■ c. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
(c)(4)	January 15, 2023	January 15, 2024
(c)(4)	$169	$174
(c)(5)	January 15, 2023	January 15, 2024
(c)(5)	$504	$520
(c)(6)	January 15, 2023	January 15, 2024
(c)(6)	$3,446	$3,558

§ 726.302 Determination of penalty.

* * * * *

(c) * * *

(2) * * *

(i) * * *

TABLE 1 TO PARAGRAPH (c)(2)(i)

Employees	Penalty (per day)
Less than 25	$174
25–50	346
51–199	520
More than 100	692

DEPARTMENT OF LABOR

Title 29—Labor

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

■ 9. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.;* 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.;* and the laws listed in 5.1(a) of this part; Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 5.5 [Amended]

■ 10. In § 5.5, amend paragraph (b)(2) by removing ''$31'' and adding in its place ''$32''.

§ 5.8 [Amended]

■ 11. In § 5.8, amend paragraph (a) by removing ''$31'' and adding in its place ''$32''.

Wage and Hour Division

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 12. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

§ 500.1 [Amended]

■ 13. In § 500.1, amend paragraph (e) by removing ''$2,951'' and adding in its place ''$3,047''.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 14. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 note; and sec. 701, Pub. L. 114–74, 129 Stat. 584.

§ 501.19 [Amended]

■ 15. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 501.19(c) introductory text	$2,045	$2,111
§ 501.19(c)(1)	6,881	7,104
§ 501.19(c)(2)	68,129	70,337
§ 501.19(c)(3)	136,258	140,674
§ 501.19(d)	6,881	7,104
§ 501.19(e)	20,439	21,101
§ 501.19(f)	20,439	21,101

PART 503—ENFORCEMENT OF OBLIGATIONS FOR TEMPORARY NONIMMIGRANT NON-AGRICULTURAL WORKERS DESCRIBED IN THE IMMIGRATION AND NATIONALITY ACT

■ 16. The authority citation for part 503 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(b); 8 U.S.C. 1184; 8 CFR 214.2(h); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

§ 503.23 [Amended]

■ 17. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column:

Paragraph	Remove	Add
§ 503.23(b)	$14,960	$15,445
§ 503.23(c)	14,960	15,445
§ 503.23(d)	14,960	15,445

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 18. The authority citation for part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

■ 19. In § 530.302:

■ a. Amend paragraph (a) by removing ''$1,240'' and adding in its place ''$1,280;'' and

■ b. Revise paragraph (b).

The revision reads as follows:

§ 530.302 Amounts of civil penalties.

* * * * *

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be de minimis in nature:

TABLE 1 TO PARAGRAPH (b)

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	$25–257	$257–512	$512–1,280
Monetary violations	25–257	257–512	.....
Employment of homeworkers without a certificate	.....	257–512	512–1,280
Other violations of statutes, regulations or employer assurances	25–257	257–512	512–1,280

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Subpart G—General Statements of Interpretation of the Child Labor Provisions of the Fair Labor Standards Act of 1938, as Amended

■ 20. The authority citation for subpart G of part 570 continues to read as follows:

Authority: 52 Stat. 1060–1069, as amended; 29 U.S.C. 201–219; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

§ 570.140 [Amended]

■ 21. In § 570.140, amend paragraph (b)(1) by removing ''$15,138'' and adding in its place ''$15,629'' and paragraph (b)(2) by removing ''$68,801'' and adding in its place ''$71,031''.

PART 578—TIP RETENTION, MINIMUM WAGE, AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 22. The authority citation for part 578 continues to read as follows:

Authority: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29, sec. 302(a), Pub. L. 110–233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, 1321–373, and sec. 701, Pub. L. 114–74, 129 Stat 584.

§ 578.3 [Amended]

■ 23. In § 578.3, amend paragraph (a)(1) by removing ''$1,330'' and adding in its place ''$1,373'' and paragraph (a)(2) by removing ''$2,374'' and adding in its place ''$2,451''.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 24. The authority citation for part 579 continues to read as follows:

Authority: 29 U.S.C. 203(m), (l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note.

§ 579.1 [Amended]

■ 25. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 579.1(a)(1)(i)(A)	$15,138	$15,629
§ 579.1(a)(1)(i)(B)	68,801	71,031

Paragraph	Remove	Add
§ 579.1(a)(2)(i)	2,374	2,451
§ 579.1(a)(2)(ii)	1,330	1,373

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 26. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 801.42 [Amended]

■ 27. In § 801.42, amend paragraph (a) introductory text by removing ''$24,793'' and adding in its place ''$25,597''.

PART 810—HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT

■ 28. The authority citation for part 810 continues to read as follows:

Authority: 19 U.S.C. 1508(b)(4) and 19 U.S.C. 4535(b); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 810.800 [Amended]

■ 29. In § 810.800, amend paragraph (c)(3)(i) by removing ''$57,224'' and adding in its place ''$59,079''.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 30. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

§ 825.300 [Amended]

■ 31. In § 825.300, amend paragraph (a)(1) by removing ''$204'' and adding in its place ''$211''.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PART 1903—INSPECTIONS, CITATIONS, AND PROPOSED PENALTIES

■ 32. The authority citation for part 1903 continues to read as follows:

Authority: Secs. 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Section 701, Pub. L. 114–74; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

§ 1903.15 [Amended]

■ 33. In the following table, for each paragraph indicated in the left column, remove the dollar amount or date indicated in the middle column from wherever it appears in the paragraph and add in its place the dollar amount or date indicated in the right column.

Paragraph	Remove	Add
§ 1903.15(d) introductory text	January 15, 2023	January 15, 2024.
§ 1903.15(d)(1)	$11,162	$11,524.
§ 1903.15(d)(1)	156,259	161,323.
§ 1903.15(d)(2)	156,259	161,323.
§ 1903.15(d)(3)	15,625	16,131.
§ 1903.15(d)(4)	15,625	16,131.
§ 1903.15(d)(5)	15,625	16,131.
§ 1903.15(d)(6)	15,625	16,131.

Mine Safety and Health Administration

Title 30—Mineral Resources

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

■ 34. The authority citation for part 100 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 815, 820, 957; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701.

■ 35. In § 100.3:

■ a. Amend paragraph (a)(1) introductory text by removing ''$85,580'' and adding in its place ''$88,354''; and

■ b. By revising table 14 to paragraph (g).

The revision reads as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(g) * * *

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE

Points	Penalty ($)
60 or fewer	$164
61	179
62	192
63	210
64	227
65	246
66	266
67	289
68	312
69	339
70	365
71	397
72	432
73	468
74	504

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
75	547
76	595
77	641
78	696
79	755
80	818
81	886
82	957
83	1,039
84	1,124
85	1,220
86	1,321
87	1,430
88	1,550
89	1,679
90	1,819
91	1,970
92	2,132
93	2,311

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
94	2,504
95	2,712
96	2,938
97	3,180
98	3,448
99	3,735
100	4,047
101	4,383
102	4,748
103	5,143
104	5,571
105	6,037
106	6,538
107	7,083
108	7,673
109	8,313
110	9,005
111	9,752
112	10,567
113	11,447

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
114	12,401
115	13,433
116	14,551
117	15,765
118	17,077
119	18,500
120	20,039
121	21,711
122	23,515
123	25,477
124	27,599
125	29,893
126	32,386
127	35,084
128	38,005
129	41,171
130	44,601
131	48,316
132	52,338
133	56,698

TABLE 14 TO PARAGRAPH (g)—PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
134	61,221
135	65,741
136	70,266
137	74,785
138	79,309
139	83,830
140 or more	88,354

* * * * *

§§ 100.4 and 100.5 [Amended]

■ 36. In the following table, for each paragraph indicated in the left column, remove the dollar amount indicated in the middle column from wherever it appears in the paragraph, and add in its place the dollar amount indicated in the right column.

Paragraph	Remove	Add
§ 100.4(a)	$2,853	$2,945
§ 100.4(b)	5,703	5,888
§ 100.4(c) introductory text	7,133	7,364
§ 100.4(c) introductory text	85,580	88,354
§ 100.5(c)	9,271	9,571
§ 100.5(d)	391	404
§ 100.5(e)	313,790	323,960

Title 41—Public Contracts and Property Management

PART 50–201—GENERAL REGULATIONS

■ 37. The authority citation for part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40; 108 Stat. 7201; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701, 129 Stat 584.

§ 50–201.3 [Amended]

■ 38. In § 50–201.3, amend paragraph (e) by removing ''$31'' and adding in its place ''$32''.

Signed in Washington, DC.

Julie A. Su,

Acting Secretary, U.S. Department of Labor.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Agency	Law	Name/description	CFR citation	2023		2024	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Regular Assessment	30 CFR 100.3(a)		$85,580		$88,354.
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty Conversion Table	30 CFR 100.3(g)	$159	$85,580	$164	$88,354.
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum Penalty for any citation or order issued under 104(d)(1) of the Mine Act.	30 CFR 100.4(a)	2,853		2,945	
MSHA	Federal Mine Safety & Health Act of 1977.	Minimum penalty for any citation or order issued under 104(d)(2) of the Mine Act.	30 CFR 100.4(b)	5,703		5,888	
MSHA	Federal Mine Safety & Health Act of 1977.	Penalty for failure to provide timely notification to the Secretary under 103(j) of the Mine Act.	30 CFR 100.4(c)	7,133	$85,580	7,364	$88,354.

Agency	Law	Name/description	CFR citation	2023		2024	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
MSHA	Federal Mine Safety & Health Act of 1977.	Any operator who fails to correct a violation for which a citation or order was issued under 104(a) of the Mine Act.	30 CFR 100.5(c)		$9,271		$9,571.
MSHA	Federal Mine Safety & Health Act of 1977.	Violation of mandatory safety standards related to smoking standards.	30 CFR 100.5(d)		$391		$404.
MSHA	Federal Mine Safety & Health Act of 1977.	Flagrant violations under 110(b)(2) of the Mine Act.	30 CFR 100.5(e)		$313,790		$323,960.
EBSA	Employee Retirement Income Security Act.	Section 209(b): Per plan year for failure to furnish reports (*e.g.,* pension benefit statements) to certain former employees or maintain employee records—each employee a separate violation.	29 CFR 2575.1–3		$36		$37.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(2)—Per day for failure/refusal to properly file plan annual report.	29 CFR 2575.1–3		$2,586		$2,670.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(4)—Per day for failure to disclose certain documents upon request under Section 101(k) and (l); failure to furnish notices under Sections 101(j) and 514(e)(3)—each statutory recipient a separate violation.	29 CFR 2575.1–3		$2,046		$2,112.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(5)—Per day for each failure to file annual report for Multiple Employer Welfare Arrangements (MEWAs) under Section 101(g).	29 CFR 2575.1–3		$1,881		$1,942.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(6)—Per day for each failure to provide Secretary of Labor requested documentation not to exceed a per-request maximum.	29 CFR 2575.1–3		$184 per day, not to exceed $1,846 per request.		$190 per day, not to exceed $1,906 per request.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(7)—Per day for each failure to provide notices of blackout periods and of right to divest employer securities—each statutory recipient a separate violation.	29 CFR 2575.1–3		$164		$169.
EBSA	Employee Retirement Income Security Act.	Section 502 (c)(8)—Per each failure by an endangered status multiemployer plan to adopt a funding improvement plan or meet benchmarks; or failure of a critical status multiemployer plan to adopt a rehabilitation plan.	29 CFR 2575.1–3		$1,624		$1,677.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(A)—Per day for each failure by an employer to inform employees of CHIP coverage opportunities under Section 701(f)(3)(B)(i)(I)—each employee a separate violation.	29 CFR 2575.1–3		$137		$141.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(9)(B)—Per day for each failure by a plan to timely provide to any State information required to be disclosed under Section 701(f)(3)(B)(ii), as added by CHIP regarding coverage coordination—each participant/beneficiary a separate violation.	29 CFR 2575.1–3		$137		$141.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—Failure by any plan sponsor of group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of Sections 702(a)(1)(F), (b)(3), (c) or (d); or Section 701; or Section 702(b)(1) with respect to genetic information—daily per participant and beneficiary during non-compliance period.	29 CFR 2575.1–3		$137		$141.

Agency	Law	Name/description	CFR citation	2023		2024	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected de minimis violation.	29 CFR 2575.1–3	3,439		3,550	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—uncorrected violations that are not de minimis.	29 CFR 2575.1–3	20,641		21,310	
EBSA	Employee Retirement Income Security Act.	Section 502(c)(10)—unintentional failure maximum cap.	29 CFR 2575.1–3		$688,012		$710,310.
EBSA	Employee Retirement Income Security Act.	Section 502(c)(12)—Per day for each failure of a CSEC plan in restoration status to adopt a restoration plan.	29CFR 2575.1–3		$126		$130.
EBSA	Employee Retirement Income Security Act.	Section 502 (m)—Failure of fiduciary to make a proper distribution from a defined benefit plan under section 206(e) of ERISA.	29 CFR 2575.1–3		$19,933		$20,579.
EBSA	Employee Retirement Income Security Act.	Failure to provide Summary of Benefits Coverage under PHS Act section 2715(f), as incorporated in ERISA section 715 and 29 CFR 2590.715–2715(e).	29 CFR 2575.1–3		$1,362		$1,406.
OSHA	Occupational Safety and Health Act.	Serious Violation	29 CFR 1903.15(d)(3)		$15,625		$16,131.
OSHA	Occupational Safety and Health Act.	Other-Than-Serious	29 CFR 1903.15(d)(4)		$15,625		$16,131.
OSHA	Occupational Safety and Health Act.	Willful	29 CFR 1903.15(d)(1)	11,162	$156,259	11,524	$161,323.
OSHA	Occupational Safety and Health Act.	Repeated	29 CFR 1903.15(d)(2)		$156,259		$161,323.
OSHA	Occupational Safety and Health Act.	Posting Requirement	29 CFR 1903.15(d)(6)		$15,625		$16,131.
OSHA	Occupational Safety and Health Act.	Failure to Abate	29 CFR 1903.15(d)(5)		$15,625 per day.		$16,131 per day.
WHD	Family and Medical Leave Act.	FMLA	29 CFR 825.300(a)(1)		$204		$211.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(1)		$1,330		$1,373.
WHD	Fair Labor Standards Act.	FLSA	29 CFR 578.3(a)(2)		$2,374		$2,451.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(i)		$2,374		$2,451.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(2)(ii)		$1,330		$1,373.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 570.140(b)(1)		$15,138		$15,629.
WHD	Fair Labor Standards Act.	Child Labor	29 CFR 579.1(a)(1)(i)(A)		$15,138		$15,629.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 570.140(b)(2)		$68,801		$71,031.
WHD	Fair Labor Standards Act.	Child Labor that causes serious injury or death.	29 CFR 579.1(a)(1)(i)(B)		$68,801		$71,031.
WHD	Fair Labor Standards Act.	Child Labor willful or repeated that causes serious injury or death (penalty amount doubled).	29 CFR 570.140(b)(2); 29 CFR 579.1(a)(1)(i)(B) Doubled.		$137,602		$142,062.
WHD	Migrant and Seasonal Agricultural Worker Protection Act.	MSPA	29 CFR 500.1(e)		$2,951		$3,047.

Agency	Law	Name/description	CFR citation	2023		2024	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
WHD	Immigration & Nationality Act.	H1B	20 CFR 655.810(b)(1)		$2,232		$2,304.
WHD	Immigration & Nationality Act.	H1B retaliation	20 CFR 655.801(b)		$9,086		$9,380.
WHD	Immigration & Nationality Act.	H1B willful or discrimination	20 CFR 655.810(b)(2)		$9,086		$9,380.
WHD	Immigration & Nationality Act.	H1B willful that resulted in displacement of a US worker.	20 CFR 655.810(b)(3)		$63,600		$65,661.
WHD	Immigration & Nationality Act.	D–1	20 CFR 655.620(a)		$11,162		$11,524.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.5(b)(2)		$31		$32.
WHD	Contract Work Hours and Safety Standards Act.	CWHSSA	29 CFR 5.8(a)		$31		$32.
WHD	Walsh-Healey Public Contracts Act.	Walsh-Healey	41 CFR 50–201.3(e)		$31		$32.
WHD	Employee Polygraph Protection Act.	EPPA	29 CFR 801.42(a)		$24,793		$25,597.
WHD	Immigration & Nationality Act.	H2A	29 CFR 501.19(c)		$2,045		$2,111.
WHD	Immigration & Nationality Act.	H2A willful or discrimination	29 CFR 501.19(c)(1)		$6,881		$7,104.
WHD	Immigration & Nationality Act.	H2A Safety or health resulting in serious injury or death.	29 CFR 501.19(c)(2)		$68,129		$70,337.
WHD	Immigration & Nationality Act.	H2A willful or repeated safety or health resulting in serious injury or death.	29 CFR 501.19(c)(3)		$136,258		$140,674.
WHD	Immigration & Nationality Act.	H2A failing to cooperate in an investigation.	29 CFR 501.19(d)		$6,881		$7,104.
WHD	Immigration & Nationality Act.	H2A displacing a US worker	29 CFR 501.19(e)		$20,439		$21,101.
WHD	Immigration & Nationality Act.	H2A improperly rejecting a US worker.	29 CFR 501.19(f)		$20,439		$21,101.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(b)		$14,960		$15,445.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(c)		$14,960		$15,445.
WHD	Immigration & Nationality Act.	H–2B	29 CFR 503.23(d)		$14,960		$15,445.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(a)		$1,240		$1,280.
WHD	Fair Labor Standards Act.	Home Worker	29 CFR 530.302(b)	24	$1,240	25	$1,280.
WHD	United States-Mexico-Canada Agreement Implementation Act..	Whistleblower	29 CFR 810.800(c)(3)(i)		$57,224		$59,079.
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to file first report of injury or filing a false statement or misrepresentation in first report.	20 CFR 702.204		$28,304		$29,221.

Agency	Law	Name/description	CFR citation	2023		2024	
				Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)	Min penalty (rounded to nearest dollar)	Max penalty (rounded to nearest dollar)
OWCP	Longshore and Harbor Workers' Compensation Act.	Failure to report termination of payments.	20 CFR 702.236	.....	$345	.....	$356.
OWCP	Longshore and Harbor Workers' Compensation Act.	Discrimination against employees who claim compensation or testify in a LHWCA proceeding.	20 CFR 702.271(a)(2)	2,830	$14,149	2,922	$14,608.
OWCP	Black Lung Benefits Act.	Failure to report termination of payments.	20 CFR 725.621 (d)	.....	$1,724	.....	$1,780.
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with fewer than 25 employees.	20 CFR 726.302(c)(2)(i)	169	.....	174	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 25–50 employees.	20 CFR 726.302(c)(2)(i)	335	.....	346	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with 51–100 employees.	20 CFR 726.302(c)(2)(i)	504	.....	520	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for mines with more than 100 employees.	20 CFR 726.302(c)(2)(i)	670	.....	692	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits after 10th day of notice.	20 CFR 726.302(c)(4)	169	.....	174	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits for repeat offenders.	20 CFR 726.302(c)(5)	504	.....	520	
OWCP	Black Lung Benefits Act.	Failure to secure payment of benefits.	20 CFR 726.302(c)(5)	.....	$3,446	.....	$3,558.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2022–0867; FRL 9655–02–OCSPP]

RIN 2070–AL10

Per- and Poly-Fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is finalizing a significant new use rule (SNUR) for 329 per- and poly-fluoroalkyl substances (PFAS) that are designated as inactive on the TSCA Chemical Substance Inventory. PFAS are a group of chemicals that have been used in industry and consumer products since the 1940s because of their useful properties, such as water and stain resistance. Many PFAS break down very slowly and can build up in people, animals, and the environment over time. Exposure at certain levels to specific PFAS can adversely impact human health and other living things. Persons subject to the final SNUR are required to notify EPA at least 90 days before commencing any manufacture (including import) or processing of the chemical substance for a significant new use. Once EPA receives a notification, EPA must review and make an affirmative determination on the notification, and take such action as is required by any such determination before the manufacture (including import) or processing for the significant new use can commence. Such a review will assess whether the new use may present unreasonable risk to health or the environment and ensure that EPA takes appropriate action as required to protect health or the environment.

DATES: This final rule is effective March 11, 2024. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (EST) on January 25, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0867, is available online at *https://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket) in the Environmental Protection Agency Docket Center (EPA/DC) in Washington, DC. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Bethany Masten, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8803; email address: *TSCA_PFAS@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, or distribute in commerce chemical substances and mixtures. 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:

- NAICS 221210—Natural Gas Distribution;
- NAICS 236220—Commercial and Institutional Building Construction;

- NAICS 324—Petroleum and Coal Product Manufacturing;
- NAICS 324—Petroleum and Coal Product Manufacturing;
- NAICS 32419—Petroleum Lubricating Oil and Grease Manufacturing;
- NAICS 325—Chemical Manufacturing;
- NAICS 325120—Industrial Gas Manufacturing;
- NAICS 325180—Other Basic Inorganic Chemical Manufacturing;
- NAICS 325199—All Other Basic Organic Chemical Manufacturing;
- NAICS 325211—Plastics Material and Resin Manufacturing;
- NAICS 325212—Synthetic Rubber Manufacturing;
- NAICS 325220—Artificial and Synthetic Fibers and Filaments Manufacturing;
- NAICS 325320—Pesticide and Other Agricultural Chemical Manufacturing;
- NAICS 325411—Medicinal and Botanical Manufacturing;
- NAICS 325412—Pharmaceutical Preparation Manufacturing;
- NAICS 325612—Polish and Other Sanitation Good Manufacturing;
- NAICS 325613—Surface Active Agent Manufacturing;
- NAICS 325998—All Other Miscellaneous Chemical Product and Preparation Manufacturing;
- NAICS 326113—Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing;
- NAICS 327910—Abrasive Product Manufacturing;
- NAICS 333999—All Other Miscellaneous General Purpose Machinery Manufacturing;
- NAICS 334511—Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing;
- NAICS 336111—Automobile Manufacturing;
- NAICS 423120—Motor Vehicle Supplies and New Parts Merchant Wholesalers;
- NAICS 423420—Office Equipment Merchant Wholesalers;
- NAICS 423510—Metal Service Centers and Other Metal Merchant Wholesalers;
- NAICS 423740—Refrigeration Equipment and Supplies Merchant Wholesalers;
- NAICS 423990—Other Miscellaneous Durable Goods Merchant Wholesalers;
- NAICS 424690—Other Chemical and Allied Products Merchant Wholesalers;
- NAICS 424720—Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals);
- NAICS 424950—Paint, Varnish, and Supplies Merchant Wholesalers;
- NAICS 441110—New Car Dealers;
- NAICS 447190—Other Gasoline Stations;
- NAICS 551112—Offices of Other Holding Companies; and
- NAICS 562—Waste Management and Remediation Services.

This action may also affect certain entities through pre-existing import, including import certification, and export notification rules under TSCA. Chemical importers are subject to the import provision of TSCA section 13 (15 U.S.C. 2612), which requires that the Secretary of the Treasury ''refuse entry into the customs territory of the United States'' of any substance, mixture, or article containing a chemical substance or mixture that fails to comply with any rule issued under TSCA or that ''is offered for entry in violation'' of TSCA or certain rules or orders issued under TSCA, including rules issued under TSCA section 5. Persons who import any chemical substance in bulk form, as part of a mixture, or as part of an article (if required by rule) are also subject to TSCA section 13 import certification requirements and the corresponding regulations promulgated at 19 CFR 12.118 through 12.127 (see also 19 CFR 127.28). Chemical importers of the chemical substances in bulk form, as part of a mixture, or as part of an article (if required by rule) must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including regulations issued under TSCA sections 5, 6, 7 and Title IV. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA further provides that such manufacturing (including import) or processing may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

TSCA section 26(c) (15 U.S.C. 2625(c)) authorizes EPA to take action under other sections of TSCA with respect to categories of chemical substances.

C. What action is the Agency taking?

This final SNUR will require persons to notify EPA at least 90 days before commencing any manufacture (including import) or processing of those 329 PFAS described in Unit II. that are designated as inactive on the TSCA Chemical Substance Inventory (TSCA Inventory) and that are not subject to an existing SNUR, including the existing SNURs cited at 40 CFR 721.9582 and 721.10536, for any use. EPA is providing a list of the 299 inactive PFAS that do not mask ''fluor'' or ''fluorine'' in the generic name in the public docket for this rule (Ref. 1). This category of PFAS chemical substances (''inactive PFAS'') is described further in Unit II.

EPA is exempting from the notice requirement PFAS present as impurities, any byproducts which are not used for commercial purposes, and the importing or processing of inactive PFAS-containing articles because notification for the commercial activity designation (as active or inactive) on the TSCA Inventory is not required for such substances (see 40 CFR 710.27(a)). Similarly, EPA is exempting from the notice requirement PFAS manufactured or processed: in small quantities solely for research and development, for test marketing purposes, as a non-isolated intermediate, or solely for export from the United States as described in 40 CFR 720.30(e) or 721.3, except where the Administrator has made a finding described in TSCA section 12(a)(2).

The SNUR was proposed in the **Federal Register** on January 26, 2023 (88 FR 4937 (FRL 9655–01–OCSPP)). EPA received a total of 20 public comment submissions in response to the notice. EPA received one ongoing use claim in Unit V. of the Response to Comments document (Ref. 2). EPA

reviewed the ongoing use claim, requested additional information, and has determined that the use is not ongoing, as described in Unit XI.D.

D. Why is the Agency taking this action?

As noted in the January 26, 2023, proposed rule (88 FR 4937 (FRL 9655–01–OCSPP)), this action is part of the comprehensive approach outlined in the Agency's ''PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024'' to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment (Ref. 3). This SNUR is necessary to ensure that EPA receives timely advance notice of any future manufacturing (including import) or processing of inactive PFAS for new uses that may produce changes in human or environmental exposures.

The rationale and objectives for this SNUR are further explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of the chemical substances included in this rule. This analysis (Ref. 4), which is available in the docket, is discussed in Unit IX., and is briefly summarized here.

In the event that a SNUN is submitted, costs are estimated to be approximately $26,894 per SNUN submission for large business submitters and $11,204 for small business submitters. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country, which is estimated to be approximately $43 per notification.

II. Chemical Substances Subject to This Rule

As discussed in Units II. and III. of the proposed rule (88 FR 4937, January 26, 2023 (FRL 9655–01–OCSPP)), this SNUR applies to chemical substances designated as inactive on the TSCA Inventory that are also PFAS, except that inactive PFAS already subject to a significant new use rule, including but not limited to the significant new use rules cited at 40 CFR 721.9582 and 721.10536, are not subject to notice requirements under this action to avoid potential redundancies or conflicts between the SNURs.

For the purposes of this SNUR, the definition of ''PFAS'' includes chemicals that contain at least one of these three structures:

- R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;
- R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or
- CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

As described in Unit II. of the January 26, 2023, proposed rule (88 FR 4937 (FRL–9655–01–OCSPP)), this definition was developed to focus on substances most likely to be persistent in the environment and EPA notes that this definition may not be identical to other definitions of PFAS used within EPA or by other domestic or international organizations.

The chemical substances for which EPA is finalizing a SNUR are the 329 PFAS that are both currently designated as inactive on the TSCA Inventory and that are not subject to an existing SNUR. The specific chemical identities for 30 of these substances that have been claimed as Confidential Business Information (CBI) have generic names (the nonconfidential substitute for the specific chemical name) that do not contain ''fluor'' or ''fluorine.'' EPA is providing a list of the 299 inactive PFAS that do not mask ''fluor'' or ''fluorine'' in the generic name in the public docket for this rule (Ref. 1). Because EPA is finalizing a structural definition of PFAS for this SNUR, EPA need not take additional steps to list the 30 inactive PFAS that are not subject to an existing SNUR and whose generic names do not contain ''fluor'' or ''fluorine''.

On October 14, 2022, prior to the publication of the proposed SNUR, EPA received a Notice of Activity for CASRN 306–92–3. This substance was erroneously included in the initial count and list of the 300 inactive PFAS that do not mask ''fluor'' or ''fluorine'' in the supplemental document, ''List of Select Chemicals Subject to the Proposed Significant New Use Rule Per- and Poly-fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory'' (Ref. 5). The designation of this substance was ''active'' at the time of the proposed rule and, as such, it is not subject to this final rule and the correct number of chemical substances for which EPA is finalizing a SNUR is 329.

EPA received one Notice of Activity for CASRN 35101–47–7 on March 2, 2023, after the publication of the proposed rule. As described in Unit IV of the proposed rule, uses arising after January 26, 2023, are significant new uses, and persons who began commercial manufacturing (including importing) or processing for a significant new use have to cease upon the effective date of the final rule. To resume their activities, these persons must first comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacturing (including importing) or processing have been satisfied.

III. Rationale and Objectives

A. What is the rationale for this action?

As discussed in Units II. and III. of the proposed rule (88 FR 4937, January 26, 2023 (FRL–9655–01–OCSPP)), PFAS can adversely impact human health and the environment. This final action is part of a comprehensive approach to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment.

In the absence of this final SNUR, manufacturing (including importing) or processing for the significant new uses in this rule could begin at any time after a manufacturer submits a Notice of Activity under section 8 of TSCA and the substance becomes ''active'' on the TSCA Inventory; EPA would not be provided prior notice under section 5 or an opportunity to review and address potential risks associated with the proposed new use. The manufacture (including import) or processing for any use of inactive PFAS would increase the magnitude and duration of exposure to humans and the environment to these chemicals. Given the concerns described in Units II. and III. of the proposed rule (88 FR 4937, January 26, 2023 (FRL–9655–01–OCSPP)), EPA has determined that notification and EPA's required review are warranted for these chemicals prior to their potential reintroduction into commerce.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), as described in Unit IV. of the proposed rule (88 FR 4937, January 26, 2023 (FRL–9655–01–OCSPP)), EPA's decision to issue a SNUR for a particular chemical use follows an analysis of the relevant factors listed in section 5(a)(2) and need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. If a person decides to begin manufacturing (including importing) or processing any of these chemicals for the significant new use, the notice to EPA allows the Agency to evaluate the new use according to the specific parameters and circumstances surrounding the conditions of use at the time it receives such a notification.

B. What are the objectives of this action?

Based on the considerations in Unit III.A., EPA will achieve the following

objectives with regard to the significant new use(s) of inactive PFAS that are designated in this rule:

- EPA will receive notice of any person's intent to manufacture (including import) or process the chemical substances for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate information submitted in a SNUN before the notice submitter begins manufacturing (including importing) or processing the chemical substances for the described significant new use.
- EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination under TSCA section 5 before the manufacture or processing for the significant new use could commence.

IV. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing (including importing), processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what constitutes a significant new use of an inactive PFAS, EPA considered relevant information about the toxicity or expected toxicity of these substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in TSCA section 5(a)(2). Since the manufacture (including import) and processing of inactive PFAS has been discontinued in the United States, exposure will decrease over time. As such, EPA expects their presence in humans and the environment to decline over time. If any new uses of inactive PFAS were to resume after having been phased out, EPA believes that such uses could both change the type and form and increase the magnitude and duration of human and environmental exposure to the substances, constituting a significant new use.

EPA acknowledges that the reporting of commercial activity under the TSCA Inventory Notification (Active-Inactive) Requirements Rule (''Active-Inactive rule'') was not required for several activities, including, but not limited to, importing or processing of inactive PFAS-containing articles, and manufacturing (including importing) or processing of inactive PFAS as impurities, byproducts not used for commercial purposes, small quantities solely for research and development, for test marketing purposes, as a non-isolated intermediate, or solely for export from the United States (Ref. 6). Thus, EPA has determined that the designation of these PFAS as inactive does not provide a sufficient basis to conclude that there are not ongoing uses of inactive PFAS for these activities, and because this SNUR is based on information obtained from the Active-Inactive rule, EPA is not at this time designating uses for these activities as significant new uses. Based on consideration of the statutory factors discussed herein, EPA has determined as significant new uses: manufacture (including import) or processing of inactive PFAS for any use except:

(1) Importing or processing of inactive PFAS-containing articles; and/or

(2) Manufacture (including import) or processing of inactive PFAS:

- As impurities,
- As byproducts not used for commercial purposes,
- In small quantities solely for research and development,
- For test marketing purposes,
- For use as a non-isolated intermediate, or
- Solely for export from the United States.

V. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Pre-manufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination under TSCA section 5 before the manufacturing (including importing) or processing for the significant new use could commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's finding.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to TSCA section 13, which requires that the Secretary of the Treasury ''refuse entry into the customs territory of the United States'' of any substance, mixture, or article containing a chemical substance or mixture that fails to comply with any rule issued under TSCA or that ''is offered for entry in violation'' of TSCA or certain rules or orders issued under TSCA, including SNURs issued under TSCA section 5. Persons who import any chemical substance in bulk form, as part of a mixture, or as part of an article (if required by rule) are also subject to TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376 (FRL–3658–5)), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule, rather than as of the effective date of the final rule. This rule was proposed on January 26, 2023 (88 FR 4937 (FRL–9655–01–OCSPP)). Uses arising after the publication of the proposed rule are

distinguished from uses that existed at publication of the proposed rule. The former would be new uses, the latter ongoing uses, except that uses that are ongoing as of the publication of the proposed rule would not be considered ongoing uses if they have ceased by the date of issuance of a final rule. EPA solicited public comment to identify any ongoing manufacturing or processing of inactive PFAS subject to the proposed SNUR. EPA received one ongoing use claim captured in the Response to Comments in Unit V. (Ref. 2). EPA reviewed the ongoing use claim, requested additional information, and has determined that the use is not ongoing, as described in Unit XI.D.

Persons who began commercial manufacturing (including importing) or processing of the chemical substances for a significant new use identified as of January 26, 2023, must cease any such activity upon the effective date of this final rule. To resume their activities, these persons first have to comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacturing (including importing) or processing have been satisfied. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376 (FRL–3658–5)) for a more detailed discussion of the cutoff date for ongoing uses.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not usually require developing new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: development of information is required where the chemical substance subject to the SNUR is also subject to a rule, order, or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule or order covering the chemical substance, persons are required to submit only information in their possession or control and to describe any other information known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25 and 720.50). However, as a general matter, EPA recommends that SNUN submitters include information that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture (including import), processing, distribution in commerce, use, or disposal. Potentially useful information includes physical-chemical property data and any information related to persistence, bioaccumulation, toxicity, and other characteristics that may help predict the impact of a chemical substance on health or the environment.

Submitting a SNUN that does not include information sufficient to permit a reasoned evaluation may increase the likelihood that EPA will either respond with a determination that the information available to the Agency is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use or, alternatively, that in the absence of sufficient information, the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance may present an unreasonable risk of injury.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs and define the terms of any potentially necessary controls if the submitter provides detailed information on human exposure and environmental releases that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what information may be useful in evaluating a significant new use notice. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 720.40. E–PMN software is available electronically at *https://www.epa.gov/chemicals-under-tsca.*

IX. Economic Analysis

A. What is the analysis for SNUNs?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of the chemical substances included in this rule (Ref. 4). In the event that a SNUN is submitted, costs are estimated at approximately $26,894 per SNUN submission for large business submitters and $11,204 for small business submitters. These estimates include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $19,020 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business as defined at 13 CFR 121.201, a reduced user fee of $3,330 (40 CFR 700.45(b)(1)). Additionally, these estimates reflect the costs and fees as they are known at the time this rule is promulgated. EPA's complete economic analysis is available in the public docket for this rule (Ref. 4).

B. What is the analysis for export notifications?

Under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical is exported). While EPA is unable to make any estimate of the likely number of export notifications for the chemicals covered in this SNUR, as stated in the accompanying economic analysis of this SNUR, the estimated cost of the export notification requirement on a per unit basis is approximately $43.

X. Scientific Standards, Evidence, and Available Information

EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science, as applicable. These information sources supply information relevant to whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2). As noted in Unit III., EPA's decision to promulgate a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use.

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of this SNUR, in Unit II. of the January 26, 2023, proposed rule (88 FR 4937 (FRL–9655–01–OCSPP)), and in the references cited throughout the preamble of the proposed rule. EPA

recognizes, based on the available information, that there is variability and uncertainty in whether any particular significant new use would actually present an unreasonable risk. For precisely this reason, it is appropriate to secure a future notice and review process for these uses, at such time as they are known more definitely. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for a significant new use rule.

XI. Response to Public Comment

The Agency reviewed and considered all comments received related to the January 26, 2023, proposed rule (88 FR 4937 (FRL–9655–01–OCSPP)). Copies of all comments are available in the docket for this action (EPA–HQ–OPPT–2022–0867), and EPA responses are in the Response to Comments document (Ref. 2), which is also available in the docket. Several primary comment topics included: the Agency's statutory authority; the definition of PFAS; significant new uses; ongoing manufacturing and processing; chemical identity claimed as CBI; byproducts, impurities, and non-isolated intermediates; and costs and fees of SNUN submissions which are summarized in this unit, along with EPA responses.

1. *Comment:* Several commenters stated that EPA is acting within its authority under TSCA with the proposed SNUR. Other commenters commented that EPA is acting outside of its statutory authority and one commenter claimed that the inactive status of a chemical or chemicals on the TSCA Inventory should not be used as the sole basis for a SNUR and that the proposal appears to undercut the simple notification procedure for changing the status of a chemical substance from inactive to active that Congress included when TSCA was amended. One commenter stated that Congress did not include in the 2016 amendments a provision that requires any form of substantive review of substances prior to change of status from inactive to active. The same commenter stated that EPA appears not to have undertaken a chemical-by-chemical review for the three hundred substances subject to this SNUR, and findings on a chemical-specific basis have not been provided.

Response: EPA disagrees that this SNUR, issued pursuant to TSCA section 5(a) undercuts the notification procedure established under TSCA section 8(b). TSCA section 8(b)(5)(B)(i) requires that ''[a]ny person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.'' This Notice of Activity reporting requirement applies to all chemical substances designated as inactive, including those subject to this SNUR. EPA separately has authority under TSCA section 5(a) to determine that uses of a chemical substance (or category of chemical substances) are ''significant new uses'' for which notification to EPA is required before manufacture (including import) or processing for the significant new use can commence. EPA has authority under TSCA section 5(a) to promulgate SNURs for ''any chemical substance,'' without regard to whether the chemical substance is designated as active or inactive. There is also no requirement that EPA need undertake a chemical-by-chemical review as the commenter suggests. One common characteristic of concern of PFAS is that many break down very slowly and can build up in people, animals, and the environment over time (Ref. 7). As described in Unit IV. of the January 26, 2023, proposed rule (88 FR 4639 (FRL–9655–01–OCSPP)), the baseline projected volume for these 329 inactive PFAS is presumed to be minimal based on their inactive TSCA Inventory designation. As such, any new manufacturing or processing of any of these chemical substances would significantly change the production volume and produce changes in human or environmental exposures to these chemical substances. Thus, EPA has determined it is necessary to review and make an affirmative determination on potential risks of the chemical substances under section 5 before the manufacture (including import) or processing of the chemical substances for the described significant new use could begin.

2. *Comment:* Many commenters discussed the proposed definition of PFAS for this rule. Several commenters suggested that EPA identify covered PFAS by specific identification rather than through a structural definition. One commenter stated that structural definitions are difficult to use as they require an extensive understanding of the often-complex chemistry of PFAS, and structural definitions may also be ambiguous and over-inclusive. Other commenters stated that should EPA move ahead with a broad definition and stated that the definition should be consistent with the definition of PFAS the Agency uses in other regulations, or that EPA should work with Federal partners to ensure a consistent Federal definition of PFAS. Two commenters stated that EPA should adopt a definition of PFAS that more closely aligns with the Organization for Economic Co-operation and Development's (OECD) broad definition (Ref. 8).

Response: EPA believes it has been chemically precise in the proposed structural definition and appreciates that there are differences between the definition of PFAS used for this rule, for other actions in the Agency, and by other Federal agencies. The Agency considered adopting various definitions, including some of those suggested by commenters, but ultimately determined those definitions were not appropriate for this rule because they were not developed to focus on substances most likely to be persistent in the environment while excluding those substances that are ''lightly'' fluorinated. In reaching this decision, EPA considered that OECD also stipulates that there may be different definitions of ''PFAS'' for different entities or for different purposes, and that it may be appropriate for there to be different definitions or interpretations depending on the specific scenario. The proposed definition focused on substances with greater potential for exposures to people and/or the environment and by extension more potential to present risks. Adopting the OECD definition of PFAS for this rule would have included many substances whose only fluorine molecule is in a terminal -CF3 and that do not share a structure that is likely to result in the substance's persistence in the environment, or which would degrade to a substance that shares toxicological or physiochemical properties with perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), or GenX (Ref. 9).

EPA disagrees that the scope of substances subject to notification requirements should be a discrete list and not a structural definition. EPA points out that other regulations promulgated pursuant to TSCA have relied on a structural definition when appropriate (*e.g.,* the long-chain perfluoroalkyl carboxylate (LCPFAC) SNUR defines covered substances using a structural definition (40 CFR 721.10536), and the polymer exemption rule for new chemical PMNs defines covered PFAS polymers using structural definitions (40 CFR 723.250)).

Additionally, there are PFAS on the TSCA Inventory whose generic names

do not clearly state the substance is fluorinated (*i.e.,* no ''fluor'' included in the generic name). The inclusion of those chemicals on a discrete list for reporting under this rule would disclose structural information for these substances that has been claimed as CBI. EPA is finalizing the rule as proposed and is providing the list of the 299 inactive PFAS that do not mask ''fluor'' or ''fluorine'' in the generic name in the public docket for this rule. EPA believes that providing a list of the 299 PFAS should eliminate most ambiguity, and notes that an entity with a valid commercial need for EPA to verify if a substance is on the inventory can submit a Bona Fide Intent to Manufacture or Import Notice (''bona fide notice''). EPA will consider the information submitted in a bona fide notice and, if the Agency believes that the submitter has demonstrated a genuine intent to manufacture or import, search the full TSCA Inventory master file and provide a written determination to the submitter on the TSCA Inventory status (including SNUR status) for the requested chemical substance.

3. *Comment:* Several commenters stated that SNURs are intended to address truly new uses. The commenters state that the dormant status of a substance on the TSCA Inventory does not mean that a previous use should be considered new when reintroduced into commerce. Two commenters stated that under TSCA, EPA is required to evaluate a substance prior to promulgating a SNUR. One commenter suggested that EPA specifically exclude from the notification requirements any uses that were identified to EPA in previously submitted PMNs. Another commenter said that addressing the discontinued use of an existing chemical with a SNUR is only administratively efficient where other requirements of TSCA section 5 have been met and where (1) stakeholder groups are broadly aware of the proposal and (2) agree with EPA that the use is permanently discontinued or being phased out; the commenter stated that these elements have not been met.

Response: EPA disagrees that the previous use of a chemical substance listed as inactive on the TSCA Inventory should not be considered new when such use is restarted. TSCA section 5 gives EPA the authority to designate uses of a chemical as Significant New Uses, including but not limited to uses that were ongoing in the past but are not longer in process. Part of EPA's rationale for promulgating this SNUR is that the chemical substances subject to this SNUR are considered to be PFAS. Certain PFAS are associated with risk to human health and the environment, and one common characteristic of concern of PFAS is that many break down very slowly and can build up in people, animals, and the environment over time. Therefore, EPA has determined that any use of these PFAS would produce changes in human or environmental exposures and should trigger a SNUN and accompanying EPA review and action as necessary. EPA also disagrees in part with the commenter who suggested that EPA specifically exclude from the SNUN requirements any uses that were identified to EPA in previously submitted PMNs. However, uses of chemical substances for which a PMN has been submitted (and for which EPA has reasonably available information that such uses are ongoing) are considered ongoing uses for which the SNUR does not apply. If production of a chemical has ceased, the use of the chemical substance is not considered to be ongoing and such use is covered by this SNUR.

EPA required reporting (with certain exemptions from reporting at 40 CFR 710.27(a)) under the Active-Inactive reporting rule of each chemical substance manufactured (including imported) or processed in the U.S. over a 10-year period ending on June 21, 2016, and there was no manufacturing (including import), or processing reported for these inactive PFAS (Ref. 6). EPA believes the comment period for the proposed SNUR allowed for stakeholder groups to be broadly aware of the proposal notice and provided an additional opportunity for industry to provide specific documentation of the status of each chemical. EPA received one ongoing use claim and has determined that the use is not ongoing, as described in Unit XI.D.

4. *Comment:* An anonymous submitter notified EPA that it intends to manufacture a PFAS covered by the proposed SNUR. The commenter stated that since EPA is not authorized under TSCA to adopt a SNUR for an ongoing use, it should exclude this substance from the final SNUR.

Response: EPA investigated the confidentially submitted information and determined that the manufacture of this substance is not ongoing. EPA is therefore not excluding the manufacture of this substance from the final SNUR.

5. *Comment:* Several commenters provided feedback on the options described in the proposed rule for potential further agency action to list out in the regulation either the specific chemical identity or generic name of all of the chemicals that fall within the scope of the proposed SNUR. Some commenters stated that EPA must identify all substances for which the chemical identity has been claimed as CBI, regardless as to whether ''fluor'' or ''fluorine'' appears in the name. Another commenter stated that TSCA section 14(d)(3) allows information claimed as CBI to be disclosed if the Agency determines that disclosure is ''necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.'' Thus, the commenter stated that EPA should override CBI claims in the context of this proposed SNUR and identify those PFAS whose generic names do not include ''fluor'' or ''fluorine''. The commenter concluded that since these PFAS are inactive, any business interest in their confidentiality is minimal and overridden by the need of states and the public for the information. Another commenter stated that although EPA must maintain substantiated CBI claims for these substances, EPA can include the generic names and PMN and accession numbers, which are not CBI, which will minimize the potential for confusion about whether certain substances are subject to this proposal. Another commenter stated that EPA should use its authority under TSCA section 14(f) to require re-substantiation of and review the chemical identity CBI claims for these PFAS. Additionally, the commenter stated that EPA should initiate review of the remaining specific chemical identity CBI claims to ensure they comply with TSCA section 14. Another commenter relinquished its CBI claims for the specific chemical identities for twelve substances listed in the confidential portion of the TSCA Inventory that EPA has identified as being subject to the proposed SNUR and requested that EPA move them to the public portion of the TSCA Inventory.

Response: EPA disagrees that all substances for which the chemical identity has been claimed as CBI must be identified. Under section 14(c) of TSCA, submitters may claim information submitted to EPA under TSCA as CBI. The listing of a chemical substance as ''inactive'' on the TSCA inventory does not itself impact CBI claims relating to such chemical substance, including CBI claims relating to the structure or chemical identity of a chemical substance. Further, as explained previously, EPA is finalizing a structural definition of the chemical substances subject to this SNUR, and EPA believes that persons will be able to identify PFAS subject to this SNUR based on that structural definition, regardless of whether there is a universally known unique identifier.

For additional convenience, EPA is providing a list of the inactive PFAS that do not mask ''fluor'' or ''fluorine'' in the generic name in the public docket for this rule.

EPA disagrees that its conclusions pursuant to section 5 of TSCA supporting the proposed SNUR for these substances meet the very different conclusions that would prompt mandatory CBI review in accordance with section 14(f). The fact that the substances are currently designated as inactive following reporting under section 8(b) of TSCA does not mean that the substance identities are no longer treated as confidential by the original CBI claimant or by subsequent or prospective manufacturers, and therefore EPA has not determined that the status of a substance as inactive on the TSCA inventory is a ''reasonable basis to believe'' that chemical identity information about such substance ''does not qualify'' for CBI protection, as is required by TSCA section 14(f)(2)(B). Further, CBI claims asserted prior to the enactment of the Lautenberg amendments to TSCA in 2016 do not automatically expire as do most post-Lautenberg CBI claims. However, if a SNUN on any of these substances is submitted, EPA would review any renewed CBI claim for chemical identity at that time, in accordance with the requirements of TSCA section 14(g). Submitters of such SNUNs that assert a CBI claim for chemical identity should expect that if the generic name submitted with such a claim does not identify the substance as a PFAS, EPA expects to require revision of the generic name to meet the generic name requirements in TSCA section 14(c). Finally, the request that EPA initiate review of the remaining specific chemical identity CBI claims to ensure they comply with TSCA section 14 is outside the scope of this rulemaking.

EPA acknowledges the commenter who relinquished its CBI claims for the specific chemical identities and plans to move the twelve substances into the public portion of the TSCA Inventory.

6. *Comment:* Many commenters stated that requiring reporting on the manufacture of any substances that were exempt under the Active-Inactive Rule would not be appropriate, including substances manufactured and processed solely for export or test marketing, non-isolated intermediates, and all other exemptions from PMN requirements listed at 40 CFR 720.30(h) (Ref. 6). Other commenters expressed opposition to the proposed exemptions. One commenter stated that exposure to minuscule amounts of PFAS is a threat to human health and safety, and the reintroduction of inactive PFAS, in even the smallest quantities, should therefore be subject to the same intense health and safety review as other quantities of PFAS. One commenter urged EPA to finalize the rule without regulatory exemptions and extend the proposed SNUR to byproducts because they are significant sources of PFAS exposure and environmental releases.

Response: EPA acknowledges that the standard SNUR exemptions do not fully align with the Active-Inactive reporting exemptions. In the final rule, EPA is adding an exemption for non-isolated intermediates and expanding the exemption for byproducts for consistency with the PMN exemptions at 40 CFR 720.30(g) and (h)(2) and believes that these exemptions are now consistent with the exemptions from Active-Inactive reporting. As EPA collects evidence of the use of PFAS, potentially including inactive PFAS, EPA may consider making certain exemptions inapplicable in the future. The Agency expects to receive additional information about any ongoing use of PFAS as part of the separate TSCA section 8(a)(7) PFAS reporting rule that was proposed on June 28, 2021 (86 FR 33962 (FRL–7902–01–OCSPP)) and finalized on October 11, 2023 (88 FR 70516 (FRL 7902–02–OCSPP)).

7. *Comment:* One commenter stated that the proposal incorrectly estimated the costs related to the submission of a SNUN. The commenter said that the estimated cost of $26,737 is inconsistent with the Agency's latest proposal for increasing TSCA fees. Another commenter stated that while the user fee may discourage a manufacturer from using PFAS in a significant way, it is likely that the user fee will deter users from submitting a SNUN altogether.

Response: EPA disagrees that the proposal incorrectly estimated the costs related to the submission of a SNUN, and notes that the latest proposal for TSCA fees referenced by the commenter has not been finalized. EPA disagrees with the commenter that a user fee would encourage a manufacturer to circumvent the SNUR. EPA has enforcement mechanisms in place to ensure compliance with EPA regulations.

XII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. EPA. ''List of Select Chemicals Subject to the Proposed Significant New Use Rule Per- and Poly-fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory.'' October 2022.
2. U.S. EPA. ''Response to Comments on the Final Per- and Poly-fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory Significant New Use Rule (SNUR).'' October 2023.
3. U.S. EPA. ''PFAS Strategic Roadmap: EPA's Commitment to Action 2021–2024.'' EPA–100–K–21–002, October 2021.
4. U.S. EPA. ''Economic Analysis of the Final Significant New Use Rule Per- and Poly-fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory.'' October 2023.
5. U.S. EPA. ''List of Select Chemicals Subject to the Proposed Significant New Use Rule Per- and Poly-fluoroalkyl Chemical Substances Designated as Inactive on the TSCA Inventory.'' January 2022.
6. U.S. EPA. TSCA Inventory Notification (Active-Inactive) Requirements; Final Rule, 82 FR 37520 (FRL–9964–22), August 11, 2017.
7. Evich, Marina G., Davis, Mary J.B., McCord, James P., Acrey, Brad, Awkerman, Jill A., Knappe, Detlef R.U., Lindstrom, Andrew B., Speth, Thomas F., Tebes-Stevens, Caroline, Strynar, Mark J., Wang, Zhanyun, Weber, Eric J., Henderson, Matthew W., Washington, John W. Per- and polyfluoroalkyl substances in the environment. Science. 375: 6580, 1–14. February 4, 2022
8. Organisation for Economic Co-operation and Development (OECD). ''Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance.'' July 9, 2021.
9. United Nations Environment Programme. Sources, Fates, Toxicity, and Risks of Trifluoroacetic Acid and Its Salts: Relevance to Substances Regulated Under the Montreal and Kyoto Protocols. Report No. 2016–01. February 2016. *https://ozone.unep.org/sites/default/files/2019-08/TFA2016.pdf.*

XIII. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094

(88 FR 21879, April 11, 2023), and was therefore not subject to Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2070–0038 (EPA ICR No. 1188.13) and 2070–0030 (EPA ICR No. 0795.16). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required SNUN.

EPA is amending the table in 40 CFR part 9 to list the SNURs and OMB approval number for the information collection activities contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

EPA always welcomes your feedback on the burden estimate. Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

I certify this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are potential future manufacturers (defined by statute to include importers), processors, and exporters of one or more subject chemical substances for a significant new use designated in the SNUR. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, the Agency has determined that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was 10 in Federal fiscal year (FY) FY2016, 14 in FY2017, 16 in FY2018, five in FY2019, seven in FY2020, and 13 in FY2021, and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $19,020 to $3,330. This lower fee reduces the total reporting and recordkeeping cost of submitting a SNUN to about $11,204 for qualifying small firms.

Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684 (FRL–5597–1)), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Based on EPA's experience with proposing and finalizing SNURs, state, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any state, local, or tribal government will be impacted by this action. As such, EPA has determined that this final rule will not impose any enforceable duty, contain any unfunded mandate, or the otherwise have any effect on small governments subject to the requirements of UMRA section 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

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

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

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

Although this action does not concern an environmental health or safety risk, the designation of certain uses of PFAS as significant new uses ensures the Agency has an opportunity to review and address potential risks associated with such uses before an entity begins commencing any manufacture (including import) or processing of PFAS for that use. Once EPA receives a notification, EPA must review and make

an affirmative determination on the notification, and take such action as is required by any such determination before the manufacture (including import) or processing for the significant new use can commence. Such a review will assess whether the use identified in the SNUN may present unreasonable risk to health or the environment and ensure that EPA can prevent future unsafe environmental releases of PFAS subject to the SNUR. As discussed previously, EPA is concerned about the potential for adverse health effects from PFAS for children and will evaluate the risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

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

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns.

The Agency believes that the inactive PFAS included in this action are no longer being manufactured (including imported) or processed for any uses in the United States. EPA believes that it is not practicable to assess whether this action is likely to result in new disproportionate and adverse effects on environmental justice communities because the Agency is not able anticipate which chemical substances and uses, if any, will be submitted for a significant new use notice under this action.

K. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 8, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Amend § 9.1 in the table by adding an entry for § 721.11777 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11777	2070–0038
* * * * *	

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.11777 in numerical order to subpart E to read as follows:

§ 721.11777 Per- and poly-fluoroalkyl chemical substances designated as inactive on the TSCA Inventory.

(a) *Definitions.* The definitions in § 721.3 apply to this section.

(b) *Chemical substances and significant new uses subject to reporting.* (1) The 329 chemical substances identified in paragraphs (b)(1)(i) through (iii) of this section, designated as inactive on the TSCA Chemical Substance Inventory as of January 26, 2023, are subject to reporting under this section for the significant new uses described in paragraph (b)(2) of this section. The requirements of this section do not apply to quantities of the substance that are manufactured or processed as nonisolated intermediates, as defined at 40 CFR 720.3(w), or to quantities of the substance that are manufactured or processed as a byproduct, as defined in 40 CFR 720.3(d), which are not used for commercial purposes.

(i) R-(CF2)-CF(R′)″, where both the CF2 and CF moieties are saturated carbons;

(ii) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; and

(iii) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(2) The significant new uses for the chemical substances identified in paragraph (b)(1) of this section are: manufacture (including import) or processing for any use.

(c) *Chemical substances not subject to reporting.* The chemical substances already subject to a rule under this part, including § 721.9582, and § 721.10536, are not subject to reporting under this section.

(d) *Specific requirements.* The provisions of subpart A of this part apply to this section.

[FR Doc. 2024–00412 Filed 1–10–24; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–70

[FPMR Case 2024–01; Docket No. GSA–FPMR–2023–0027; Sequence No. 1]

RIN 3090–AK77

Civil Monetary Penalties Inflation Adjustment

AGENCY: The Office of the General Counsel, General Services Administration.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, this final rule applies the inflation adjustments for GSA's civil monetary penalties.

DATES: Effective January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Pound, Assistant General Counsel, General Law Division (LG), General Services Administration, 1800 F Street NW, Washington, DC 20405. Telephone Number 202–501–1460.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

To maintain the remedial impact of civil monetary penalties (CMPs) and to promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Sec. 701 of Pub. L. 114–74) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every year thereafter for these penalty amounts. The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments shall apply only to violations which occur after the date the increase takes effect, *i.e.,* thirty (30) days after date of publication in the **Federal Register**. Pursuant to the 2015 Act, agencies are required to adjust the level of the CMP with an initial ''fix'', and make subsequent annual adjustments for inflation. Catch up adjustments are based on the percent change between the Consumer Price Index for Urban Consumers (CPI–U) for the month of October for the year of the previous adjustment, and the October 2015 CPI–U. Annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of adjustment and the prior year's October CPI–U.

II. The Program Fraud Civil Remedies Act of 1986

Sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) set forth the Program Fraud Civil Remedies Act of 1986 (PFCRA). Specifically, this statute imposes a CMP and an assessment against any person who, with knowledge or reason to know, makes, submits, or presents a false, fictitious, or fraudulent claim or statement to the Government. The General Services Administration's regulations, published in the **Federal Register** (61 FR 246, December 20, 1996) and codified at 41 CFR part 105–70, currently set forth a CMP of up to $13,000 for each false claim or statement made to the agency. Based on the penalty amount inflation factor calculation, derived from originally dividing the October 2022 CPI by the October 2023 CPI and making the CPI-based annual adjustment thereafter, after rounding, we are adjusting the maximum penalty amount for this CMP to $13,400 for each false claim or statement made to the agency.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking, public comment, and effective date procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA, at 5 U.S.C. 559, provides that a subsequent statute may supersede the APA if it does so expressly. This rulemaking effectuates the statutory requirements set forth in section 4(b)(2) of the 2015 Act, which provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. Furthermore, the APA provides an exception to the usual notice of proposed rulemaking, public comment, and effective date procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B) and 553(d)(3), good cause exists for dispensing with these procedures. The 2015 Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties. GSA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, under the clear terms of the APA and the language of the 2015 Act, this rule is not subject to notice, an opportunity for public comment, or a delayed effective date, and will be final and effective on January 15, 2024.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of E.O. 12866 and has determined that it does not meet the criteria for a significant regulatory action and thus was not subject to review under Section 6(b) of E.O. 12866. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable CMPs. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited conduct, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited conduct in violation of the statute. As such, this final rule and the inflation adjustment contained therein should have no effect on Federal or state expenditures.

V. Congressional Review Act

The agency and the Office of Information and Regulatory Affairs, OMB have determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. GSA will submit a report

containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). As explained above, GSA is not required to first publish a proposed rule here. Thus, the RFA does not apply to this final rule.

VII. Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 41 CFR Part 105–70

Administrative hearing, Claims, Program fraud.

Robin Carnahan,

Administrator.

Accordingly, 41 CFR part 105–70 is amended as set forth below:

PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 105–70 continues to read as follows:

Authority: 40 U.S.C. 121(c); 31 U.S.C. 3809.

§ 105–70.003 [Amended]

■ 2. Amend § 105–70.003 by—
■ a. Removing from paragraph (a)(1)(iv) the amount ''13,000'' and adding ''13,400'' in its place; and
■ b. Removing from paragraph (b)(1)(ii) the amount ''13,000'' and adding ''13,400'' in its place.

[FR Doc. 2024–00446 Filed 1–10–24; 8:45 am]

BILLING CODE 6820–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 09–197, 16–271; RM 11868; FCC 23–60; FR ID 196019]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for Enhanced Alternative Connect America Cost Model (A–CAM) contained in the Commission's *Enhanced A–CAM Order* (Order), WC Docket No. 10–90 et al., FCC 23–60. This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the revised information collection requirements.

DATES: The amendments to § 54.308(e)(2) and (6) published at 88 FR 55918, August 17, 2023, are effective January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Jesse Jachman, Wireline Competition Bureau at (202) 418–7400. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted new information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on November 22, 2023. OMB approved the new information collection requirements on January 2, 2024. The information collection requirements are contained in the Commission's *Enhanced A–CAM Order,* FCC 23–60, published at 88 FR 55918, August 17, 2023. The OMB Control Number is 3060–1319. The Commission publishes this document as an announcement of the effective date of the rules published on August 17, 2023. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–1319, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on January 2, 2024, for the amendments to 47 CFR 54.308(e)(2) and (6) published at 88 FR 55918, August 17, 2023.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1319. The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1319.

OMB Approval Date: January 2, 2024.

OMB Expiration Date: January 31, 2027.

Title: Enhanced A–CAM Cybersecurity and Supply Chain Risk Management Plan Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities, and State, Local or Tribal governments.

Number of Respondents and Responses: 450 respondents; 900 responses.

Estimated Time per Response: 10–50 hours.

Frequency of Response: One-time and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 214, 218–220, 254, 303(r), and 403.

Total Annual Burden: 27,000 hours.

Total Annual Cost: No Cost.

Needs and Uses: On July 24, 2023, the Commission released the *Enhanced A–CAM Order* (Order), 88 FR 55918, August 17, 2023, WC Docket No. 10–90 et al., FCC 23–60, which adopted a voluntary path for supporting the widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving Alternative Connect America Cost Model (A–CAM) support and in areas served by rate-of-return carriers eligible to receive legacy support by the end of 2028. The Commission extended by 10 years beyond the remaining five years, for a total of 15 years, the term of support for electing carriers and set a methodology for determining support amounts for locations without 100/20 Mbps broadband service within a potential budget of no more than $1.27

billion annually, or no more than $1.33 billion annually if certain conditions are met, using an updated version of the A–CAM. By adopting this program, the Commission furthered its long-standing goals by promoting the universal availability of voice and broadband networks, while also taking measures to minimize the burden on the nation's ratepayers. The Commission also adopted requirements for the Enhanced A–CAM program to complement existing Federal, state, and local funding programs, so that broadband funding can be used efficiently to maximize the deployment of high-quality broadband service across the United States.

To ensure that the Enhanced A–CAM program does not deprive rural consumers in high-cost areas of broadband service that is as secure as the service deployed pursuant to other Federal funding initiatives, the Commission required Enhanced A–CAM carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024—the start of the Enhanced A–CAM support term. Enhanced A–CAM carriers must submit such plans to the Universal Service Administrative Company (USAC) and certify they have done so, by January 2, 2024, or within 30 days of approval under the Paperwork Reduction Act, whichever is later. Failure to submit the plans and make the certification shall result in 25% of monthly support being withheld until the carrier comes into compliance. If a carrier makes a substantive modification to its cybersecurity or supply chain risk management plan, the Commission requires that the carrier submit its updated plan to USAC within 30 days of making that modification.

The purpose of this information collection is to collect the operational cybersecurity and supply chain risk management plans required of the Enhanced A–CAM carriers by the start of the Enhanced A–CAM support term and address the burdens associated with that requirement.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–00417 Filed 1–10–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC No. 23–110; FR ID 195910]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks to provide vital support to assist rural health care providers with the costs of broadband and other eligible services. By offering discounted rates for these services, the Rural Health Care (RHC) Program enables health care providers to better treat patients in rural areas that often have fewer medical resources and higher service rates than in urban areas.

DATES: Effective February 12, 2024, except for §§ 54.601(b) and (c) (amendatory instruction 2) and 54.622(e)(1)(i) through (ii) and (i)(3)(iv) (amendatory instruction 4), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those rule sections.

FOR FURTHER INFORMATION CONTACT: Philip A. Bonomo, *Philip.Bonomo@fcc.gov,* Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. 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 (voice), 202–418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Report and (*Third R&O*) in WC Docket No. 17–310; FCC No. 23–110, adopted on December 13, 2023, and released on December 14, 2023.The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-110A1.pdf.*

I. Introduction

1. In the *Third R&O,* the Commission continues its efforts to improve the effectiveness and efficiency of the Rural Health Care (RHC) Program. The RHC Program offers discounted rates for broadband and other communications services to health care providers who use these increasingly essential services to better treat patients in rural areas that may have limited resources, fewer medical professionals, and higher rates for these services than in urban areas. Broadband-enabled telehealth and telemedicine services in particular have proven to be critical tools for the effective delivery of health care to millions of patients in rural areas, as demonstrated by the heightened dependency on these services during the COVID–19 pandemic. Telemedicine and telehealth make the provision of high-quality health care a reality for patients regardless of location or ability to travel. The measures adopted will enhance the provision of these vital services through the RHC Program.

2. The Commission adopts four revisions to the RHC Program as proposed in the Second Further Notice of Proposed Rulemaking, 88 FR 17495, March 23, 2023 (Second FNPRM) (FCC 23–6), aimed at facilitating participation in and improving the administration of the Program. First, the Commission revises the RHC Program rules to permit conditional approval of eligibility for health care providers that expect to be eligible in the near future to allow them to initiate competitive bidding and request funding. Second, to give participants more flexibility with deadlines, the Commission revises its rules to move back the RHC Program's Service Provider Identification Number (SPIN) change deadline to align with the invoice deadline. Third, the Commission simplifies the rules for determining urban rates by eliminating the seldom-used ''standard urban distance'' component of the urban rate rules. Fourth, in a separate action to provide more flexibility with deadlines, the Commission revises the RHC Program rules to permit health care providers to request changes to the dates of their evergreen contracts following a funding commitment.

3. In addition to these revisions, the Commission also on its own motion makes two programmatic improvements to the administration of the RHC Program and Universal Service Fund. To reduce burdens and promote efficiency, the Commission harmonizes the RHC Program eligibility determination process by shifting to the use of a single universal eligibility form for all program participants. Finally, to free up for other uses unclaimed RHC Program support, the Commission establishes a deadline by which health care providers must submit invoices for any undisbursed funding commitments from funding year 2019 and prior that do not currently have an applicable invoice deadline.

II. Discussion

4. In the *Third R&O,* the Commission continues to improve the RHC Program by facilitating health care provider participation in and improving the administration of the Program. Specifically, the Commission revises the RHC Program rules to permit conditional eligibility for health care providers and eliminate the seldom-used ''standard urban distance'' component of the urban rate rule. The Commission also makes two changes relating to RHC Program administrative deadlines by aligning the SPIN change deadline with the existing invoice deadline and permitting health care providers to request a change to evergreen contract dates. The Commission then amends the rules to shift to the use of the same form when determining Telecom and Healthcare Connect Fund (HCF) Program eligibility. Finally, the Commission establishes a deadline by which invoices must be submitted for undisbursed funding commitments from before funding year 2020.

5. *Conditional Approval of Eligibility for Future Eligible Health Care Providers.* The Commission first adopts amendments to the RHC Program rules to allow conditional approval of eligibility consistent with what the Commission proposed in the Second FNPRM. The amendments enable entities that do not meet all eligibility requirements at the time they seek eligibility determinations to obtain conditional approval of eligibility, conduct competitive bidding, and request funding prior to receiving formal approval of eligibility. With this change, entities granted such conditional approval may conduct competitive bidding and request funding before they receive formal eligibility approval, ensuring that they are able to participate in the RHC Program for the funding year in which they expect to receive a formal eligibility approval. However, entities with conditional approval will not receive funding commitments until they meet all eligibility requirements. The substantive standard used to determine full eligibility remains unchanged. This change ensures that health care providers that are not yet eligible during the application window, but expect to become eligible in the near future, are not locked out of much needed funding. All commenters who addressed this proposal supported it, and no commenters opposed this change. This change will be effective for funding year 2025, the competitive bidding process for which begins in mid-2024.

6. Eligible health care providers, as defined in section 254(h)(7)(B) of the Communications Act and implemented in the Commission's rules, are limited to the following categories: (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia of health care providers consisting of one or more entities falling into the first seven categories. In addition, eligible health care providers must be non-profit or public. In the Telecom Program, only eligible health care providers located in a ''rural area'' defined in § 54.600(e) of the Commission's rules can receive support. The HCF Program, on the other hand, permits rural eligible health care providers as well as non-rural eligible health care providers participating in a majority-rural consortium to receive support.

7. To allow health care providers to receive RHC Program funding as soon as they become eligible, the Commission amends § 54.601 of its rules to permit entities that expect to meet all eligibility requirements before the end of a given upcoming funding year to request and receive a conditional approval of eligibility. The Commission also amends § 54.622(e)(1) of its rules to allow those entities to make the required certifications when filing a Request for Services to initiate competitive bidding. The amendments adopted will enable entities that receive conditional approval of program eligibility to conduct competitive bidding and submit funding requests *prior* to receiving formal approval of eligibility. However, the substantive standard used to determine eligibility remains unchanged. Entities that receive conditional approval of eligibility will not receive funding commitments until they actually become eligible and receive the formal approval of eligibility under the existing substantive standard. No RHC funding shall be committed or disbursed to an entity for any time period that is prior to the date the entity is formally approved as eligible. The Commission directs the Universal Service Administrative Company (Administrator or USAC), upon approval from the Wireline Competition Bureau (Bureau), to implement the conditional approval of eligibility mechanism.

8. This change is warranted given the change to a fixed application filing window in the RHC Program. Before funding year 2016, after an initial application filing window, the Administrator accepted applications on a rolling basis until the last day of the funding year. Since funding year 2017, no applications have been accepted following the close of the initial application window. Beginning in funding year 2021, the Commission's rules require the Administrator to open an initial filing window period with an end date no later than April 1 prior to the start of the funding year.

9. In 2016, when applications were still accepted on a rolling basis and there were two application windows, the Bureau issued the Hope Community Order, DA 16–855, rel. July 29, 2016 (Hope Order), which held that that if an entity had not demonstrated its eligibility at the time of its eligibility determination form submission for a funding year, it would be ineligible to receive RHC Telecommunications Program support for that funding year. The change the Commission makes eliminates this limitation and allows health care providers to seek conditional eligibility approval so they can participate in the program in the year in which they expect to become fully eligible, even if they receive their full eligibility approval after the initial application window closes. Based on experience administering the program, the Commission finds it appropriate to eliminate the Hope Order's requirement that a site be eligible for RHC Program support, which requires that it qualifies as one of the eligible health care providers defined by section 254(h)(7)(B) of the Communications Act, at the time of its request for eligibility determination. In funding year 2013, the funding year at issue in the Hope Order, the Administrator accepted applications on a rolling basis throughout the funding year, which permitted a health care provider to begin receiving funding for RHC Program supported services within a few months after it became an eligible entity under section 254(h)(7)(B) of the Communications Act. Shortly after meeting eligibility requirements, the health care provider could receive its eligibility determination, engage in competitive bidding, file a Request for Funding during the rolling application window, and start to receive funding.

10. Absent this change with the current use of a fixed filing window, a health care provider might have to wait more than one year after becoming an eligible health care provider to receive RHC Program funding. For example, if a new medical provider is in the process of opening and expects to become eligible under section 254(h)(7)(B) of the

Communications Act on July 1, 2025, which is after the initial application filing window, it may not be able to receive RHC Program support for funding year 2025 because it could not have been approved as eligible until after the provider's July 1, 2025 opening date. Permitting conditional approvals of eligibility will allow health care providers that are not yet eligible but expect to become an eligible health care provider in a given upcoming funding year to complete competitive bidding and file Requests for Funding so they are able to receive RHC Program funding as soon as they are fully designated as an eligible health care provider under the Commission's rules.

11. To protect the integrity and success of the RHC program and ensure that no RHC Program funding is disbursed for entities that are not yet fully approved as eligible, the Commission adopts the following safeguards for conditional approvals of eligibility. First, to request conditional approval of eligibility, an applicant must submit an eligibility determination form and supporting documentation to the Administrator, which will include the estimated date that it expects to meet all eligibility requirements. The documentation must show that the entity is or reasonably expects to qualify as a public or non-profit health care provider defined in § 54.600(b) of the Commission's rules by the estimated eligibility date. Additionally, if applying for the Telecom Program or if applying as an individual applicant in the HCF Program, the entity must be located or reasonably expect to be located in a rural area defined in § 54.600(e) of the Commission's rules by the estimated eligibility date, or, if not located in such a rural area, for purposes of applying for the HCF Program, be or plan to be a member of a majority-rural HCF Program consortium that satisfies the eligible rural health care provider composition requirement set forth in § 54.607(b) of the Commission's rules by the estimated eligibility date.

12. Once the Administrator approves an applicant's conditional eligibility, the applicant can proceed to conduct competitive bidding for the conditionally-approved site(s). In order to provide notice of the applicant's conditional eligibility to potential bidders and service providers, an applicant engaging in competitive bidding with conditional eligibility must provide a written indication with its competitive bidding form indicating (1) that the eligibility is conditional, and (2) when the estimated expected eligibility date is. After conducting competitive bidding and signing a service contract, the applicant can submit a funding request during the application filing window for a given funding year, provided that the applicant's estimated expected eligibility date is no later than the end of that funding year. To ensure that no funding is committed or disbursed for health care providers that are conditionally eligible under section 254(h)(7)(B) of the Communications Act or the RHC Program rules, entities with conditional approval of eligibility will not be able to receive funding commitments or disbursements until they meet all eligibility requirements and are granted a formal approval of eligibility. This restriction is consistent with the Commission rule that RHC Program funding is provided to eligible health care providers for services for health care purposes.

13. An applicant with conditional approval of eligibility is expected to notify the Administrator within 30 calendar days of its actual eligibility date and provide documentation confirming that it is actually eligible. If the Administrator determines that the entity meets the requirements for a public or non-profit health care provider defined in § 54.600(b) Commission's rules and the requirements for rural location or majority-rural HCF consortium membership set forth in the Commission's rules, the Administrator shall formally approve the applicant's eligibility and designate the applicant as an eligible health care provider. The Administrator will then review the applicant's funding request and issue a funding commitment or denial in a timely manner. The funding commitment shall cover only a time period that starts no earlier than the applicant's actual approved eligibility date and that is within the funding year for which support was requested. No funding shall be committed to ineligible entities or entities with only conditional approval and any support erroneously disbursed to ineligible entities or entities with only conditional approval must be recovered. The Commission directs the Administrator to implement these requirements in its procedures and delegate authority to the Bureau to issue further direction consistent with the *Third R&O* as necessary.

14. *Alignment of the Service Provider Identification Number Change Deadline with Invoice Deadline.* The Commissions next amends its rules to move back the Service Provider Identification Number (SPIN) change filing deadline to align with the invoice filing deadline, rather than the service delivery deadline. A SPIN is a unique number that the Administrator assigns to an eligible service provider seeking to participate in the universal service support programs. An applicant under the HCF Program or Telecom Program may request either a ''corrective SPIN change'' (in cases not involving a change in the service provider associated with the applicant's funding request number) or an ''operational SPIN change'' (in cases involving a change to the service provider associated with the applicant's funding request number). The current filing deadline to submit a SPIN change request is no later than the service delivery deadline, which, with limited exceptions, is June 30 of the funding year for which program support is sought. The invoice deadline is 120 days after the later of the service delivery deadline or the date of a revised funding commitment letter. In the Second FNPRM, the Commission proposed to align the SPIN change deadline with the invoice deadline and commenters supported this change.

15. The Commission moves back the deadline for requesting SPIN changes effective funding year 2023 in response to program participant requests asserting that the nature of corrective SPIN changes creates a ''recurring hardship for applicants'' unable to meet the deadline, which, in turn, results in deadline waiver requests filed with the Commission. According to these participant comments, two commonly recurring situations support a change to the corrective SPIN change deadline: (1) mergers and acquisitions that can occur at any time during the funding year and (2) a service provider that assigns one of its multiple SPINs to a funding request without advising the healthcare provider as to the correct SPIN before invoicing begins, a situation that, in many instances, occurs after the service delivery deadline has passed. These commenters maintain that changing the deadline to request a corrective SPIN change to match the invoice deadline will provide the Administrator with sufficient time to process the change request without the need for applicants to request deadline waivers from the Commission. The Commission agrees with these commenters that the current deadline for requesting corrective SPIN changes imposes unnecessary burdens and challenges for program participants that a later-in-time deadline will largely eliminate.

16. The Commission moves back the SPIN change deadline to align with the invoice deadline, which, in most cases is 120 days after the close of the funding year, to reduce the need for applicants to seek, and for the Commission to address, waivers of the current

corrective SPIN change deadline. This change facilitates participation in and the administration of the program, while still maintaining an administratively reasonable date by which such change requests must be made. Aligning the SPIN change deadline with the invoice deadline will not cause Program participants to miss the invoice deadline because a SPIN change results in a revised commitment letter, which will create a new invoice deadline 120 days from the issuance of the revised commitment letter.

17. *Simplifying Urban Rate Calculations.* In this section, the Commission simplifies the rules for calculating urban rates for the Telecom Program by eliminating the rarely-invoked ''standard urban distance'' provision from its rules. In the Order on Reconsideration, 88 FR 17379, March 23, 2023 (Order on Recon) (FCC 23–6), the Commission eliminated the Rates Database and reinstated the long-standing rules for calculating urban rates. These rules provide that the urban rate for an eligible service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state. If, however, the service is provided over a distance greater than the standard urban distance, which is the average of the longest diameters of all cities with a population of 50,000 or more within a state, the urban rate is the rate no higher than the highest tariffed or publicly-available rate provided over the standard urban distance. In the Second FNPRM, the Commission proposed to simplify program rules by eliminating the distinction between services provided over and within the standard urban distance and proposed to base all urban rates calculations on rates provided in a city, rather than over the standard urban distance. It also sought comment on the extent to which health care providers rely on the standard urban distance distinction to calculate urban rates.

18. Based on the record, the Commission finds that adopting its proposal to eliminate the standard urban distance provision from the urban rate rules will help simplify the calculation of urban rates in the Telecom Program. Eliminating it will make clearer the process for determining urban rates and there is no evidence that it will adversely impact health care providers because few, if any, Telecom Program participants calculate urban rates using this distinction. No commenters opined on the extent to which health care providers rely on the standard urban distance provision to calculate urban rates, which suggests that standard urban distance was not commonly invoked to calculate urban rates. The only commenter that addressed this proposal, the Schools, Health & Libraries Broadband (SHLB) Coalition, supported this change. Therefore, the Commission adopts the proposal to base all urban rates calculations on rates provided in a city rather than over the standard urban distance. This change shall be applicable for funding year 2025.

19. *Change of Evergreen Contract Dates.* The Commission next amends the RHC Program rules to permit health care providers to request a change in the evergreen contract dates following a funding commitment. Upon approving such a change, the Administrator will issue a revised funding commitment letter. This change will provide health care providers with the benefits of evergreen contract designation across the full length of the contract's term while also reducing the need for health care providers to seek relief from the Administrator in cases where a post-commitment evergreen contract date change is necessary. This new rule will become effective for funding year 2024.

20. Evergreen contracts are multi-year agreements under which covered services are exempt from the competitive bidding requirements for the term of the contract, which may be extended by up to an aggregate of five years. When the Administrator issues a funding commitment letter, it sets the period for an evergreen contract based on the estimated service start and end dates provided by the health care provider on the Request for Funding. However, as the Commission explained in the Second FNPRM, services sometimes start after the estimated service start date, which means that the evergreen status of the contract expires before it would have if the evergreen designation period was based on the actual service start date. In the Second FNPRM, the Commission sought comments on whether there should be a process for health care providers to change evergreen contract dates after a funding commitment has been made. The Commission also requested comments on how such a process could be accomplished.

21. SHLB and New England Telehealth Consortium (NETC) support, and no party opposes, allowing health care providers to request changes to their evergreen contract dates in cases when the contract supports those changes. SHLB maintains that such requests should always be deemed timely and not precluded by expiration of the 60-day window for an appeal of the original funding commitment. SHLB also suggests that the Commission clarify that the Administrator should defer to the parties' interpretation of a contract's start and end date unless it is ''obviously inconsistent'' with the language of the contract.

22. The Commission agrees with SHLB and NETC that health care providers should be permitted to request evergreen contract changes following a funding commitment provided the contract supports a change. Aligning a contract's actual service start date with the start date that determines the duration of the evergreen contract period will exempt health care providers from the competitive bidding process for the full length of the contract, thereby providing certainty to RHC Program participants. This change will not alter rules or processes for multi-year commitments or other competitive bidding exemptions. Accordingly, the Commission amends the RHC Program rules to allow health care providers to request changes to evergreen contract dates, subject to the following two requirements.

23. First, the Commission requires that the terms of the evergreen contract support any requested date change. For example, an evergreen contract that specifies a start date effective upon signature of the contracting parties would not be eligible for a contract date change because the start date is a date established by the contract independent of the service start date. By contrast, an evergreen contract with terms specifying a start date tied to the commencement of services yet to be delivered would be eligible for a date change regardless of the date of signature. The Commission makes clear that any changes to the dates of the evergreen contract must be supported by the contract, and declines to adopt SHLB's suggestion that the Administrator defer to the contracting parties' interpretation on the contract timing. As in the case of ''verification of discounts, offsets, or support amounts'' as a general matter under § 54.707 of the Commission's rules, it will be incumbent upon applicants to ensure that the available evidence sufficiently justifies a given date change.

24. Second, the Commission requires that health care providers request an evergreen contract change within 60 days of the date service commences. This 60-day window should provide health care providers with ample time to request a date change without having to resort to appealing the original funding commitment, which addresses the timing concern raised by SHLB and

NETC. The Commission declines, however, to adopt SHLB's approach that all requests for evergreen contract changes be deemed timely. Such an open-ended option would provide no incentive to health care providers to promptly notify the Administrator of evergreen contract date changes. To memorialize the changed evergreen contract dates, the Commission directs the Administrator to issue a revised funding commitment letter to the health care provider reflecting the changed dates. If the Administrator denies a requested change, the Commission directs it to issue a letter to the health care provider explaining the basis for the denial. Finally, the Commission directs the Administrator to develop procedures subject to prior Bureau approval for accepting changes to evergreen contract dates consistent with the amended Commission's rules § 54.622(i)(3), and to publicize instructions on requesting changes to evergreen contract dates with the stakeholder community.

25. *Single Eligibility Form.* To reduce burdens on Telecom Program applicants and improve the efficiency and operation of the RHC Program, the Commission next harmonizes the RHC Program eligibility determination process by establishing a single eligibility determination form for both the Telecom Program and the HCF Program that is required to be filed only once. Applicants must first be determined eligible under section 254(h)(7)(B) of the Communications Act and RHC Program rules to receive support from the RHC Program. The Telecom Program and the HCF Program currently have different procedures for eligibility determinations. In the Telecom Program, applicants seeking eligibility determinations use the FCC Form 465 (Description of Services Requested and Certification Form), which is the same form used to initiate competitive bidding. Thus, even though most Telecom Program applicants' eligibilities are very unlikely to change from year to year, they are required to provide, and the Administrator is required to review, information regarding their eligibility statuses every time there is a new competitive bidding process, which is generally every year.

26. In contrast, when the HCF Program was established in 2012, the Commission instituted a more efficient process for eligibility determinations by separating the process for eligibility determination from the process for competitive bidding. In the HCF Program, applicants file an FCC Form 460 (Eligibility and Registration Form) to seek a one-time eligibility determination that remains in place unless there is a material change in the entity's eligibility. After receiving this eligibility determination, the applicant may file an FCC Form 461 (Request for Services Form) to initiate competitive bidding. Thus, applicants are able to know whether they are eligible before they spend time and resources planning competitive bidding. Because the FCC Form 460 is filed only once, the eligibility determination process in the HCF Program improves efficiency and reduces costs and time for both health care providers and the Administrator.

27. Therefore, beginning funding year 2025, the FCC Form 460 will be used for eligibility determinations in the Telecom Program and the eligibility determination portion will be eliminated from the FCC Form 465. As a result of this change, starting for funding year 2025, the FCC Form 465 will be used solely for competitive bidding in the Telecom Program while the FCC Form 461 will continue to be used for competitive bidding in the HCF Program. Because there are certain differences in eligibility requirements between the Telecom Program and the HCF Program, applicants who are determined eligible in one program are not necessarily eligible in the other program even though one eligibility determination form is used for both programs. For example, non-rural public or non-profit health care providers who are members of majority-rural consortia are eligible to receive support under the HCF Program, but not under the Telecom Program. Thus, in this example, applicants whose FCC Form 460s are submitted specifically for the HCF Program and approved on that basis are not automatically eligible for support in the Telecom Program and must seek eligibility determinations in the Telecom Program if they subsequently wish to demonstrate their eligibility for that program. The Commission directs the Bureau to amend the FCC Form 460 for eligibility determinations for both the Telecom Program and the HCF Program and direct the Administrator to track whether a health care provider is eligible for the Telecom Program, the HCF Program, or both.

28. As part of adopting the FCC Form 460 for the Telecom Program, the Commission also amends § 54.601(b) of its rules to extend it to the Telecom Program effective for funding year 2025. Section 54.601(b) of the Commission's rules addresses the timing requirements for eligibility determinations in the HCF Program and requires health care providers to notify the Administrator of changes to their name, location, contact information, or eligible entity type. It was adopted when the Commission established the HCF Program in 2012 as a procedural rule for specifying the process for determining health care provider eligibility in the HCF Program. There are no corresponding rules for the eligibility determination process in the Telecom Program where applicants previously had to make a new eligibility showing every year they wished to seek support. Since a single eligibility determination form will be used for both programs, and thus now in the Telecom Program, like the HCF Program, applicants will be required to file separate forms for eligibility determination and request for services, and findings of eligibility will remain in place absent a material change in circumstances, it is reasonable to amend § 54.601(b) of the Commission's rules to make it apply to both programs to provide greater clarity to program participants.

29. To further reduce unnecessary burdens and ease the implementation of this change, the Commission directs the Administrator to deem presumptively eligible for funding year 2025 and beyond any health care provider with an existing eligibility approval in the Telecom Program. Because the eligibility status of health care providers rarely changes, an additional up-front eligibility determination for funding year 2025 is unnecessary. This direction is consistent with the eligibility determination process in the HCF Program. The Commission reminds any health care providers with changes to conditions that might impact their eligibility status of the requirement to update the Administrator within 30 days of the change. As before, health care providers in both the Telecom and HCF Programs are required to certify their eligibility when filing a Request for Services to initiate competitive bidding.

30. The Commission emphasizes that its actions do not change the substantive requirements for determining eligibility in the RHC Program. It is the RHC Program applicants' obligation to submit accurate information and certifications regarding their eligibility, including the obligation to notify the Administrator within 30 days of a material change in their eligibility information. Because health care provider eligibility is limited by the Act, the Commission does not have discretion to waive eligibility requirements, and must recover any support erroneously disbursed to ineligible entities.

31. *De-Obligation of Undisbursed, Un-Invoiced Commitments.* The Commission establishes a deadline of July 1, 2024, for Telecom Program

participants to submit invoices for funding years 2019 and earlier, the period during which there was no invoice deadline in the Telecom Program. After that date, funding commitments from funding year 2019 and earlier that have not yet been invoiced will be de-obligated and will not be able to be invoiced. The Commission established an invoice deadline for the Telecom Program effective funding year 2020 in the *Promoting Telehealth Report and Order,* 84 FR 54952, Oct. 11, 2019. The Commission explained that this deadline of 120 days from the service delivery deadline supported the ''harmonization of the invoice deadline for RHC programs'' and provided ''applicants with sufficient time to submit their invoices and seek reimbursements from the Administrator,'' while being ''necessary for the efficient administration of the RHC program.''

32. There is currently $22.2 million in undisbursed, un-invoiced commitments from funding year 2019 and earlier, when there was no invoice submission deadline. Establishing an invoice submission deadline of July 1, 2024, for Telecom Program funding requests from funding year 2019 and earlier and de-obligating unused funding is appropriate for several reasons. It is highly unlikely, given the significant lapse of time, that a significant portion of this funding will ever be invoiced, and some of these commitments may be for services that were ultimately never used. At this point, the Administrator receives very few invoices for services from prior to funding year 2019. Further, this deadline provides ample time for Program participants to assess whether they have undisbursed commitments requiring invoicing and to complete the invoicing process for those funding requests. Any funding de-obligated as a result of this change can be used for more useful purposes.

33. Therefore, all existing Telecom Program commitments from funding year 2019 and earlier must be invoiced by July 1, 2024. This decision does not affect the invoice deadline for Telecom Program funding requests for funding year 2020 and later, which are subject to the invoice deadlines established in § 54.627 of the Commission's rules. In the event that the Administrator issues a funding commitment in the future for a funding request for funding year 2019 or earlier, invoices for that funding commitment must be submitted within 120 days of the issuance of a commitment letter.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

34. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, its noted that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

35. In this present document, the Commission has assessed the effects of allowing conditional approvals of eligibility, allowing changes to evergreen contract dates, and adopting for the entire RHC Program eligibility form filing requirements that previously existed only in the HCF Program and finds that the additional funding and administrative conveniences these changes give health care providers justify these changes.

B. Congressional Review Act

36. The Commission has determined and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that the rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Third R&O* to Congress and the Government Accountability Office pursuant to Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

37. In addition, the Commission will send a copy of the *Third R&O,* including the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

C. Final Regulatory Flexibility Analysis

38. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared an FRFA concerning the potential impact of the rule and policy changes adopted in the *Third R&O.*

39. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Second FNPRM, FCC 23–6, rel. January 27, 2023. The Commission sought written public comment on the proposals in the Second FNPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA.

i. Need for, and Objectives of, the Third R&O

40. In the *Third R&O,* the Commission seeks to further improve the Rural Health Care (RHC) Program's capacity to distribute telecommunications and broadband support to health care providers—especially small, rural healthcare providers (HCPs)—in the most equitable and efficient manner possible. Over the years, telehealth has become an increasingly vital component of healthcare delivery to rural Americans. Rural healthcare facilities are typically limited by the equipment and supplies they have and the scope of services they can offer, which ultimately can have an impact on the availability of high-quality health care. Therefore, the RHC Program plays a critical role in overcoming some of the obstacles healthcare providers face in delivering their services to rural communities. Considering the significance of RHC Program support, the Commission implements several measures to most effectively meet HCPs' needs while responsibly distributing the RHC Program's limited funds.

41. Additionally, the *Third R&O* adopts proposals from the Second FNPRM that allow conditional approvals of eligibility to allow soon-to-be eligible providers to engage in competitive bidding, align the Service Provider Identification Number (SPIN) change deadline with the invoice deadline, simplify urban rate calculations, and allow health care providers to change evergreen contract dates. The Commission also harmonizes the RHC Program eligibility determination process by establishing a single eligibility determination form for the Telecom Program and RHC program and announce a new deadline for the de-obligation of undisbursed, un-invoiced commitments.

ii. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

42. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

iii. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

43. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

iv. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

44. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA.

45. *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 SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

46. 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.

47. 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.''

a. Healthcare Providers

48. *Offices of Physicians (except Mental Health Specialists).* This industry comprises establishments of health practitioners having the degree of M.D. (Doctor of Medicine) or D.O. (Doctor of Osteopathy) primarily engaged in the independent practice of general or specialized medicine (except psychiatry or psychoanalysis) or surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or health maintenance organization (HMO) medical centers. The SBA small business size standard for this industry classifies a business having annual receipts of $14 million or less as small. The 2017 Economic Census indicates that 137,366 firms operated in this industry for the entire year. Of this number, 126,098 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms operating in this industry are small under the SBA size standard.

49. *Offices of Dentists.* This industry comprises establishments of health practitioners having the degree of D.M.D. (Doctor of Dental Medicine), D.D.S. (Doctor of Dental Surgery), or D.D.Sc. (Doctor of Dental Science) primarily engaged in the independent practice of general or specialized dentistry or dental surgery. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. They can provide either comprehensive preventive, cosmetic, or emergency care, or specialize in a single field of dentistry. The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small. The 2017 Economic Census indicates that 113,795 firms operated in this industry for the entire year. Of that number, 112,332 firms had revenue of less than $5 million. Based on this data, the Commission concludes that a majority of dental businesses are small entities.

50. *Offices of Chiropractors.* This industry comprises establishments of health practitioners having the degree of DC (Doctor of Chiropractic) primarily engaged in the independent practice of chiropractic. These practitioners provide diagnostic and therapeutic treatment of neuromusculoskeletal and related disorders through the manipulation and adjustment of the spinal column and extremities, and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small. The 2017 Economic Census indicates that 34,414 firms operated in this industry for the entire year. Of that number, 34,366 firms operated with revenue of less than $5 million per year. Based on this data, the Commission concludes that a majority of chiropractors are small.

51. *Offices of Optometrists.* This industry comprises establishments of health practitioners having the degree of O.D. (Doctor of Optometry) primarily engaged in the independent practice of optometry. These practitioners examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions. Offices of optometrists prescribe and/or provide eyeglasses, contact lenses, low vision aids, and vision therapy. They operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers, and may also provide the same services as opticians, such as selling and fitting prescription eyeglasses and contact

lenses. The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small. The 2017 Economic Census indicates that 17,879 firms operated in this industry for the entire year. Of this number, 16,792 firms had revenue of less than $5 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

52. *Offices of Mental Health Practitioners (except Physicians).* This industry comprises establishments of independent mental health practitioners (except physicians) primarily engaged in (1) the diagnosis and treatment of mental, emotional, and behavioral disorders and/or (2) the diagnosis and treatment of individual or group social dysfunction brought about by such causes as mental illness, alcohol and substance abuse, physical and emotional trauma, or stress. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small. The 2017 Economic Census indicates that 19,316 firms operated in this industry for the entire year. Of that number, 13,318 firms had revenue of less than $5 million. Based on this data, the Commission concludes that a majority of mental health practitioners who do not employ physicians are small.

53. *Offices of Physical, Occupational and Speech Therapists and Audiologists.* This industry comprises establishments of independent health practitioners primarily engaged in one of the following: (1) providing physical therapy services to patients who have impairments, functional limitations, disabilities, or changes in physical functions and health status resulting from injury, disease or other causes, or who require prevention, wellness or fitness services; (2) planning and administering educational, recreational, and social activities designed to help patients or individuals with disabilities, regain physical or mental functioning or to adapt to their disabilities; and (3) diagnosing and treating speech, language, or hearing problems. These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA small business size standard for this industry classifies a business having annual receipts of $11 million or less as small. The 2017 Economic Census indicates that 22,402 firms in this industry operated for the entire year. Of that number, 21,712 firms had revenue of less than $5 million. Based on this data, the Commission concludes that a majority of businesses in this industry are small.

54. *Offices of Podiatrists.* This industry comprises establishments of health practitioners having the degree of D.P.M. (Doctor of Podiatric Medicine) primarily engaged in the independent practice of podiatry. These practitioners diagnose and treat diseases and deformities of the foot and operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA small business size standard for this industry classifies a business having annual receipts of $8 million or less as small. The 2017 Economic Census indicates that 6,673 firms operated in this industry for the entire year. Of that number, 6,235 firms had revenue of less than $5 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

55. *Offices of All Other Miscellaneous Health Practitioners.* This industry comprises establishments of independent health practitioners (except physicians; dentists; chiropractors; optometrists; mental health specialists; physical, occupational, and speech therapists; audiologists; and podiatrists). These practitioners operate private or group practices in their own offices (*e.g.,* centers, clinics) or in the facilities of others, such as hospitals or HMO medical centers. The SBA small business size standard for this industry classifies firms having annual receipts of $9 million or less as small. The 2017 Economic Census indicates that 14,194 firms in this industry operated the entire year. Of that number, 10,874 firms had revenue of less than $5 million. Based on this data, the Commission concludes the majority of firms in this industry are small.

56. *Family Planning Centers.* This industry comprises establishments with medical staff primarily engaged in providing a range of family planning services on an outpatient basis, such as contraceptive services, genetic and prenatal counseling, voluntary sterilization, and therapeutic and medically induced termination of pregnancy. The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small. The 2017 Economic Census indicates that 1,339 firms in this industry operated for the entire year. Of that number, 1,014 firms had revenue of less than $10 million. Based on this data, the Commission concludes that the majority of firms in this industry is small.

57. *Outpatient Mental Health and Substance Abuse Centers.* This industry comprises establishments with medical staff primarily engaged in providing outpatient services related to the diagnosis and treatment of mental health disorders and alcohol and other substance abuse. These establishments generally treat patients who do not require inpatient treatment. They may provide a counseling staff and information regarding a wide range of mental health and substance abuse issues and/or refer patients to more extensive treatment programs, if necessary. The SBA small business size standard for this industry classifies a firm as small if it has $16.5 million or less in annual receipts. The 2017 Economic Census indicates that 5,637 firms operated for the entire year. Of this number, 4,534 firms had of less than $10 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

58. *HMO Medical Centers.* This industry comprises establishments with physicians and other medical staff primarily engaged in providing a range of outpatient medical services to the HMO subscribers with a focus generally on primary health care. These establishments are owned by the HMO. HMO establishments that both provide health care services and underwrite health and medical insurance policies are also included in this industry. The SBA small business size standard for this industry classifies firms having $39 million or less in annual receipts as small. The 2017 U.S. Economic Census indicates that 17 firms in this industry operated for the entire year. However, the 2017 Economic Census does not provide disaggregated financial information for this industry, therefore the Commission cannot determine how many of the firms in this industry are small under the SBA small business size standard.

59. *Freestanding Ambulatory Surgical and Emergency Centers.* This industry comprises establishments with physicians and other medical staff primarily engaged in (1) providing surgical services (*e.g.,* orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (*e.g.,* setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis.

Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment. The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small. The 2017 U.S. Economic Census indicates that 3,888 firms in this industry operated for the entire year. Of that number, 3,132 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

60. *All Other Outpatient Care Centers.* This industry comprises establishments with medical staff primarily engaged in providing general or specialized outpatient care (except family planning centers, outpatient mental health and substance abuse centers, HMO medical centers, kidney dialysis centers, and freestanding ambulatory surgical and emergency centers). Centers or clinics of health practitioners with different degrees from more than one industry practicing within the same establishment (*i.e.,* Doctor of Medicine and Doctor of Dental Medicine) are included in this industry. The SBA small business size standard for this industry classifies a business with annual receipts of $22.5 million or less as small. The 2017 U.S. Economic Census indicates that 5,524 firms operated in this industry for the entire year. Of this number, 4,584 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

61. *Blood and Organ Banks.* This industry comprises establishments primarily engaged in collecting, storing, and distributing blood and blood products and storing and distributing body organs. The SBA small business size standard for this industry classifies firms having annual receipts of $35 million or less as small. The 2017 U.S. Census Bureau data indicate that 293 firms operated in this industry for the entire year. Of that number, 219 firms operated with revenue of less than $25 million. Based on this data, the Commission concludes the major of firms that operate in this industry are small.

62. *All Other Miscellaneous Ambulatory Health Care Services.* This U.S. industry comprises establishments primarily engaged in providing ambulatory health care services (except offices of physicians, dentists, and other health practitioners; outpatient care centers; medical and diagnostic laboratories; home health care providers; ambulances; and blood and organ banks). The SBA small business size standard for this industry classifies businesses having annual receipts of $18 million or less as small. 2017 U.S. Bureau Census data show that 2,968 firms operated in this industry for the entire year. Of that number, 2,810 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of the firms in this industry are small. This industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA small business size standard for this industry classifies a business as small if it has annual receipts of $36.5 million or less. 2017 U.S. Census Bureau data indicate that 2,799 firms operated in this industry for the entire year. Of this number, 2,640 firms had revenue of less than $25 million. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

63. *Medical Laboratories.* This industry comprises establishments known as medical laboratories primarily engaged in providing analytic or diagnostic services, including body fluid analysis, generally to the medical profession or to the patient on referral from a health practitioner. The SBA small business size standard for this industry classifies a business as small if it has annual receipts of $36.5 million or less. 2017 U.S. Census Bureau data indicate that 2,799 firms operated in this industry for the entire year. Of this number, 2,640 firms had revenue of less than $25 million. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

64. *Diagnostic Imaging Centers.* This U.S. industry comprises establishments known as diagnostic imaging centers primarily engaged in producing images of the patient generally on referral from a health practitioner. The SBA small business size standard for this industry classifies firms having annual receipts of $16.5 million or less as small. The 2017 U.S. Economic Census indicates that 3,556 firms operated in this industry for the entire year. Of that number, 3,233 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

65. *Home Health Care Services.* This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy. The SBA small business size standard for this industry classifies a firm having annual receipts of $16.5 million or less as small. The 2017 Economic Census indicates that 19,414 firms operated in this industry for the entire year. Of that number, 18,291 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms that operate in this industry are small.

66. *Ambulance Services.* This industry comprises establishments primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. The vehicles are equipped with lifesaving equipment operated by medically trained personnel. The SBA small business size standard for this industry classifies businesses having annual receipts of $20 million or less as small. The 2017 U.S. Economic Census indicates that 2,744 firms operated in this industry for the entire year. Of that number, 2,539 firms had revenue of less than $10 million. Based on this data, the Commission concludes that a majority of firms in this industry is small.

67. *Kidney Dialysis Centers.* This industry comprises establishments with medical staff primarily engaged in providing outpatient kidney or renal dialysis services. The SBA small business size standard for this industry classifies firms having annual receipts of $41.5 million or less as small. The 2017 U.S. Economic Census indicates that 378 firms operated in this industry for the entire year. Of that number, 271 firms had revenue of less than $25 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

68. *General Medical and Surgical Hospitals.* This industry comprises ''establishments known and licensed as general medical and surgical hospitals primarily engaged in providing diagnostic and medical treatment (both surgical and nonsurgical) to inpatients with any of a wide variety of medical conditions. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. The

hospitals have an organized staff of physicians and other medical staff to provide patient care services and usually provide other services, such as outpatient services, anatomical pathology services, diagnostic X-ray services, clinical laboratory services, operating room services for a variety of procedures, and pharmacy services. The SBA small business size standard for this industry classifies firms having annual receipts of $41.5 million or less as small. The 2017 U.S. Economic Census indicates that 2,948 firms operated in this industry for the entire year. Of that number, 705 firms had revenue of less than $25 million, while 709 firms had revenue between $25 million and $99,999,999 and 1,072 firms had revenue greater than $100,000,000. Based on this data, the Commission concludes that approximately one-quarter of firms in this industry are small.

69. *Psychiatric and Substance Abuse Hospitals.* This industry comprises establishments known and licensed as psychiatric and substance abuse hospitals primarily engaged in providing diagnostic, medical treatment, and monitoring services for inpatients who suffer from mental illness or substance abuse disorders. The treatment often requires an extended stay in the hospital. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. Psychiatric, psychological, and social work services are available at the facility. These hospitals usually provide other services, such as outpatient services, clinical laboratory services, diagnostic X-ray services, and electroencephalograph services. The SBA small business size standard for this industry classifies a business having annual receipts of $41.5 million or less as small. 2017 U.S. Census Bureau data indicate that 414 firms operated in this industry for the entire year. Of this number, 174 firms had revenue of less than $25 million. The Commission notes that 195 firms had revenue between $25 million and $99,999,999 but are unable to determine the number of firms in this group that have revenue of $41.5 million or less. Thus, based on the available data, under the SBA size standard slightly more than one-third of the businesses in this industry are small.

70. *Specialty (Except Psychiatric and Substance Abuse) Hospitals.* This industry consists of ''establishments known and licensed as specialty hospitals primarily engaged in providing diagnostic, and medical treatment to inpatients with a specific type of disease or medical condition (except psychiatric or substance abuse).'' Hospitals providing long-term care for the chronically ill and hospitals providing rehabilitation, restorative, and adjustive services to physically challenged or disabled people are included in this industry. These establishments maintain inpatient beds and provide patients with food services that meet their nutritional requirements. They have an organized staff of physicians and other medical staff to provide patient care services. These hospitals may provide other services, such as outpatient services, diagnostic X-ray services, clinical laboratory services, operating room services, physical therapy services, educational and vocational services, and psychological and social work services. The SBA small business size standard for this industry classifies businesses having annual receipts of $41.5 million or less as small. 2017 U.S. Census Bureau data indicate that 346 firms operated in this industry for the entire year. Of that number, 119 firms had revenue of less than $25 million, while 169 firms had revenue of $25 million or more. Based on this data, the Commission concludes the less than half of the firms in this industry are small.

71. *Emergency and Other Relief Services.* This industry comprises establishments primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (*e.g.,* wars). The SBA small business size standard for this industry classifies firms having annual receipts of $36.5 million or less as small. The 2017 U.S. Economic Census indicates that 499 firms operated in this industry for the entire year. Of that number, 413 firms had revenue of less than $25 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

b. Providers of Telecommunications and Other Services

(i) Telecommunications Service Providers

72. The small entities that may be affected are Wireline Providers, Wireless Carriers and Service Providers, and Internet Service Providers.

(ii) Vendors and Equipment Manufacturers

73. *Vendors of Infrastructure Development or ''Network Buildout.''* The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are ''Radio and Television Broadcasting and Wireless Communications Equipment'' with a SBA small business size standard of 1,250 employees or less, and ''Other Communications Equipment Manufacturing'' with a SBA small business size standard of 750 employees or less.'' U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year. Of that number, 310 firms operated with fewer than 250 employees. Based on this data, the Commission concludes that the majority of firms in this industry are small.

74. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), private branch exchange (PBX) equipment, telephone answering machines, local area network (LAN) modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways. The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year. Of this number, 177 firms operated with fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

75. *Radio and Television Broadcasting and Wireless Communications Equipment*

Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, global positioning system (GPS) equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

76. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small. U.S. Census Bureau data for 2017 show that 321 firms in this industry operated for the entire year. Of this number, 310 firms operated with fewer than 250 employees. Based on this data, the Commission concludes that the majority of firms in this industry are small.

v. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

77. The rules adopted in the *Third R&O* will result in modified reporting, recordkeeping, or other compliance requirements for small and other entities. Applicants that request conditional approval for eligibility must submit an eligibility determination and supporting documentation, along with an estimated date to meet all eligibility requirements. They must also be located in a rural area as defined in § 54.600(e) of the Commission's rules by the estimated eligibility date, or plan to be a member of a majority-rural Healthcare Connect Fund (HCF) Program consortium that satisfies the eligible rural health care provider composition requirement set forth in § 54.607(b) of the Commission's rules by the estimated eligibility date. An applicant with conditional eligibility that plans to engage in competitive bidding must indicate that the eligibility is conditional, and state the estimated date of eligibility on its competitive bidding form. Applicants with conditional approval of eligibility must also notify the Universal Service Administrative Company (Administrator) within 30 calendar days of its actual eligibility date and provide documentation confirming eligibility. Beginning funding year 2025, a single eligibility determination form for the RHC Program for both the Telecom Program and the HCF Program, FCC Form 469, will be required to be filed once. Applicants will use the FCC Form 460 for eligibility determinations in the Telecom Program and the eligibility determination portion will be eliminated from the FCC Form 465. The Commission also amends § 54.601(b) of the Commission's rules to require health care providers in both programs to notify the Administrator of changes to their name, location, contact information, or eligible entity type. Telecom Program providers with invoices for funding years 2019 and earlier, must submit invoices by July 1, 2024, after which, any funding commitments for 2019 and earlier will be de-obligated and providers will not be able to invoice for services.

78. The Commission expects the actions taken in the *Third R&O* will achieve the goals of improving the effectiveness and efficiency of the RHC Program without placing significant additional costs and burdens on small entities. At present, there is not sufficient information on the record to quantify the cost of compliance for small entities, however, the Commission anticipates that the compliance obligations for small providers will be outweighed by the benefits of improving the RHC Program's capacity to distribute telecommunications and broadband support to rural health care providers.

vi. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to provide ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

80. In the *Third R&O,* the Commission takes steps to minimize the economic impact on small entities with the rule changes that are adopted. For example, conditional approval of eligibility for RHC Program funding will allow soon-to-be eligible providers to begin competitive bidding and request funding so that they may receive support as soon as they become eligible. The Commission aligns the SPIN change deadline with the invoice filing deadline to give small entities more time to complete SPIN changes. The Commission simplifies urban rate calculations by eliminating the standard urban distance provision, which will ease administrative burdens on small entities. The Commission changes evergreen contract dates to provide small entities with the benefits of evergreen contract designation across the full length of the contract's term. As a part of the reforms to use the same form for eligibility determinations in the Telecom and HCF Program, the Commission allows small entities to continue using their existing eligibility determinations. Finally, in establishing an invoice deadline for funding year 2019 and earlier, the Commission provides ample time for small providers and other entities to meet that deadline. These actions will promote efficiency and promote the goals of these programs, while strengthening protections against waste, fraud and abuse.

vii. Report to Congress

81. The Commission will send a copy of the *Third R&O,* including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third R&O,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

82. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 4(j), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214, and 254 and § 1.429 of the Commission's rules, 47 CFR 1.429, that the *Third R&O* is adopted.

83. *It is further ordered,* that pursuant to § 1.103 of the Commission's rules, the provisions of the *Third R&O will become effective* February 12, 2024, unless indicated otherwise herein.

84. *It is further ordered,* that pursuant to the authority contained in sections 1–

4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, 303(r), and 403, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, part 54 of the Commission's rules, 47 CFR part 54, *is amended,* and such rule amendments shall be effective February 12, 2024, except for §§ 54.601(b) and (c) and 54.622(e)(1)(i) through (ii) and (i)(3)(iv), which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes any required review under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to publish a document in the **Federal Register** announcing completion of such reviews and the relevant effective dates.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Puerto Rico, Reporting and recordkeeping requirements, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 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. Delayed indefinitely, amend § 54.601 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 54.601 Health care provider eligibility.

* * * * *

(b) *Determination of health care provider eligibility for the Rural Health Care Program.* (1) Before funding year 2025, health care providers in the Healthcare Connect Fund Program may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a request for funding for the site. Health care providers must also notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

(2) Effective for funding year 2025, applicants in the Rural Health Care Program may certify to the eligibility of particular sites prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a Request for Funding for the site. Health care providers must notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

(c) *Conditional approval of eligibility.* Effective for funding year 2025:

(1) An entity that does not yet meet all eligibility requirements under the Rural Health Care Program may request and receive a conditional approval of eligibility from the Administrator if the entity provides documentation showing that it satisfies the following requirements:

(i) The entity is or reasonably expects to qualify as a public or non-profit health care provider as defined in § 54.600(b) by an estimated eligibility date;

(ii) The entity is or reasonably expects to be physically located in a rural area defined in § 54.600(e) by the estimated eligibility date or, for the Healthcare Connect Fund Program only, is not located in a rural area but is or plans to be a member of a majority-rural Healthcare Connect Fund Program consortium that satisfies the eligible rural health care provider composition requirement set forth in § 54.607(b) by the estimated eligibility date; and

(iii) The estimated eligibility date is in the same funding year as or in the next funding year of the date that the entity requests the conditional approval of eligibility.

(2) An entity that receives conditional approval of eligibility may conduct competitive bidding for the site. An entity engaging in competitive bidding with conditional approval of eligibility must provide a written notification to potential bidders that the entity's eligibility is conditional and specify the estimated eligibility date.

(3) An entity that receives conditional approval of eligibility may file a request for funding for the site during an application filing window opened for a funding year that ends after the estimated eligibility date. The Administrator shall not issue any funding commitments to applicants that have received conditional approval of eligibility only. Funding commitments may be issued only after such applicants receive formal approval of eligibility as described in paragraph (c)(4) of this section.

(4) An entity that receives conditional approval of eligibility is expected to notify the Administrator, along with supporting documentation for the eligibility, within 30 days of its actual eligibility date. The actual eligibility date is the date that the entity qualifies as a public or non-profit health care provider as defined in § 54.600(b) and meets the requirements under paragraph (c)(1)(ii) of this section. The actual eligibility date may be a different date from the estimated eligibility date. The Administrator shall formally approve the entity's eligibility if the entity meets the requirements for a public or non-profit health care provider defined in § 54.600(b) and the requirements under paragraph (c)(1)(ii) of this section. Upon the entity receiving a formal approval of eligibility, the Administrator may issue funding commitments covering a time period that starts no earlier than the entity's actual eligibility date and that is within the funding year for which support was requested.

■ 3. Revise § 54.604 to read as follows:

§ 54.604 Determining the urban rate.

(a) Effective funding year 2024:

(1) If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the ''standard urban distance,'' as defined in paragraph (a)(3) of this section, for the state in which it is located, the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

(2) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the ''standard urban distance,'' as defined in paragraph (a)(3) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service

were provided between two points within the city.

(3) The ''standard urban distance'' for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(4) The Administrator shall calculate the ''standard urban distance'' and shall post the ''standard urban distance'' and the maximum supported distance for each state on its website.

(b) As of funding year 2025, if a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

■ 4. Delayed indefinitely, amend § 54.622 by revising paragraphs (e)(1)(i) and (ii) and adding paragraph (i)(3)(iv) to read as follows:

§ 54.622 Competitive bidding requirements and exemptions.

* * * * *

(e) * * *

(1) * * *

(i) The entity seeking supported services is a public or nonprofit health care provider that falls within one of the categories set forth in the definition of health care provider listed in § 54.600, or expects to be such a public or nonprofit health care provider before the end of the funding year for which the supported services are requested provided that the entity has received a conditional approval of eligibility pursuant to § 54.601(c);

(ii) The health care provider seeking supported services is physically located in a rural area as defined in § 54.600 or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b). If an entity seeks supported services under a conditional approval of eligibility set forth in § 54.601(c), the entity expects to be located in a rural area defined in § 54.600 before the end of the funding year for which the supported services are requested, or plans to be a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b) before the end of the funding year for which the supported services are requested;

* * * * *

(i) * * *

(3) * * *

(iv) As of funding year 2024, if the date that services start under an evergreen contract differs from the date services were estimated to start, participants may request a change of the start date and end date of their evergreen contract within 60 days of the actual service start date provided the terms of the evergreen contract support such a change. Upon approving a requested change, the Administrator will issue a revised funding commitment letter to the health care provider reflecting the changed dates. If the Administrator denies a requested change, it will issue a letter to the health care provider explaining the basis for the denial.

* * * * *

■ 5. Amend § 54.625 by revising paragraph (c) to read as follows:

§ 54.625 Service Provider Identification Number (SPIN) changes.

* * * * *

(c) *Filing deadline.* An applicant must file its request for a corrective or operational SPIN change with the Administrator no later than the invoice filing deadline as defined by § 54.627.

[FR Doc. 2024–00415 Filed 1–10–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 8
Thursday, January 11, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0030; Project Identifier AD–2023–01066–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for CFM International (CFM) Model LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A engines. This proposed AD was prompted by detection of melt-related freckles in the billet, which may reduce the life of certain high-pressure turbine (HPT) rotor interstage seals. This proposed AD would require removing the affected HPT rotor interstage seals from service and replacing with a part eligible for installation. 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 26, 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–2024–0030; 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 CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: *mehdi.lamnyi@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–2024–0030; Project Identifier AD–2023–01066–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

Background

The FAA was notified by the manufacturer of the detection of melt-related freckles in the billet, which may reduce the life of certain HPT rotor interstage seals. Through the manufacturer's investigation, it was determined that these affected parts may have subsurface anomalies that developed during the manufacturing process, resulting in a lower life capability. This condition, if not addressed, could result in failure of the HPT rotor interstage seal, release of uncontained debris, damage to the engine, and damage to the airplane.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00, dated April 6, 2023, which provides the serial numbers of the affected HPT rotor interstage seals and specifies procedures for replacement of the HPT rotor

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1 engine installed on an airplane 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
Remove HPT rotor interstage seal	225 work-hours × $85 per hour = $19,125	$168,000	$187,125	$187,125

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:

CFM International, S.A.: Docket No. FAA–2024–0030; Project Identifier AD–2023–01066–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 26, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) Model LEAP–1A23, LEAP–1A24, LEAP–1A24E1, LEAP–1A26, LEAP–1A26CJ, LEAP–1A26E1, LEAP–1A29, LEAP–1A29CJ, LEAP–1A30, LEAP–1A32, LEAP–1A33, LEAP–1A33B2, and LEAP–1A35A engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by detection of melt-related freckles in the billet, which may reduce the life of certain high-pressure turbine (HPT) rotor interstage seals. The FAA is issuing this AD to prevent failure of the HPT rotor interstage seal. The unsafe condition, if not addressed, could result in release of uncontained debris, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

For engines with an affected HPT rotor interstage seal installed, before exceeding the applicable threshold specified in Table 1 of paragraph 3.E., Compliance, of CFM Service Bulletin (SB) LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00, dated April 6, 2023 (CFM SB LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00), or at the next HPT rotor module exposure, whichever occurs first after the effective date of this AD, remove the affected HPT rotor interstage seal from service and replace it with a part eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''affected HPT rotor interstage seal'' is any HPT rotor interstage seal having part number 2466M68P02 and a serial number listed in Table 1 of paragraph 3.E., Compliance, of CFM SB LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00.

(2) For the purpose of this AD, a ''part eligible for installation'' is any HPT rotor interstage seal having a serial number that is not listed in Table 1 of paragraph 3.E., Compliance, of CFM SB LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00.

(3) For the purpose of this AD, an ''HPT rotor module exposure'' is an engine shop visit during which the HPT rotor assembly is fully removed from the engine core.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Additional Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des

Moines, WA 98198; phone: (781) 238–7743; email: *mehdi.lamnyi@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) CFM International, S.A. (CFM) Service Bulletin LEAP–1A–72–00–0492–01A–930A–D, Issue 001–00, dated April 6, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com*.

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

(5) You may view this 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 January 5, 2024.

Victor Wicklund,

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

[FR Doc. 2024–00377 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0026; Project Identifier MCAI–2023–00776–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a Transport Canada AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 26, 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–2024–0026; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Transport Canada material that is proposed for IBR in this NPRM, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.* It is also available at *regulations.gov* under Docket No. FAA–2024–0026.
- 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.

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

SUPPLEMENTARY INFORMATION:

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–2024–0026; Project Identifier MCAI–2023–00776–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 Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued AD CF–2023–43, dated June 21, 2023 (Transport Canada AD CF–2023–43) (also referred to as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to prevent potential fatigue cracking and

damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0026.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Transport Canada AD CF–2023–43, which specifies new or more restrictive airworthiness limitations for airplane structures and a safe life limit. 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**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in Transport Canada AD CF–2023–43 described previously, as incorporated by reference. Any differences with Transport Canada AD CF–2023–43 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2023–43 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2023–43 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2023–43 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0026 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

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

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

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

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has 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:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2024–0026; Project Identifier MCAI–2023–00776–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 26, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to prevent potential fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2023–43, dated June 21, 2023 (Transport Canada AD CF–2023–43).

(h) Exceptions to Transport Canada AD CF–2023–43

(1) Where Transport Canada AD CF–2023–43 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph 1. of Transport Canada AD CF–2023–43 specifies to ''incorporate the new and revised tasks identified in Table 1 below, in the appropriate chapter within Section 2 and Section 3 of the MRM CSP B–053 Part 2 manual,'' this AD requires replacing those words with ''revise the existing maintenance or inspection program, as applicable, by incorporating the new and revised tasks identified in Table 1.''

(3) The initial compliance time for doing the tasks specified in paragraph 1. of Transport Canada AD CF–2023–43 is at the applicable ''thresholds'' and ''discard times'' as specified in the service information referenced in paragraph 1. of Transport Canada AD CF–2023–43, or within 60 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt paragraph 2. of Transport Canada AD CF–2023–43.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Corrective Actions'' section of Transport Canada AD CF–2023–43.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–43, dated June 21, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–43, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th 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 January 5, 2024.

Victor Wicklund,

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

[FR Doc. 2024–00343 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2493; Airspace Docket No. 23–AGL–25]

RIN 2120–AA66

Amendment of Jet Route J–89 and VOR Federal Airway V–161, and Establishment of Canadian RNAV Routes Q–834 and T–765; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Jet Route J–89 and Very High Frequency Omnidirectional Range (VOR) Federal Airway V–161 and to establish Canadian Area Navigation (RNAV) routes Q–834 and T–765 in United States (U.S.) airspace. The FAA is proposing this action due to the planned decommissioning of the Winnipeg, Manitoba (MB), Canada,

VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). This action is in support of NAV CANADA's NAVAID Modernization Program.

DATES: Comments must be received on or before February 26, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2493 and Airspace Docket No. 23–AGL–25 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

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

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Jet Routes are published in paragraph 2004, Canadian Area Navigation Routes (Q-routes) are published in paragraph 2007, VOR Federal airways are published in paragraph 6010(a), and Canadian Area Navigation Routes (T-routes) are published in paragraph 6013 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

NAV CANADA, which operates Canada's civil air navigation service, is implementing changes to Canada's instrument flight rules (IFR) navigation infrastructure as part of their NAVAID Modernization Program. This modernization program is designed to enhance the efficiency of Canada's flying operations by taking advantage of performance-based navigation and RNAV avionics capabilities. The changes being implemented by NAV CANADA affect Jet Route J–89 and portions of VOR Federal Airway V–161 that extend across the U.S./Canada border through U.S. airspace.

NAV CANADA is planning to decommission the Winnipeg, MB, Canada, VORTAC in September 2024 as part of their NAVAID Modernization Program. As a result, amendments to J–89 and V–161 in U.S. airspace are necessary due to the loss of navigational guidance provided by the Winnipeg VORTAC and to match the Air Traffic Service (ATS) route changes planned by NAV CANADA within Canadian airspace. Additionally, NAV CANADA plans to establish new Canadian RNAV routes, Q–834 in the high-altitude enroute structure and T–765 in the low-altitude enroute structure, as route segment replacements for the affected

ATS routes within Canadian and U.S. airspace.

To mitigate the loss of the J–89 and V–161 route segments in U.S. airspace and support NAV CANADA's planned RNAV route replacements for these affected routes, the FAA is proposing to establish portions of Canadian RNAV routes Q–834 and T–765 within U.S. airspace. The new Canadian RNAV route segments in U.S. airspace would provide airway continuity with NAV CANADA's RNAV routes being established within Canadian airspace and provide cross-border airway connectivity between the U.S. and Canada. Existing NAVAIDs that provide conventional enroute structure in the affected area are limited and alternate, parallel, or adjacent Jet Routes or VOR Federal Airways to use as mitigations are not available. To compensate for the loss of the conventional enroute structure, IFR pilots with RNAV-equipped aircraft could navigate using the Canadian RNAV routes proposed in this action or fly point-to-point using the Fixes and waypoints (WP) that would remain in place. Additionally, IFR pilots could request air traffic control (ATC) radar vectors to fly through or around the affected area. Visual flight rules pilots who elect to navigate via airways could also take advantage of the ATC services listed previously.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by amending Jet Route J–89 and VOR Federal Airway V–161 and by establishing Canadian RNAV Routes Q–834 and T–765 in U.S. airspace. This action is necessary due to the planned decommissioning of the Winnipeg, MB, Canada, VORTAC by NAV CANADA as part of their NAVAID Modernization Program. The proposed ATS route actions are described below.

J–89: J–89 currently extends between the Louisville, KY, VORTAC and the Winnipeg, MB, Canada, VORTAC, excluding the airspace within Canada. The FAA proposes to remove the route segment between the Duluth, MN, VORTAC and the Winnipeg VORTAC. As amended, the route would be changed to extend between the Louisville VORTAC and the Duluth VORTAC.

Q–834: Q–834 is a new Canadian RNAV route proposed to be established within U.S. airspace extending between the Duluth, MN, VORTAC and the ALBNG, MN, WP that would replace the ''CFHBZ'' Computer Navigation Fix (CNF) on the U.S./Canada border. The new RNAV route would mitigate the proposed J–89 route segment removal and provide route continuity and cross-border connectivity with the Q–834 route being established by NAV CANADA within Canadian airspace between the ALBNG WP and the Winnipeg, MB, area.

V–161: V–161 currently extends between the Three Rivers, TX, VORTAC and the Tulsa, OK, VORTAC; between the Butler, MO, VORTAC and the Gopher, MN, VORTAC; and between the International Falls, MN, VOR/Distance Measuring Equipment (VOR/DME) and the Winnipeg, MB, Canada, VORTAC, excluding the airspace within Canada. The FAA proposes to remove the airway segment between the International Falls VOR/DME and the Winnipeg VORTAC. As amended, the airway would be changed to extend between the Three Rivers VORTAC and the Tulsa VORTAC, and between the Butler VORTAC and the Gopher VORTAC.

T–765: T–765 is a new Canadian RNAV route proposed to be established in two segments within U.S. airspace extending between the International Falls, MN, VOR/DME and the KORTY, MN, WP replacing the ''CFFQV'' CNF on the U.S./Canada border; and between the LCROS, MN, WP replacing the ''CFXDP'' CNF on the U.S./Canada border and the CALDU, MN, WP replacing the ''CFZMG'' CNF on the U.S./Canada border. The new RNAV route segments would mitigate the proposed V–161 airway segments removal between the International Falls VOR/DME and the Winnipeg, MB, Canada VORTAC and provide route continuity and cross-border connectivity with the T–765 route segments being established by NAV CANADA within Canadian airspace.

The NAVAID radials listed in the VOR Federal Airway V–161 description in the proposed regulatory text of this NPRM are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–89 [Amended]

From Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; to Duluth, MN.

* * * * *

Paragraph 2007 Canadian Area Navigation Routes.

* * * * *

Q–834 DULUTH, MN (DLH) TO ALBNG, MN [NEW]

Duluth, MN (DLH)	VORTAC	(Lat. 46°48′07.79″ N, long. 092°12′10.33≤″ W)
ALBNG, MN	WP	(Lat. 48°59′58.05″ N, long. 095°38′10.41″ W)

* * * * *

Paragraph 6010(a) VOR Federal Airways.

* * * * *

V–161 [Amended]

From Three Rivers, TX; Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; to Tulsa, OK. From Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; to Gopher, MN.

* * * * *

Paragraph 6013 Canadian Area Navigation Routes.

* * * * *

T–765 INTERNATIONAL FALLS, MN (INL) TO CALDU, MN [NEW]

International Falls, MN (INL)	VOR/DME	(Lat. 48°33′56.87″ N, long. 093°24′20.44″ W)
KORTY, MN	WP	(Lat. 48°35′20.54″ N, long. 093°27′59.55″ W)
and		
LCROS, MN	WP	(Lat. 49°03′44.39″ N, long. 094°44′18.17″ W)
CALDU, MN	WP	(Lat. 49°12′42.53″ N, long. 095°09′11.89″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00152 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2567 Airspace Docket No. 23–ANM–32]

RIN 2120–AA66

Establishment of United States Area Navigation Routes Q–143 and T–467 in Southern Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation Routes (RNAV) Q–143 and T–467 in southern Utah. The FAA is proposing this action to provide alternative routing around the TIPET and SEVIER Air Traffic Control Assigned Airspaces (ATCAA) and the WHITE ELK and GANDY Military Operations Areas (MOA).

DATES: Comments must be received on or before February 26, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2567 and Airspace Docket No. 23–ANM–32 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific segment of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

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

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the

internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 2006 (Q routes) and paragraph 6011 (T routes) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

This action proposes to establish United States Area Navigation Routes (RNAV) Q–143 and T–467 in southern Utah. The FAA is proposing this action to provide alternative routing around the TIPET and SEVIER Air Traffic Control Assigned Airspaces (ATCAA) and the WHITE ELK and GANDY Military Operations Areas (MOA). This action would improve the safety and efficiency of the NAS by offering high and low altitude alternate RNAV routing when the aforementioned special use airspace is active. Currently, pilots are issued point-to-point clearances from air traffic control to ensure proper separation is maintained between the aircraft and the active special use airspace. The ability to issue a route clearance increases safety of flight and efficiency by reducing the workload on air traffic controllers and pilots. Q–143 would extend between the WINEN, waypoint (WP), UT to the BROPH, WP, ID and provide alternate routing to Q–73 when the TIPET and SEVIER ATCAAs are active. T–467 would extend between the BERYL, Fix, UT and the BROPH, WP, ID and provide alternative routing when the WHITE ELK and GANDY MOAs are active.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 establishing United States Area Navigation Routes (RNAV) Q–143 and T–467 in southern Utah. The FAA is proposing this action to provide alternative routing around the TIPET and SEVIER ATCAAs and the WHITE ELK and GANDY MOAs when active.

T–467: T–467 would extend between the BERYL, Fix, UT and the BROPH, WP, ID and provide alternative routing when the WHITE ELK and GANDY MOAs are active.

Q–143: Q–143 would extend between the WINEN, WP, UT to the BROPH, WP, ID and provide alternate routing to Q–73 when the TIPET and SEVIER ATCAAs are active.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–143 WINEN, UT to BROPH, ID [New]

WINEN, UT	WP	(Lat. 37°56′00.00″ N, long. 113°30′00.00″ W)
TESSA, NV	WP	(Lat. 39°39′15.04″ N, long. 115°16′15.97″ W)
RUBII, NV	WP	(Lat. 40°27′03.58″ N, long. 115°16′15.97″ W)
CLEIN, NV	WP	(Lat. 41°53′37.36″ N, long. 114°52′51.96″ W)
BROPH, ID	WP	(Lat. 42°43′15.71″ N, long. 114°52′31.80″ W)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–467 BERYL, UT to BROPH, ID [New]

BERYL, UT	FIX	(Lat. 37°54′00.17″ N, long. 113°23′08.58″ W)
ELY, NV (ELY)	VOR/DME	(Lat. 39°17′53.25″ N, long. 114°50′53.90″ W)
TESSA, NV	WP	(Lat. 39°39′15.04″ N, long. 115°16′15.97″ W)
RUBII, NV	WP	(Lat. 40°27′03.58″ N, long. 115°16′15.97″ W)
WELLS, NV (LWL)	VOR/DME	(Lat. 41°08′41.29″ N, long. 114°58′39.04″ W)

YIKUK, NV	FIX	(Lat. 41°59′05.16″ N, long. 114°51′49.12″ W)
BROPH, ID	WP	(Lat. 42°43′15.71″ N, long. 114°52′31.80″ W)

* * * * *

Issued in Washington, DC, on January 2, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–00085 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2023–C–5679]

Filing of Color Additive Petition From Environmental Defense Fund, et al.; Request To Amend the Color Additive Regulations To Remove the Solvents Ethylene Dichloride, Methylene Chloride, and Trichloroethylene

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a color additive petition, submitted by Environmental Defense Fund, et al., proposing that the color additive regulations be amended to remove three specified solvents.

DATES: The color additive petition was filed on December 21, 2023. Either electronic or written comments must be submitted by March 11, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 11, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comment, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper instructions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–C–5679 for ''Filing of Color Additive Petition From Environmental Defense Fund, et al.; Request To Amend the Color Additive Regulations To Remove the Solvents Ethylene Dichloride, Methylene Chloride, and Trichloroethylene.'' Received comments, those filed in a timely manner (see DATES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comment only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Paulette M. Gaynor, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1192.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 4C0327), submitted by Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Environmental Health, Environmental Working Group, and Lisa Lefferts, c/o Lisa Lefferts, Nellysford, VA 22958. The petition proposes that we amend §§ 73.1 (21 CFR 73.1, ''Diluents in color additive mixtures for food use exempt from certification''), 73.30 (21 CFR 73.30, ''Annatto extract''), 73.345 (21 CFR 73.345, ''Paprika oleoresin''), and 73.615 (21 CFR 73.615, ''Turmeric oleoresin'') to remove the use of three specified solvents.

The three solvents that are the subject of this petition are:

1. Ethylene dichloride (CAS No. 107–06–2);

2. Methylene chloride (CAS No. 75–09–2); and

3. Trichloroethylene (CAS No. 79–01–6).

II. Request To Amend 21 CFR Part 73

In accordance with the procedure in section 721(d) of the FD&C Act for issuance, amendment, or repeal of regulations, the petition asks us to amend §§ 73.1, 73.30, 73.345, and 73.615 to remove ethylene dichloride, methylene chloride, and trichloroethylene. Specifically, the petitioners state these substances have been found to induce cancer in humans or animals and, therefore, are not safe pursuant to section 721(b)(5)(B) of the FD&C Act (also referred to as the ''Delaney Clause''). The Delaney Clause provides, in relevant part, that no color additive shall be deemed safe for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary of Health and Human Services (Secretary) to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal.

The petition is available in the docket. We invite comments, additional scientific data, and other information related to the issues raised by this petition. If we determine that the available data justify amending §§ 73.1, 73.30, 73.345, and 73.615 to remove ethylene dichloride, methylene chloride, and trichloroethylene, we will publish our decision in the **Federal Register** in accordance with 21 CFR 71.20.

The petitioners have claimed that this action is categorically excluded under 21 CFR 25.32(m), which applies to an action to prohibit or otherwise restrict or reduce the use of a substance in food, food packaging, or cosmetics. In addition, the petitioners have stated that, to their knowledge, no extraordinary circumstances exist (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00410 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 173

[Docket No. FDA–2023–F–5684]

Filing of Food Additive Petition From Environmental Defense Fund, et al.; Request To Amend the Food Additive Regulations To Remove the Solvents Benzene, Ethylene Dichloride, Methylene Chloride, and Trichloroethylene

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a food additive petition, submitted by Environmental Defense Fund, et al., proposing that the food additive regulations be amended to remove four specified solvents.

DATES: The food additive petition was filed on December 21, 2023. Submit either electronic or written comments on the filing notice by March 11, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 11, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–F–5684 for ''Filing of Food Additive Petition from Environmental Defense Fund, et al.; Request To Amend the Food Additive Regulations To Remove the Solvents Benzene, Ethylene Dichloride, Methylene Chloride, and Trichloroethylene.'' Received comments, those filed in a timely manner (see DATES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comment only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Paulette M. Gaynor, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1192.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 4A4839), submitted by Environmental Defense Fund, Breast Cancer Prevention Partners, Center for Environmental Health, Environmental Working Group, and Lisa Lefferts, c/o Lisa Lefferts, Nellysford, VA 22958. The petition proposes that we amend §§ 172.560 (21 CFR 172.560, ''Modified hop extract''), 172.710 (21 CFR 172.710, ''Adjuvants for pesticide use dilutions''), 173.230 (21 CFR 173.230, ''Ethylene dichloride''), 173.255 (21 CFR 172.255, ''Methylene chloride''), 173.290 (21 CFR 173.290, ''Trichloroethylene''), and 173.315 (21 CFR 173.315, ''Chemicals used in washing or to assist in the peeling of fruits and vegetables'') to remove the use of four specified solvents.

The four solvents that are the subject of this petition are:

1. Benzene (CAS No. 71–43–2);
2. Ethylene dichloride (CAS No. 107–06–2);
3. Methylene chloride (CAS No. 75–09–2); and
4. Trichloroethylene (CAS No. 79–01–6).

II. Request To Amend 21 CFR Parts 172 and 173

In accordance with the procedures for amending or repealing a food additive regulation in § 171.130 (21 CFR 171.130), the petition asks us to amend §§ 172.560, 172.710, 173.230, 173.255, 173.290, and 173.315 to remove benzene, ethylene dichloride, methylene chloride, and trichloroethylene. Specifically, the petitioners state that these substances have been found to induce cancer in humans or animals and, therefore, are not safe pursuant to section 409(c)(3)(A) of the FD&C Act (also referred to as the ''Delaney Clause''). The Delaney Clause provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal.

The petition is available in the docket. We invite comments, additional scientific data, and other information related to the issues raised by this petition. If we determine that the available data justify amending §§ 172.560, 172.710, 173.230, 173.255, 173.290, and 173.315 to remove benzene, ethylene dichloride, methylene chloride, and trichloroethylene, we will publish our decision in the **Federal Register** in accordance with § 171.130.

The petitioners have claimed that this action is categorically excluded under 21 CFR 25.32(m), which applies to an action to prohibit or otherwise restrict or reduce the use of a substance in food, food packaging, or cosmetics. In addition, the petitioners have stated that, to their knowledge, no extraordinary circumstances exist (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00411 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1 and 301

[REG–118492–23; REG–113064–23; REG–120080–22]

RIN 1545–BQ99; RIN 1545–BQ86; RIN 1545–BQ52

Section 30D Excluded Entities; Transfer of Clean Vehicle Credits Under Section 25E and Section 30D; Section 30D New Clean Vehicle Credit; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations that would provide guidance regarding the proposed regulations under sections 25E, 30D, and 6213 with respect to the clean vehicle credits as amended by the Inflation Reduction Act of 2022.

DATES: The public hearing on these proposed regulations has been scheduled for Wednesday, January 31, 2024, at 10 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Thursday, January 18, 2024. If no outlines are received by Thursday, January 18, 2024, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

Send Submissions to CC:PA:01:PR (REG–130080–22, REG–113064–23, and REG–118492–23), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:01:PR (REG–130080–22, REG–113064–23, and REG–118492–23), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5205, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at

www.regulations.gov (IRS REG–130080–22, IRS REG–113064–23, or IRS REG–118492–23).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–6835 (not a toll-free number); concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202–317–6901) (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notices of proposed rulemakings (REG–130080–22, REG–113064–23, REG–118492–23) that were published in the **Federal Register** on Monday, April 17, 2023, (FR 88 23370), Tuesday, October 10, 2023 (FR 88 70310), and Monday, December 4, 2023, (FR 88 84098) respectively.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by January 18, 2024.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by January 18, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–130080–22, REG–113064–23, and REG–118492–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–130080–22, REG–113064–23, and REG–118492–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–130080–22, REG–113064–23, and REG–118492–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–130080–22, REG–113064–23, and REG–118492–23, whichever applies.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–130080–22, REG–113064–23, and REG–118492–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–130080–22, REG–113064–23, and REG–118492–23, whichever applies. Requests to attend the public hearing must be received by 5 p.m. ET by Monday, January 29, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–130080–22, REG–113064–23, and REG–118492–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–130080–22, REG–113064–23, and REG–118492–23, whichever applies. Requests to attend the public hearing must be received by 5:00 p.m. ET by Monday, January 29, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by 5:00 p.m. ET on Friday, January 26, 2024.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Oluwafunmilayo A. Taylor,

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

[FR Doc. 2024–00375 Filed 1–10–24; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 23–109; FR ID 193610]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Third Further Notice of Proposed Rulemaking (FNPRM) that tentatively concludes that the Commission should take further action to facilitate the processing of pole attachment applications that are submitted in large numbers. It also seeks comment on whether the Commission should modify its self-help rules to enable prospective attachers to access poles more quickly. Finally, it seeks comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work.

DATES: Comments are due on or before February 13, 2024, and reply comments are due on or before February 28, 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 March 11, 2024.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Interested parties may file comments or reply comments, identified by CG Docket No. 17–59 and WC Docket No. 17–97 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Effective March 19, 2020, and until further notice, the Commission no

longer accepts any hand or messenger delivered filings.

- 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.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, FCC, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact either Michele Berlove, Assistant Division Chief, Competition Policy Division, Wireline Competition Bureau, at *michele.berlove@fcc.gov* or at (202) 418–1477, or Michael Ray, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *michael.ray@fcc.gov* or at (202) 418–0357. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 17–84, FCC 23–109, adopted on December 13, 2023, and released on December 15, 2023. The full text of this document is available for public inspection at the following internet address: *https://www.fcc.gov/document/fcc-seeks-make-pole-attachment-process-faster-more-transparent-and-more-cost-effective.* The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this *FNPRM* is available at *https://www.fcc.gov/proposed-rulemakings.* To request materials in accessible formats for people with disabilities (*e.g.,* 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.

Initial Paperwork Reduction Act of 1995 Analysis

This document may contain proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13.

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), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Comment Period and Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. Commenters should refer to WC Docket No. 21–341 when filing in response to this *FNPRM.*

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.
- 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.

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).

Synopsis

I. Introduction

1. Access to a broadband connection is a necessity of modern life. With consumers more dependent than ever on fixed and mobile broadband networks for work, healthcare services, education, and social activities, the Commission remains committed to ensuring consumers across the nation have meaningful access to broadband. With the support of the Commission's universal service fund, the Infrastructure Investment and Jobs Act, which included the largest ever federal investment in broadband, as well as other federal and state broadband deployment programs, more funding than ever is available to build the necessary infrastructure to bring much-needed broadband services to unserved and underserved areas in the United States. Key to these broadband projects are the utility poles that support the wires and the wireless equipment that carry broadband to American homes and businesses.

2. Over the last several years, the Commission has taken significant steps in setting the ''rules for the road'' for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. (Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. The Commission's pole attachment rules currently only apply to cable operators and providers of telecommunications services and therefore do not apply to broadband-only internet service providers. We recently proposed to reclassify broadband internet access service as a telecommunications service,

which would, if completed, apply section 224 and the Commission's pole attachment rules to broadband-only internet service providers.) In this item, we take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective. Specifically, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband builds. Additionally, as a follow-on to the pole replacement clarification issued in the *2021 Pole Replacement Declaratory Ruling,* in the Declaratory Ruling below we provide further clarification regarding cost causation when a pole must be replaced for any reason other than lacking capacity to support a new attachment. Specifically, we clarify that a ''red tagged'' pole is one that the utility has identified as needing replacement for any reason other than the pole's lack of capacity, and we provide additional examples of when a pole replacement is not ''necessitated solely'' as a result of a third party's attachment or modification request—*i.e.,* when a pole already requires replacement at the time the new attacher makes a request. We also clarify the obligation to share easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles. Finally, we seek comment in the FNPRM on ways to further facilitate the processing of pole attachment applications and make-ready to enable faster broadband deployment.

II. Background

3. In 1996, as part of its implementation of the pole attachment requirements located in sections 224(h) and 224(i) of the Act, the Commission determined that when a modification, such as a pole replacement, is undertaken for the benefit of a particular party, then under cost causation principles, the benefiting party must assume the cost of the modification. (Section 224(h) states that ''[w]henever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.'' Section 224(i) states that ''[a]n entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).'') The Commission also found that when a utility decides to modify a pole for its own benefit, and no other attachers derive a benefit from the modification, the utility must bear the full cost of the new pole. The Commission further adopted a cost sharing principle for when an existing attacher uses a modification by another party as an opportunity to add to or modify its own attachments and applied this principle to utilities and other attachers seeking to use modifications as an opportunity to bring their own facilities into compliance with safety or other requirements. In the *2018 Wireline Infrastructure Order,* the Commission reiterated that application of the cost sharing principle.

4. On July 16, 2020, NCTA—the Internet & Television Association (NCTA) filed a Petition asking the Commission to clarify its rules in the context of pole replacements. Specifically, NCTA asked the Commission to declare that: (1) utilities must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Act, section 1.1408(b) of the Commission's rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under § 1.736 of the Commission's rules; and (3) § 1.1407(b) of the Commission's rules authorizes the Commission to order a utility to complete a pole replacement within a specified time frame or designate an authorized contractor to do so. NCTA argued that without Commission action, the costs and operational challenges associated with pole replacements will inhibit attachers from deploying broadband services to Americans in unserved areas.

5. In the *2021 Pole Replacement Declaratory Ruling,* although the Wireline Competition Bureau declined to act on NCTA's Petition, finding that ''it is more appropriate to address questions concerning the allocation of pole replacement costs within the context of a rulemaking, which provides the Commission with greater flexibility to tailor regulatory solutions,'' it observed that the record developed in response to the NCTA Petition revealed inconsistent practices by utilities with regard to cost responsibility for pole replacements. Accordingly, the Bureau clarified that, pursuant to § 1.1408(b) of the Commission's rules and prior precedent, ''utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.'' The Commission subsequently affirmed the Bureau's clarifications.

6. Last year, the Commission issued a *Second Further Notice* (87 FR 25181; Apr. 28, 2022) in this proceeding seeking comment on the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs among utilities and attachers in those situations. (To the extent that this Report and Order does not expressly address a topic that was subject to comment in the *Second Further Notice,* that issue remains pending.) Specifically, the Commission sought comment on the applicability of cost causation and cost allocation principles in the context of pole replacements—*e.g.,* when is a pole replacement not caused (necessitated solely) by a new attachment request, and when and how parties must share in the costs of a pole replacement. The Commission also sought comment on the extent to which utilities directly benefit from pole replacements, including a utility's responsibility for the costs of pole upgrades and modifications unrelated to new attachments and the effect of early pole retirements on pole replacement cost causation and cost allocation calculations. The *Second Further Notice* also sought comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may help avoid or expedite the resolution of disputes between the parties, including whether to expand use of the Commission's Accelerated Docket for pole attachment complaints and the specific criteria that Commission staff should use in deciding whether to place a pole complaint on the Accelerated Docket.

III. Further Notice of Proposed Rulemaking

7. We recognize that Congress has undertaken a number of initiatives allocating funding to further the deployment of broadband to unserved and underserved areas of the United States. In connection with this funding, broadband providers will have to deploy extensive facilities. This, in turn will require that they file significant numbers of applications seeking to attach these facilities to large numbers of poles. To that end, we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable speedier broadband deployment. In seeking comment on these areas, we emphasize that even when there is not a specific Commission rule or policy that governs a particular situation, it is our expectation that parties negotiate in good faith to resolve issues that may arise.

8. *Large Orders.* We tentatively conclude that we should adopt a defined make-ready timeline for orders that exceed 3,000 poles or 5 percent of the utility's poles in a state in order to facilitate the processing of pole attachment applications that are submitted in large numbers. We seek comment on this tentative conclusion. Our current make-ready rule requires make-ready in the communications space to be completed within 30 days after the utility sends a notification to all existing attachers on a pole. (The rule provides 90 days from attachments above the communications space.) The 30-day timeframe applies for communications space make-ready requests up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state. This make-ready timeframe is extended 45 extra days for requests up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state. For requests exceeding 3,000 poles or 5 percent of the utility's poles in the state, the Commission's rules require that a utility shall negotiate the timing of the make-ready in good faith. (As we clarify in the Declaratory Ruling accompanying this FNPRM, the first 3,000 poles of these large orders are subject to the timeline set forth in § 1.1411(g)(3).) We tentatively conclude that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state and seek comment on this tentative conclusion.

9. NCTA asserts that our rules do not at present sufficiently address the needs of attachers with these larger requests in the latter category. For example, NCTA asserts that its members have faced situations where the utilities have imposed limits on (1) the number of poles that may be included in any one application, and (2) the number of applications an attacher may submit at a time. NCTA states that these limitations ''create problematic delays and jeopardize operators' ability to meet broadband build-out commitments.'' At the same time, USTelecom notes the difficulties presented by these very large orders, noting that ''make-ready requests involving more than 3,000 poles require flexibility that make-ready timelines cannot provide, given the many outside factors that impact the time required for make-ready for such large orders, including permitting delays, workforce shortages and staffing issues, and the coordination required among all the attachers to the poles.'' Given these factors, would 90 additional days over the timeline set forth in § 1.411(e) be sufficient for processing these larger orders? Would some other amount of time be reasonable in all circumstances, or should the Commission create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles? If the Commission were to adopt additional make-ready timeline tiers, what would be an appropriate cut off number of poles for each tier? For instance, should the Commission add an additional number of days for application processing per 3,000 poles? Does the ability to deviate from the timelines specified in § 1.1411 provide utilities with enough flexibility such that imposing a 90 additional day limit would be reasonable?

10. We also seek comment on NCTA's proposal that the Commission revise its rules to prohibit utilities from limiting ''the size of an application or the number of poles included in an application so as to avoid the timelines.'' How prevalent are situations of the type described by NCTA? Are the reasons underlying utilities' imposition of such limitations as laid out by USTelecom valid, and do other reasons exist for these limitations? Would prohibiting utilities from imposing such limitations in fact speed up the attachment process, or would the same delays still exist for other reasons (*e.g.,* lack of qualified workers, shortages in materials, etc.) or even, as USTelecom alleges, ''ultimately slow—rather than—accelerate deployment''? Specifically, NCTA proposes adding additional time to the existing timelines for these ''larger'' orders, for which our rules require that utilities negotiate the timing in good faith. Would NCTA's proposed new timing requirements for larger orders facilitate the pole attachment process for such orders? Utilities have raised multiple concerns with such requirements. For example, they assert that compliance with expanded timelines may not be possible ''if many permit applications by multiple attachers are submitted at approximately the same time, or if the contractor's workload is already heavy.'' They also assert that given constraints on workforce availability, utilities would be forced to ''choose between providing safe, reliable and affordable power to electric customers (which is mandated by the states), and performing requested pole replacements in an unreasonable and likely unattainable amount of time.'' Are these concerns valid? Are there any other reasons why NCTA's proposed new timing requirements for larger orders would not work? What are the respective costs and benefits of such potential requirements? What other steps could we take to facilitate the pole attachment process for larger orders?

11. *Self-Help and Use of Contractors.* Should the Commission consider modifying its self-help rules to enable prospective attachers to access poles more quickly? NCTA also asserts that it has faced issues with utilities failing to process attachment applications in a timely manner. NCTA therefore proposes that utilities notify attachers in advance of survey and make-ready deadlines if the utility will be unable to complete a portion of the process. For instance, NCTA proposes that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner. NCTA also proposes making self-help available for the estimate process, which is not contemplated under current Commission rules. We seek comment on NCTA's proposal. (We decline NCTA's request to adopt rules in the Fourth Report and Order regarding self-help and the use of contractors. We find that these issues would be better addressed after a more comprehensive record is developed.) How prevalent is the issue cited by NCTA? Can utilities feasibly be required to inform attachers within 15 business days of receiving a completed application that they will be unable to conduct a survey, estimate, or make-ready within the required time period? Do sufficient contractors exist that meet the minimum qualification

requirements set forth in our rules such that adoption of NCTA's proposal would have the desired effect of speeding broadband deployment? What are the respective costs and benefits of adopting NCTA's proposal? Are there other ways to assist utilities in processing the larger number of applications they will likely receive in the coming months and years based on the funding initiatives in place for accelerating broadband deployment to unserved and underserved areas?

12. We also seek comment on the impact of contractor availability when attachers seek to use their own contractors when conducting self-help or one-touch make-ready for surveys and make-ready work. Specifically, do we need to amend the Commission's rules to make it easier for attachers to use their own contractors to do self-help and one-touch make-ready surveys and make-ready work when there are no contractors available from a utility list? Utility commenters point out the labor constraints in the contractor workforce; given such constraints, do our current rules provide adequate relief to attachers to timely identify and use qualified contractors to do self-help and one-touch make-ready work? If not, what can the Commission do to change this dynamic?

13. Pursuant to our rules, an attacher can do its own work when (1) completing surveys and make-ready work when the utility misses the deadlines for these activities, or (2) electing to use the one-touch make-ready process. (Note that there are no attacher self-help remedies for pole replacements.) When conducting self-help or one-touch make-ready work, the attacher must use a utility-approved contractor. For self-help surveys and make-ready work that is complex or is above the communications space on a pole, our rules require that a utility make available and keep up to date a reasonably sufficient list of contractors that it authorizes to perform such work. (The term ''complex make-ready'' means transfers and work within the communications space on a pole that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.) Attachers can request to add contactors to the utility's list—provided the contractor meets the minimum qualifications in the Commission's rules—and the utility cannot unreasonably withhold its consent. Further, a utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. Again, attachers may request the addition to the list of any contractor that meets the minimum qualifications in the Commission's rules, and the utility cannot unreasonably withhold its consent. However, if the utility does not provide a list of approved contractors for surveys or simple make-ready work or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor who meets the Commission's minimum requirements. Utilities retain the right to disqualify such contractor, but disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the Commission's minimum qualifications or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of this objection to the attacher and must identify at least one available qualified contractor that the attacher can use instead to perform simple surveys and make-ready work.

14. Given that our current rules allow for attachers to choose their own contractors for one-touch make-ready and for self-help when the utility fails to meet the Commission's deadlines (provided such contractors meet the minimum qualifications set forth in our rules), we seek comment on whether attachers are availing themselves of this option. Have attachers faced any obstacles from utilities when seeking to invoke this option? While a utility cannot be blamed for a lack of available contractors in an area due to workforce constraints, are utilities seeking to use their discretion set forth in the rules to disqualify otherwise-qualified contractors whom attachers may seek to bring in from outside of an area? We note that, at least for surveys and simple make-ready work, our current rules already require the utility to designate an available contractor if it properly exercises its discretion to disqualify one chosen by an attacher—is this not being done? If not, is it due to labor constraints for which the utility should not be held responsible? In the instance where no qualified contractors are available for a project, how could the Commission help to solve that problem?

IV. Initial Regulatory Flexibility Analysis

15. 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 small entities by the policies and rules proposed in this *FNPRM.* The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *FNPRM.* The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

16. In order to continue the Commission's work combating illegal calls, this FNPRM proposes to impose several obligations on gateway providers. Specifically, the FNPRM proposes to require gateway providers to authenticate and employ robocall mitigation techniques on all SIP calls that they allow into the United States from abroad that display a U.S. number in the caller ID field. The FNPRM also proposes that gateway providers should engage in robocall mitigation by (1) responding to all traceback requests from the Commission, law enforcement, and the industry traceback consortium within 24 hours; (2) complying with mandatory call blocking requirements; (3) complying with enhanced know-your-customer obligations; (4) complying with a general duty to mitigate illegal robocalls; and (5) filing a certification in the Robocall Mitigation Database. The Commission also proposes one blocking requirement for intermediate and terminating providers immediately downstream from the gateway provider, which would require those providers to block all traffic from a gateway provider that fails to block or effectively mitigate illegal traffic when notified of such traffic by the Commission.

B. Legal Basis

17. The FNPRM proposes to find authority largely under those provisions through which it has previously adopted rules to stem the tide of robocalls in its *Call Blocking* and *Call*

Authentication Orders. Specifically, the FNPRM proposes to find authority under sections 201(a) and (b), 202(a), 251(e), the Truth in Caller ID Act, the TRACED Act and, where appropriate, ancillary authority. The FNPRM also proposes to conclude that, to the extent any of the rules we seek to adopt have an effect on foreign service providers, that effect is only indirect and therefore consistent with the Commission's authority. The FNPRM solicits comment on these proposals.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

18. 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. (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'') A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

19. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the 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.

20. 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. (The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.) 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. (The IRS Exempt Organization Business Master File (E.O. BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS E.O. BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1—Northeast Area (58,577), Region 2—Mid-Atlantic and Great Lakes Areas (175,272), and Region 3—Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.)

21. 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. (The Census of Governments survey is conducted every five (5) years compiling data for years ending with ''2'' and ''7''.) (Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts).) Of this number, there were 36,931 general purpose governments (county, (there were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments) municipal, and town or township (there were 18,729 municipal and 16,097 town and township governments with populations less than 50,000)) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts (there were 12,040 independent school districts with enrollment populations less than 50,000) with enrollment populations of less than 50,000. (While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.) Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' (This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls. 5, 6 & 10.)

1. Internet Access Service Providers

22. *Wired Broadband Internet Access Service Providers (Wired ISPs).* (Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.) Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more

precise estimate of the number of firms that meet the SBA size standard.)

23. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T–1/DS–1 and T3/DS–1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.) The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report,* we believe that the majority of wireline internet access service providers can be considered small entities.

24. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

25. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.)

26. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the

SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

29. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. (Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

30. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

31. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

32. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

33. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. (This includes, among others, the approximately 800 members of WISPA, including those entities who provide fixed wireless broadband service using unlicensed spectrum. We also consider the impact to these entities for the purposes of this FRFA, by including them under the ''Wireless Providers—Fixed and Mobile'' category.) Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

34. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.)

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

35. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

36. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands. (The ''Designated entities'' sections in subparts D–Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.)

37. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

38. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

39. According to Commission data as of November 2021, there were three active licenses in this service. (Based on an FCC Universal Licensing System search on November 8, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a ''small business'' is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

40. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

41. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

42. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for

2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

43. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. (Based on a FCC Universal Licensing System search on November 16, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

44. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

45. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities. (We note that there were also SMR providers reporting in the ''Cellular/PCS/SMR'' classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.)

46. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. (Based on a FCC Universal Licensing System search on December 15, 2021, search parameters: Service Group = All, ''Match radio services within this group'', Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

47. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

48. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. (Based on a FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding

three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

49. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

50. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. (We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.) Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

51. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. (Based on a FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

52. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.,* voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

53. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

54. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. (Based on a FCC Universal Licensing System search on December 20, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

55. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

56. *3650–3700 MHz Band.* Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700

MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

57. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. (Based on an FCC Universal Licensing System search on November 19, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

58. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. (Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.) They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

59. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

60. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

61. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). (The use of the term ''wireless cable'' does not imply that it constitutes cable television for statutory or regulatory purposes.) Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels. (Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.)

62. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

63. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses. (Based on an FCC Universal Licensing System search on December 10, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio

Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December 2021. (We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

64. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

65. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

66. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

5. Cable Service Providers

67. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

68. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. (The U.S. Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).) Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note

that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that a majority of firms in this industry are small.

69. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

70. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. (In the *2023 Subscriber Threshold Public Notice,* the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. This threshold will remain in effect until the Commission issues a superseding Public Notice.) Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules.) Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

71. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of ''establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

72. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

73. In the *FNPRM,* we seek comment on ways to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment. Some of these proposals may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. Specifically, we seek comment on a proposal that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. We also seek comment on whether NCTA's proposal to add additional time to the existing application timelines for larger orders and prohibit utilities from limiting the size of an application or the number of poles included in an application, to avoid these timelines, will facilitate the pole attachment process for such orders. Additionally, we seek comment on whether the Commission should create additional make-ready timeline tiers in its rules to differentiate between attachment applications that could range from requesting access to thousands of poles to tens or even hundreds of thousands of poles. We also consider whether to require that a utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period, making self-help available for the estimate process, which is not contemplated under current Commission rules. We also seek comment on whether attachers face any obstacles from utilities when seeking to invoke self-help options, which allows attachers to choose their own contractors for one-touch make-ready and for self-help when the utility fails to meet the Commission's deadlines. This information will help to inform whether potential rule changes are necessary. At this time, the Commission cannot quantify the cost of compliance for small entities with the approaches discussed in the *FNPRM,* or whether any compliance requirements will require small entities to hire professionals; however, the Commission requests information on the costs and benefits of the approaches discussed, such as the availability of qualified contractors and other workforce constraints that may impact the speed and cost of deployment for utilities and attachers.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

74. 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.''

75. The *FNPRM* seeks comment on whether the Commission should revise its rules to further facilitate the approval process for pole attachment applications and make-ready to enable quicker broadband deployment, including a tentative conclusion that utilities should have an additional 90 days for make-ready for requests exceeding 3,000 poles or 5 percent of the utility's poles in a state. The Commission's objective in requesting this information is to determine whether it can and should establish clear standards for when and how attachers and utilities must share the costs of a pole replacement precipitated by a new attachment request. Among the alternatives considered in the *FNPRM* is whether the Commission should allow additional time for the existing larger order timelines where our current rules require that utilities negotiate timing in good faith. We seek comment on whether requiring that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period would allow the attacher to elect self-help for the survey sooner. In the alternative, we inquire whether such expansion of time is reasonable for utilities if numerous permits are submitted around the same time or contractor workload is heavy. We also consider whether attachers are choosing to find their own contractors for one-touch make-ready and for self-help when utilities fail to meet the Commission's deadlines. Similarly, we request information on whether or not utilities designate an available contractor if it properly exercises its discretion to disqualify one chosen by an attacher. We also seek comment on how the Commission can help resolve situations where labor shortages may hinder utilities from meeting deadlines to respond to attachers. The Commission also seeks comment on and will consider the relative costs and benefits of any such revisions to its rules. Information submitted in response to these requests for comment will enable the Commission to evaluate the impact that revising its pole attachment rules would have on smaller entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

76. None.

V. Procedural Matters

77. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this FNPRM. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the FNPRM indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the SBA.

78. *Paperwork Reduction Act.* The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

79. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this FNPRM initiates 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 § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules 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.

VI. Ordering Clauses

80. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 202, 217, 227, 227b, 251(e), 303(r), 403, that this Third Further Notice of Proposed Rulemaking *is adopted*.

81. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference information Center, *shall send* a copy of this Third Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis (IRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

The Federal Communications Commission proposes to amend part 1 of Title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

■ 2. Amend § 1.1411 by revising paragraph (g)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(g) * * *

(4) A utility may add 90 days to the make-ready periods described in paragraph (e) of this section to all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

* * * * *

[FR Doc. 2023–28763 Filed 1–10–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 8
Thursday, January 11, 2024

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; USAID Workforce Commuter Survey

AGENCY: Agency for International Development (USAID).

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, USAID is proposing a new information collection.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Greg Shanahan, *mbureauclimatechangewg@usaid.gov,* 202–921–5107.

SUPPLEMENTARY INFORMATION: USAID, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps USAID assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand USAID's information collection requirements and provide USAID the data it requested in the format it prefers. USAID is soliciting comments on the proposed information collection request (ICR) that USAID describes below. USAID is especially interested in public comment addressing the following issues: (1) how USAID might enhance the quality, utility, and clarity of the information it is planning to collect; and (2) how USAID might minimize the burden for the members of USAID's workforce who respond to the commuter survey, including by using information technology. Written comments USAID receives in response to this notice will be public records.

Title of Collection: USAID Workforce Commuter Survey.

OMB Control Number: XXXX.

Type of Review: A new information collection.

Respondents/Affected Public: USAID's workforce, including contractor staff.

Total Estimated Number of Annual Responses: 6,500.

Total Estimated Number of Annual Burden Hours: 1,083.33 (6,500 * 10 mins = 65,000 mins ÷ 60 mins = 1,083.33 hours).

Abstract: USAID's workforce commuter survey enables USAID to estimate the greenhouse gas (GHG) emissions associated with its workforce's commuting and to gather data on its workforce's commuting habits. USAID will use these data to inform its GHG emissions inventory, measure progress against its GHG emissions reduction targets, and inform and improve its commuter benefits program and reporting.

Dated: January 8, 2024.

Ruth Buckley,

Deputy Assistant Administrator for Management, Bureau for Management, USAID.

[FR Doc. 2024–00475 Filed 1–10–24; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 12, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Improving Coordination Between SNAP and Medicaid in State Agencies.

OMB Control Number: 0584–NEW.

Summary of Collection: SNAP and Medicaid serve similar populations, which provides opportunities for State Agencies administering the programs to coordinate policies and processes to improve efficiency, customer service, and program access. This study will conduct case studies in up to five states to understand the challenges with improving program coordination and highlight the best practices that could be shared with other states.

Need and Use of the Information: FNS has identified five objectives for this study:

1. Identify and describe relevant federal statutory, regulatory, and operational barriers and facilitators that have considerable impact on coordination between SNAP and Medicaid agencies.

2. Identify and describe relevant State statutory, regulatory, and operational barriers and facilitators that have considerable impact on coordination between SNAP and Medicaid agencies.

3. Identify and describe systems used by States to determine eligibility and manage SNAP and Medicaid application and recertification information.

4. Identify and describe similarities and differences in State SNAP and Medicaid applications.

5. Using information collected from Objectives 1–4, develop a Best Practices Guide that explains how States can better improve coordination between SNAP and Medicaid.

Description of Respondents: State and Local Government, Businesses or other For- Profit and Not-for-Profit.

Number of Respondents: 180.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 184.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–00444 Filed 1–10–24; 8:45 am]

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COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss the post-report activities of the Committee's recent civil rights project on civil asset forfeiture in Georgia.

DATES: Tuesday, January 30, 2024, from 12 p.m.–1 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1607844568

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 784 4568#

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer (DFO), at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–434–515–0204.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Post-Report Activities
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: January 8, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–00424 Filed 1–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on Tuesday, January 30, 2024, 9:30 a.m., (Pacific standard time) at the SPIE Photonics West 2023, at the InterContinental Hotel San Francisco, 888 Howard Street, in the Fremont Room (Level 5), San Francisco, CA 94103. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Welcome and Introductions
2. Remarks from the Bureau of Industry and Security Management
3. Industry Presentations
4. New Business

To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than January 23, 2024.

A limited number of seats will be available during the public session of the meeting.

Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

For more information contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–00422 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, A–489–501, A–201–805, A–580–809, A–583–008, A–583–814, C–489–502, A–351–809]

Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and the Republic of Turkey; Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Continuation of Antidumping Duty Orders (India, Mexico, the Republic of Korea, Taiwan, Thailand, and the Republic of Turkey), Continuation of Countervailing Duty Order (the Republic of Turkey), and Revocation of Antidumping Duty Order (Brazil)

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on: certain welded carbon steel pipes and tubes (pipes and tubes) from India, Thailand, and the Republic of Turkey (Turkey); certain circular welded non-alloy steel pipe (non-alloy steel pipe) from Mexico, the Republic of Korea (Korea), and Taiwan; and certain circular welded carbon steel pipes and tubes (circular pipes and tubes) from Taiwan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders. Additionally, as a result of determinations by Commerce and the ITC that revocation of the countervailing duty (CVD) order on pipes and tubes from Turkey would likely lead to continuation or recurrence of countervailable subsidies and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this CVD order. Furthermore, as a result of the ITC's determination that revocation of the AD order on non-alloy steel pipe from Brazil is not likely to lead to continuation or recurrence of material injury to an industry in the United States, Commerce is revoking the AD order on pipes and tubes from Brazil.

DATES: AD Revocation (Brazil): Applicable February 7, 2023; AD and CVD Continuations (India, Mexico, Korea, Thailand, Taiwan, and Turkey): Applicable January 4, 2024.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, AD/CVD Operations, Office I, and Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3464 and (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, Commerce published the AD order on circular pipes and tubes from Taiwan.[1] Between March 7 and May 15, 1986, Commerce published the AD orders on pipes and tubes from India, Thailand, and Turkey and the CVD order on pipe and tubes from Turkey.[2] On November 2, 1992, Commerce published the AD orders on non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan.[3]

On January 3, 2023, Commerce initiated, and the ITC instituted the fifth sunset review of the AD orders on pipes and tubes from India, Thailand, and Turkey; non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan; circular pipes and tubes from Taiwan; and the CVD order on pipes and tubes from Turkey, pursuant to section 751© of the Tariff Act of 1930, as amended (the Act).[4]

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the AD orders on pipes and tubes from India, Thailand, and Turkey; non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan; and circular pipes and tubes from Taiwan would likely lead to the continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should these AD orders be revoked.[5] Additionally, Commerce determined pursuant to sections 751(c)(1) and 752(b) of the Act, that revocation of the CVD order on pipes and tubes from Turkey would likely lead to continuation or recurrence of countervailable subsidies and notified the ITC of the net countervailable subsidy rates likely to prevail should the order be revoked.[6]

On January 4, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD orders on pipes and tubes from India, Thailand, and Turkey; the CVD order on pipes and tubes from Turkey; the AD orders on non-alloy steel pipe from Mexico, Korea, and Taiwan; and the AD order on circular pipes and tubes from Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, but that revocation of the AD order on non-alloy steel pipe from Brazil would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[7]

Scope of the AD and CVD Orders

The products covered by the orders are pipes and tubes, non-alloy steel pipe, and circular pipes and tubes. For a complete description of the scope of the AD and CVD orders, *see* the appendix to this notice.

Continuation of the AD Orders and CVD Order on Pipes and Tubes From India, Thailand, and Turkey; Non-Alloy Steel Pipe From Mexico, Korea, and Taiwan; and Circular Pipes and Tubes From Taiwan

As a result of the determinations by Commerce and the ITC that revocation of the AD orders on pipes and tubes

[1] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984).

[2] *See Antidumping Duty Order: Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986); *Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986); *Antidumping Duty Order: Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986); and *Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986).

[3] *See Notice of Antidumping Duty Orders: Certain Circular Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, Taiwan, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

[4] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 63 (January 3, 2023); *see also Circular Welded Pipe and Tube from Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey; Institution of Five-Year Reviews,* 88 FR 107 (January 3, 2023).

[5] *See Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Republic of Turkey: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders,* 88 FR 29636 (May 8, 2023), and accompanying Issues and Decision Memorandum (IDM); and *Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Expedited Fifth Sunset Reviews of the Antidumping Duty Orders,* 88 FR 29880 (May 9, 2023).

[6] *See Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of the Expedited Sunset Review of the Countervailing Duty Order,* 88 FR 24757 (April 24, 2023), and accompanying IDM.

[7] *See Circular Welded Pipe and Tube From Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey; Determination,* 89 FR 478 (January 4, 2024); and *Circular Welded Pipe and Tube from Brazil, India, Mexico, South Korea, Taiwan, Thailand, and Turkey: Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 532–534, and 536* (Fifth Review), 89 FR 478 (January 4, 2024).

from India, Thailand, and Turkey; non-alloy steel pipe from Mexico, Korea, and Taiwan; circular pipes and tubes from Taiwan; and the CVD order on pipes and tubes from Turkey would likely lead to continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD orders on pipes and tubes from India, Thailand, and Turkey; non-alloy steel pipe from Mexico, Korea, and Taiwan; circular pipes and tubes from Taiwan; and the CVD order on pipes and tubes from Turkey. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD and CVD orders will be January 4, 2024. Commerce intends to initiate the next five-year reviews of the AD and CVD orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Revocation of the AD Order on Non-Alloy Steel Pipe From Brazil

As a result of the determination by the ITC that revocation of the AD order on non-alloy steel pipe from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, 19 CFR 351.222(i)(1)(iii), and 19 CFR 351.218(a), Commerce is revoking the AD order on non-alloy steel pipe from Brazil. Pursuant to section 751(d)(3) of the Act and 19 CFR 351.222 (i)(2)(i), the effective date of the revocation is February 7, 2023 (*i.e.,* the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of the AD order).[8]

Cash Deposits and Assessment of Duties on Non-Alloy Steel Pipe From Brazil

Commerce intends to notify CBP to terminate the suspension of liquidation and to discontinue the collection of AD cash deposits on entries of non-alloy steel pipe from Brazil, entered or withdrawn from warehouse, on or after February 7, 2023. Commerce intends to further instruct CBP to refund with interest all cash deposits on unliquidated entries made on or after February 7, 2023. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD deposit requirements and assessments.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceedings. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(c) and (d)(2) and 777(i)(1) of the Act, and 19 CFR 351.218(f)(4) and 19 CFR 351.222(i)(1)(iii).

Dated: January 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Antidumping Duty Orders and Countervailing Duty Order

Certain Welded Carbon Steel Pipes and Tubes From India (A–533–502)

The products covered by this order are certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule of the United States (HTSUS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Certain Welded Carbon Steel Pipes and Tubes From Thailand (A–549–502)

The products covered by this order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), the written description of the merchandise subject to the Thailand Order is dispositive.[9]

Certain Welded Carbon Steel Pipes and Tubes From Turkey (A–489–501)

The products covered by this order are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090.10. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A–120, A–53, or A–135.

Certain Welded Carbon Steel Pipes and Tubes From Turkey (C–489–502)

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United

[8] *See Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey; Certain Circular Welded Non Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order,* 83 FR 5402 (February 7, 2018).

[9] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021,* 87 FR 60656 (October 6, 2022).

States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Certain Circular Welded Non-Alloy Steel Pipe From Brazil (A–351–809)

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications.

Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Certain Circular Welded Non-Alloy Steel Pipe From Mexico (A–201–805)

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications.

Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Certain Circular Welded Non-Alloy Steel Pipe From Korea (A–580–809)

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications.

Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Certain Circular Welded Non-Alloy Steel Pipe From Taiwan (A–583–814)

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan (A–583–008)

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the

written description of the merchandise under investigation is dispositive.[10]

[FR Doc. 2024–00397 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–17A001]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review by Aerospace Industries Association of America, Inc. (AIA), Application No. 92–17A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, received an application for an amended Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to *ETCA@trade.gov.* An original and five (5) copies, plus two (2) copies of the nonconfidential version, should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 92–17A001.''

A summary of the application follows.

Summary of the Application

Applicant: AIA, 1000 Wilson Boulevard, Suite 1700, Arlington, VA 22209.

Contact: Matthew F. Hall, General Counsel, Dunaway & Cross, P.C.

Application No.: 92–17A001.

Date Deemed Submitted: December 26, 2023

Proposed Amendment: AIA seeks to amend its Certificate as follows:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- Albany Engineered Composites; Rochester, NH (controlling entity Albany International Corp.; Rochester, NH)
- ALTEN Technology USA, Inc.; Troy, MI (controlling entity The ALTEN Group; Boulogne-Billancourt, France)
- Archer Aviation Inc.; Palo Alto, CA
- ATLAS Space Operations, Inc.; Traverse City, MI
- Bain & Company, Inc.; Boston, MA
- BlackSky Technology Inc.; Herndon, VA
- Chicago Precision, Inc.; Elk Grove Village, IL
- Cre8tive Technology and Design, Inc.; San Diego, CA
- Deltek, Inc.; Herndon, VA
- Epirus, Inc.; Los Angeles, CA
- Estes Energetics; Penrose, CO
- ExoAnalytic Solutions Inc.; Foothill Ranch, CA
- GKN Aerospace North America; Westlake, TX (controlling entity GKN Aerospace Services Limited Solihull, UK)
- GXA Consulting LLC; Ely, IA
- Ivis Technologies, LLC; Phoenix, AZ
- Janes Capital Partners, Inc.; Irvine, CA
- LeoLabs, Inc.; Menlo Park, CA
- LOAR Group; White Plains, NY
- MapLarge, Inc.; Atlanta, GA
- Merlin Labs, Inc.; Boston, MA
- Overair, Inc.; Santa Ana, CA
- Primer AI; Arlington, VA
- RCM Technologies, Inc.; Pennsauken, N.J.
- Riveron Consulting, LLC; Dallas, TX
- Rocket Lab USA, Inc.; Long Beach, CA
- Shift5; Rosslyn, VA
- Slingshot Aerospace, Inc.; Austin, TX
- The Haskell Company; Jacksonville, FL
- TransDigm Group, Inc.; Cleveland, OH
- True Anomaly; Centennial, CO
- TTM Technologies Inc.; Santa Ana, CA
- United Launch Alliance; Centennial, CO
- Ursa Major Technologies, Inc.; Berthoud, CO
- Weldaloy Specialty Forgings; Warren, MI
- Westinghouse Electric Company LLC; Cranberry Township, PA

2. Remove the following companies as Members of AIA's Certificate:

- ADDMAN Tech Production Center
- Aernnova Aerospace
- Aerojet Rocketdyne
- AMETEK Pacific Design Technologies
- Apex International Management Company
- Astronics Corporation
- Avascent
- CAE USA
- ENSCO, Inc.
- Ferra Aerospace, Inc.
- IBM Corporation
- Metis Flight Research Associates
- Microsoft Azure
- MTI Motion
- Net-Inspect, LLC
- Plexus Corporation
- PTC Inc.
- SB Technology, Inc.
- Sunbelt Design and Development, Inc.
- SysArc Inc.
- Tip Technologies
- Virgin Orbit Holdings, Inc.

3. Change in names or addresses for the following Members:

- ATI Defense of Pittsburgh, PA is now ATI Inc. located in Dallas, TX.
- AUSCO, Inc. of Port Washington, NY is now located in Farmingdale, NY.
- Exosonic, Inc. of Los Angeles, CA is now located in Torrance, CA
- General Electric Aviation of Cincinnati, OH is now GE Aerospace at the same location.

[10] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Administrative Review, 2018–2019,* 86 FR 6302 (January 21, 2020).

- Parker Meggitt USA Inc. of Simi Valley, CA is now Parker Aerospace at the same location.
- Raytheon Technologies Corporation of Arlington, VA is now RTX Corporation at the same location.
- Securitas Critical Information Services, Inc. of Springfield, VA is now located in Herndon, VA.
- Sierra Space Corporation of Broomfield, CO is now Sierra Nevada Corporation located in Sparks, NV.
- Verify, Inc. of Irvine, CA is now located in Costa Mesa, CA.

AIA's proposed amendment of its Export Trade Certificate of Review would result in the following membership list:

- 3M Company; St. Paul, MN
- AAR Corp.; Wood Dale, IL
- Accenture; Chicago, IL
- Acorn Growth Companies, LLC; Oklahoma City, OK
- Acutec Precision Aerospace, Inc.; Meadville, PA
- ACUTRONIC USA, Inc.; Pittsburgh, PA
- ADI American Distributors LLC; Randolph, NJ
- Advanced Logistics for Aerospace (ALA); Bethpage, NY
- AeroMed Group; Charlotte, NC
- Aero-Mark, LLC; Ontario, CA
- AeroVironment, Inc.; Arlington, VA
- Aireon LLC; McLean, VA
- Albany Engineered Composites; Rochester, NH
- AlixPartners, LLP; New York, NY
- Allied Telesis, Inc.; Bothell, WA
- ALTEN Technology USA, Inc.; Troy, MI
- Alvarez & Marsal Holdings, LLC; New York, NY
- Amazon.com Inc.; Seattle, WA
- American Pacific Corporation; Cedar City, UT
- Ansys, Inc.; Canonsburg, PA
- Applied Composites; Lake Forest, CA
- Archer Aviation Inc.; Palo Alto, CA
- Astronautics Corporation of America; Oak Hill, WI
- Astroscale U.S. Inc.; Denver, CO
- AT Kearney Public Sector and Defense Services; Arlington, VA
- Athena Manufacturing, LP; Austin, TX
- ATI Inc.; Dallas, TX
- ATLAS Space Operations, Inc.; Traverse City, MI
- Aura Network Systems, Inc.; McLean, VA
- AUSCO, Inc.; Farmingdale, NY
- Aviation Management Associates, Inc.; Washington, DC
- BAE Systems, Inc.; Falls Church, VA
- Bain & Company, Inc.; Boston, MA
- Ball Aerospace & Technologies Corp.; Boulder, CO
- Belcan Corporation; Cincinnati, OH
- Beta Technologies; South Burlington, VT
- BlackSky Technology Inc.; Herndon, VA
- Boom Technology, Inc.; Denver, CO
- Booz Allen Hamilton; McClean, VA
- Boston Consulting Group; Boston, MA
- BRPH Architects Engineers, Inc.; Melbourne, FL
- Burns & McDonnell Engineering Corporation, Inc.; Kansas City, MO
- BWX Technologies, Inc.; Lynchburg, VA
- CADENAS PARTsolutions, LLC; Cincinnati, OH
- Cadence Design Systems, Inc.; San Jose, CA
- Capewell Aerial Systems; South Windsor, CT
- Capgemini; New York, NY
- Celestica Inc.; Toronto, Canada
- Chicago Precision, Inc.; Elk Grove Village, IL
- Click Bond, Inc.; Carson City, NV
- Cobham Advanced Electronic Solutions (CAES); Arlington, VA
- COMSPOC Corporation; Exton, PA
- CPI Aerostructures, Inc.; Edgewood, NY
- Crane Aerospace & Electronics; Lynnwood, WA
- Cre8tive Technology and Design, Inc.; San Diego, CA
- Deloitte Consulting LLP; New York, NY
- Deltek, Inc.; Herndon, VA
- Ducommun Incorporated; Santa Ana, CA
- DXC Technology Company, Ashburn, VA
- Eaton Corporation; Cleveland, OH
- Elbit Systems of America, LLC; Fort Worth, TX
- Electra.aero; Manassas, VA
- Embraer Aircraft Holding Inc.; Fort Lauderdale, FL
- Enjet Aero, LLC; Overland Park, KS
- Epirus, Inc.; Los Angeles, CA
- EPS Corporation; Tinton Falls, NJ
- Ernst & Young LLP; New York, NY
- Estes Energetics; Penrose, CO
- ExoAnalytic Solutions Inc.; Foothill Ranch, CA
- Exosonic, Inc.; Torrance, CA
- Exostar LLC; Herndon, VA
- FTG Circuits, Inc.; Chatsworth, CA
- GE Aerospace; Cincinnati, OH
- General Atomics Aeronautical Systems, Inc.; Poway, CA
- General Dynamics Corporation; Reston, VA
- GKN Aerospace North America; Westlake, TX
- Google, LLC; Mountain View, CA
- GSE Dynamics, Inc.; Hauppauge, NY
- GXA Consulting LLC; Ely, IA
- HCL America Inc.; Sunnyvale, CA
- HEICO Corporation; Hollywood, FL
- Hexcel Corporation; Stamford, CT
- Honeywell Aerospace; Phoenix, AZ
- Howmet Aerospace Inc.; Pittsburgh, PA
- Huntington Ingalls Industries, Inc.; Newport News, VA
- Infosys; Richardson, TX
- Interos, Inc.; Arlington, VA
- Iron Mountain, Inc.; Boston, MA
- Ivis Technologies, LLC; Phoenix, AZ
- Jabil Defense & Aerospace Services LLC; St. Petersburg, FL
- Janes Capital Partners, Inc.; Irvine, CA
- Joby Aviation, Inc.; Santa Cruz, CA
- Kaman Corporation; Bloomfield, CT
- KPMG LLP; New York, NY
- Kratos Defense & Security Solutions, Inc.; Round Rock, TX
- L3Harris Technologies, Inc.; Melbourne, FL
- Leidos, Inc; Reston, VA
- LeoLabs, Inc.; Menlo Park, CA
- LOAR Group; White Plains, NY
- LS Technologies, LLC; Fairfax, VA
- MapLarge, Inc.; Atlanta, GA
- Marotta Controls, Inc.; Montville, NJ
- Mercury Systems, Inc.; Andover, MA
- Merlin Labs, Inc.; Boston, MA
- Microchip Technology Incorporated; Chandler, AZ
- National Technical Systems, Inc.; Calabasas, CA
- New England Air Foil Products, Inc.; Farmington, CT
- Nimbis Services, Inc.; Oro Valley, AZ
- Nokia US; Murray Hill, NJ
- Norsk Titanium US Inc.; Plattsburgh, NY
- Northrop Grumman Corporation; Falls Church, VA
- Oliver Wyman Inc.; New York, NY
- O'Neil & Associates, Inc.; Miamisburg, OH
- Overair, Inc.; Santa Ana, CA
- Pacific Forge Incorporated; Fontana, CA
- Parker Aerospace; Simi Valley, CA
- PCX Aerosystems; Santa Ana, CA
- Perryman Company; Houston, PA
- PPG Aerospace-Sierracin Corporation; Sylmar, CA
- Primer AI; Arlington, VA
- PWC Aerospace & Defense Advisory Services; McLean, VA
- RCM Technologies, Inc.; Pennsauken, NJ
- RTX Corporation; Arlington, VA
- Reaction Engines, Inc.; Denver, CO
- Relativity Space, Inc.; Long Beach, CA
- Reliable Robotics Corporation; Mountain View, CA
- Rhinestahl Corporation; Mason, OH
- Riveron Consulting, LLC; Dallas, TX
- Rocket Lab USA, Inc.; Long Beach, CA
- Rolls-Royce North America Inc.; Reston, VA
- Salesforce, Inc.; San Francisco, CA
- SAP America, Inc.; Newtown Square, PA

- Securitas Critical Infrastructure Services, Inc.; Herndon, VA
- Shift5; Rosslyn, VA
- SI2 Technologies; North Billerica, MA
- Siemens Government Technologies, Inc.; Reston, VA
- Sierra Nevada Corporation; Sparks, NV
- SkyThread Corporation; Irvine, CA
- Slingshot Aerospace, Inc.; Austin, TX
- Solvay; Alpharetta, GA
- Spartronics LLC; Williamsport, PA
- Special Aerospace Services, LLC; Boulder, CO
- Spirit AeroSystems; Wichita, KS
- Spright; Gilbert, AZ
- Stratolaunch LLC; Mojave, CA
- Supernal LLC; Washington, DC
- SupplyOn North America, Inc.; Greer, SC
- Synergetic Technologies Group, Inc.; La Verne, CA
- Tata Consultancy Services; Edison, NJ
- Textron Inc.; Providence, RI
- The Aerospace Corporation, Civil Systems Group; El Segundo, CA
- The Boeing Company; Chicago, IL
- The Haskell Company; Jacksonville, FL
- The Lundquist Group LLC; New York, NY
- The Padina Group, Inc.; Lancaster, PA
- Therm, Incorporated; Ithaca, NY
- TransDigm Group, Inc.; Cleveland, OH
- Tribus Aerospace Corporation; Poway, CA
- TriMas Aerospace; Irvine, CA
- Triumph Group, Inc.; Berwyn, PA
- True Anomaly; Centennial, CO
- TTM Technologies Inc.; Santa Ana, CA
- Umbra Lab, Inc.; Santa Barbara, CA
- Unitech Composites Inc.; Hayden, ID
- United Launch Alliance; Centennial, CO
- Ursa Major Technologies, Inc.; Berthoud, CO
- Verify, Inc.; Costa Mesa, CA
- VIASAT, INC.; Carlsbad, CA
- Virgin Galactic, LLC; Las Cruces, NM
- Weldaloy Specialty Forgings; Warren, MI
- Westinghouse Electric Company LLC; Cranberry Township, PA
- Wisk Aero LLC; Mountain View, CA
- Woodward, Inc.; Fort Collins, CO
- World View Enterprises, Inc.; Tucson, AZ

Dated: January 5, 2024.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2024–00367 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Federal Republic of Germany: Notice of Court Decision Not in Harmony With the Amended Final Determination of Antidumping Investigation; Notice of Second Amended Final Determination

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

SUMMARY: On December 21, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *AG der Dillinger Hüttenwerke* v. *United States,* Court No. 17–00158, sustaining the U.S. Department of Commerce's (Commerce) fourth final results of redetermination pertaining to the antidumping duty (AD) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Federal Republic of Germany (Germany) covering the period April 1, 2015, through March 31, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's amended final determination and Commerce is amending the amended final determination with respect to the dumping margins assigned to AG Der Dillinger Hüttenwerke (Dillinger) and all other producers and exporters of subject merchandise.

DATES: Applicable December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2017, Commerce published its final determination in the AD investigation of CTL plate from Germany.[1] After correcting ministerial errors in the *Final Determination,* on May 25, 2017, Commerce published the *Amended Final Determination,* calculating estimated weighted-average dumping margins of: 5.52 percent for Dillinger; 22.90 percent for Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH (collectively, Salzgitter); and 21.04 percent for all other producers and exporters.[2] In this same notice, Commerce published its AD order on CTL plate from Germany.

Dillinger and Salzgitter appealed Commerce's *Amended Final Determination.* On July 16, 2019, the CIT remanded to Commerce to reconsider its application of partial adverse facts available (AFA) to certain downstream home market sales reported by Dillinger.[3] Pursuant to *Dillinger Germany I,* Commerce reconsidered how it applied partial AFA to these sales.[4]

On August 18, 2021, in *Dillinger Germany II,* the CIT remanded to Commerce to consider its reallocation of costs between prime and non-prime steel plate for Dillinger, among other Dillinger cost issues, as well as the application of a partial AFA methodology to certain downstream home market sales reported by Salzgitter.[5] In parallel with *Dillinger Germany II,* the CIT issued a separate memorandum and order sustaining Commerce's rejection of Dillinger's proposed quality code for sour service pressure vessel plate and staying Dillinger's challenge to Commerce's rejection of the proposed quality code for sour service petroleum transport plate pending the outcome of the cost issues on remand.[6]

On September 23, 2022, in *Dillinger Germany III,* the CIT remanded to Commerce to again reconsider its selection of the facts otherwise available for determining the cost of production of Dillinger's non-prime products.[7] On June 23, 2023, in *Dillinger Germany IV,* the CIT sustained Commerce's determination to assign the ''likely

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value,* 82 FR 16360 (April 4, 2017) (*Final Determination*).

[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017) (*Amended Final Determination*).

[3] *See AG der Dillinger Hüttenwerke* v. *United States,* 399 F. Supp. 3d 1247 (CIT 2019) (*Dillinger Germany I*).

[4] *See Final Results of Redetermination Pursuant to Court Remand, Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany,* Court No. 17–00158, Slip Op. 19–87 (CIT July 16, 2019), dated October 8, 2019, available at *https://access.trade.gov/resources/remands/index.html.*

[5] *See AG der Dillinger Hüttenwerke* v. *United States,* 534 F. Supp. 3d 1403 (CIT 2021) (*Dillinger Germany II*).

[6] *See Memorandum and Order,* ECF No. 121 (August 18, 2021).

[7] *See AG der Dillinger Hüttenwerke* v. *United States,* 592 F. Supp. 3d 1344 (CIT 2022) (*Dillinger Germany III*).

selling price'' recorded Dillinger's books and records as the cost of production for non-prime plate and the application of partial AFA to Salzgittter.[8] However, the CIT remanded Commerce's model-match methodology, related specifically to Commerce's rejection of Dillinger's proposed quality code for sour service petroleum transport plate, for further explanation or, if appropriate, reconsideration in light of Commerce's approach in *Bohler*.[9]

In its final results of redetermination, issued on September 6, 2023, Commerce reconsidered its rejection of Dillinger's proposed quality code for sour service petroleum transport plate and included this quality code in the control numbers used in Dillinger's margin calculations.[10] As a result of this change, Dillinger's final estimated weighted-average dumping margin became 4.99 percent. The CIT sustained Commerce's final results of redetermination.[11] While this revision to Dillinger's margin did not affect the calculation of the all-others rate, Commerce revised the all-others rate to be 20.99 percent in the *Second Remand Redetermination*.[12] The CIT sustained this aspect of Commerce's redetermination.[13]

Timken Notice

In its decision in *Timken,*[14] as clarified by *Diamond Sawblades,*[15] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 21, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Amended Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Amended Final Determination* with respect to Dillinger and all other producers and/or exporters as follows:

Producer/exporter	Weighted-average dumping margin (percent)
AG Der Dillinger Hüttenwerke	4.99
All Others	20.99

Cash Deposit Requirements

Because Dillinger has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate. For all other producers and exporters, Commerce will issue revised cash deposit instructions to CBP.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: January 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–00398 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See AG der Dillinger Hüttenwerke* v. *United States,* Court No. 17–00158, Slip Op. 23–94 (CIT 2023) (*Dillinger Germany IV*).

[9] *See Dillinger Germany IV,* Court No. 17–00158, Slip Op. 23–94 at 4 and 25; *see also Bohler Bleche GMBH & Co. KG* v. *United States,* 324 F. Supp. 3d 1344 (CIT 2018) (*Bohler*).

[10] *See Final Results of Redetermination Pursuant to Court Remand; Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany,* Court No. 17–00158, Slip Op. 23–94 (CIT June 23, 2023), dated September 6, 2023, available at *https://access.trade.gov/resources/remands/index.html.*

[11] *See AG Der Dillinger Hüttenwerke,* v. *United States,* Court No. 17–00158, Slip Op. 23–187 (CIT 2023).

[12] *See Final Results of Redetermination Pursuant to Court Remand; Certain Carbon and Alloy Steel Cut-to-Length Plate from Germany,* Court No. 17–00158, Slip. Op. 21–101 (CIT August 18, 2021), dated January 19, 2022 (*Second Remand Redetermination*), available at *https://access.trade.gov/resources/remands/index.html.* As a result of this redetermination, Commerce reinstated the dumping margin for Salzgitter of 22.90 percent calculated in the *Amended Final Determination.*

[13] *See Dillinger Germany III.*

[14] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[15] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802, A–533–840, A–570–893, A–549–822]

Certain Frozen Warmwater Shrimp From the People's Republic of China, India, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders; Correction

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

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of July 5, 2023, the U.S. Department of Commerce (Commerce) published a notice of continuation of the antidumping duty (AD) orders on certain frozen warmwater shrimp from the People's Republic of China (China), India, Thailand, and the Socialist Republic of Vietnam (Vietnam). This notice contained an incorrect scope of the orders.

FOR FURTHER INFORMATION CONTACT: Andrew Hart, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1058.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 5, 2023, in FR Doc 2023–14181, on page 42915 in the first and second columns, correct the scope of the orders to state: ''The scope of the orders includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm raised (produced by aquaculture), head on or head off, shell on or peeled, tail on or tail off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the orders. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the orders.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell on or peeled (HTSUS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; [2] (7) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the orders are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, 1605.29.10.10, 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042. These HTSUS subheadings are provided for convenience and for customs purposes only; the written description of the scope of the orders are dispositive.[3] ''

Background

On July 5, 2023, Commerce published in the **Federal Register** the continuation of the orders for certain frozen warmwater shrimp from China, India, Thailand, and Vietnam.[4] We inadvertently included the wrong scope of the orders.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(c), 751(d)(2), and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.218(f)(4).

Dated: January 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–00396 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–DS–P

[2] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope of the AD order on certain frozen warmwater shrimp from China.

[3] On April 26, 2011, Commerce amended the orders to include dusted shrimp, pursuant to the Court decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011); *see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam,* Inv. Nos. 731–TA1063, 1064, 1066–1068 (Review), USITC Pub. 4221 (March 2011).

[4] *See Certain Frozen Warmwater Shrimp from the People's Republic of China, India, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 88 FR 42914 (July 5, 2023).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD574]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Sitka Seaplane Base Construction

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewals.

SUMMARY: NMFS has received a request from the City and Borough of Sitka (CBS) for authorization to take marine mammals incidental to Sitka seaplane base construction activities over two years in Sitka, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two incidental harassment authorizations (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-time, 1-year renewals for each IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than February 12, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.harlacher@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 1, 2023, NMFS received a request from CBS for two IHAs to take marine mammals incidental to the Sitka seaplane base construction project in Sitka, Alaska, over the course of two years. Following NMFS' review of the application and a revised version, CBS submitted a final version on November 15, 2023. The application was deemed adequate and complete on December 1, 2023. For both IHAs, CBS's request is for take of seven species of marine mammals by Level B harassment and, for a subset of three of these species, Level A harassment. Neither CBS nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

CBS proposes to replace the existing seaplane base in the Sitka Channel in Sitka, Alaska. The purpose of this project is to construct a new seaplane base, which would address existing capacity, safety, and condition deficiencies for critical seaplane operations, and for all seaplanes to transit the Sitka Chanel more safely. The proposed location of the new seaplane base in the Sitka Channel is located on the northern shore of Japonski Island in the Sitka Sound. Over the course of 2 years spanning July 2024–June 2025 and July 2025–June 2026, CBS would use a variety of methods, including vibratory and impact pile driving, and down-the-hole (DTH) drilling to install and remove piles. These methods of pile driving would introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals.

Dates and Duration

CBS anticipates that the seaplane base construction project would occur over 2 years (phases). The in-water work window would last from July 2024 to June 2025 (Phase I) and July 2025 to June 2026 (Phase II). Pile driving and removal activities are anticipated to take 45 hours over 31 days in Phase I and 13 hours over 9 days in Phase II. All in-water pile driving would be completed during daylight hours. The Phase I IHA would be valid from July 1, 2024 to June 30, 2025, and the Phase II IHA would be valid from July 1, 2025 to June 30, 2026.

Specific Geographic Region

The CBS seaplane base is located on the northern shore of Japonski Island in the Sitka Channel. Sitka Channel separates Japonski Island from Sitka Harbor and downtown Sitka on the much larger Baranof Island. The Sitka Channel is located on the eastern shore of Sitka Sound, west of Crescent Bay and adjacent to Whiting Harbor. Sitka Channel is bookended by the Channel Rock Breakwaters to the north and James O'Connell Bridge to the south. Sitka Channel is approximately 150 feet (ft) (46 meters (m)) wide and about 22 ft (6.7 m) deep at its narrowest.

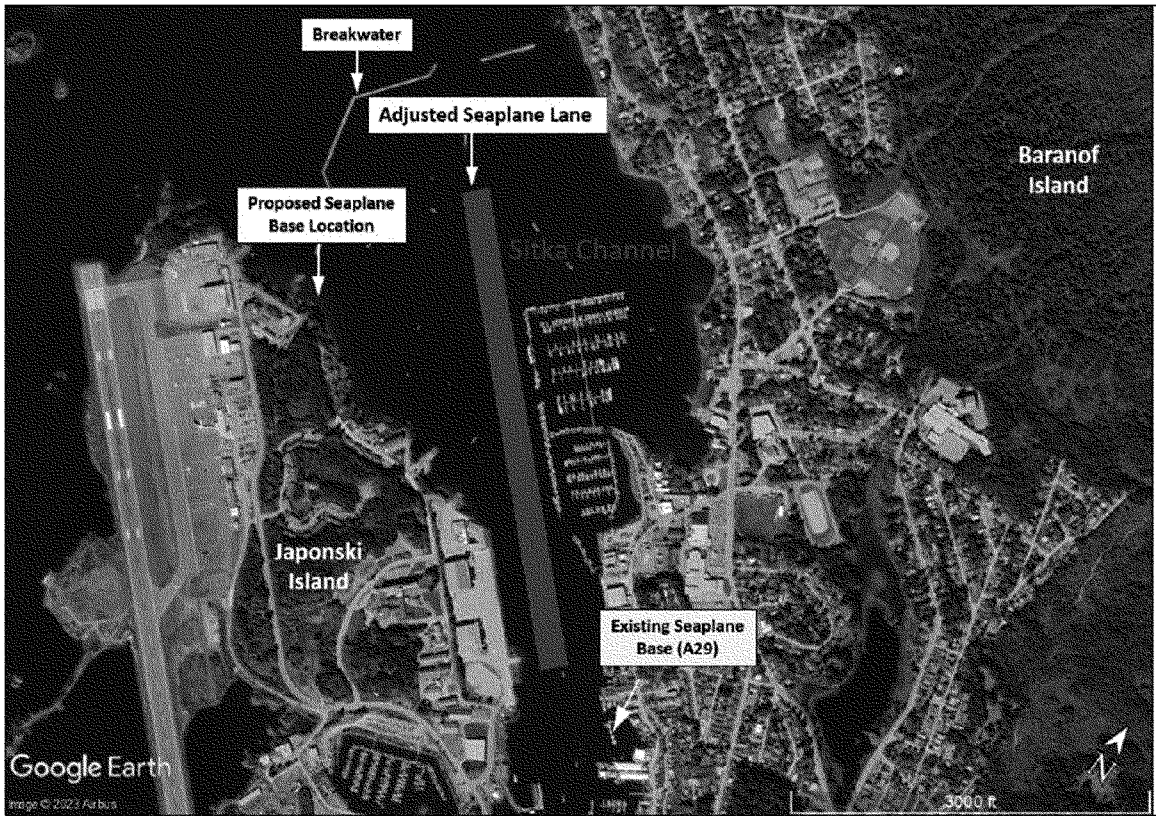

Figure 1—Project Location

Detailed Description of the Specified Activity

The purpose of the proposed project is to replace the existing seaplane base in Sitka that has come to the end of its useful life and has several shortcomings, including limited docking capacity. The existing facility is expensive to maintain, has wildlife conflicts with a nearby seafood processing plant, and requires pilots to navigate a busy channel with heavy ship traffic. The new seaplane base would improve safety of seaplane operations by reducing traffic and congestion in Sitka Channel. The proposed project would consist of several components including in-water and landside construction, completed over two phases. All components of landside construction would not cause harassment of marine mammals and are not discussed further.

Phase I would involve the installation and removal of temporary piles, and the installation of permanent piles. During Phase I, 10 16-inch (in, 0.4 m) and 16 24-in (0.6 m) permanent steel piles would be installed. The installation and removal of 12 temporary 16-in (0.4 m) steel pipe piles would be completed to support permanent pile installation. Vibratory hammers, impact hammers, and DTH drilling would be used for the installation and removal of the piles (table 1). The installation and removal of temporary piles would be conducted using impact and vibratory hammers. All permanent piles would be initially installed with a vibratory hammer. After vibratory driving, piles would be socketed into the bedrock with DTH drilling equipment. Finally, piles would be driven the final few inches of embedment with an impact hammer.

Phase II similarly would involve the installation and removal of temporary piles, and the installation of permanent piles. During Phase II six 24-in (0.6 m) steel piles would be installed. The installation and removal of six temporary 16-in (0.4 m) steel pipe piles would be completed to support the permanent pile installation. As in Phase I, vibratory hammers, impact hammers, and DTH drilling would be used for the installation and removal of the piles (table 2). The installation and removal of temporary piles would be conducted using impact and vibratory hammers. All permanent piles would be initially installed with a vibratory hammer. After vibratory driving, piles would be socketed into the bedrock with DTH drilling equipment. Finally, piles would be driven the final few inches of embedment with an impact hammer.

TABLE 1—PHASE 1 PROJECT PILE INSTALLATION AND REMOVAL SUMMARY

Project component	Temp install (16-in)	Temp remove (16-in)	Perm install (16-in)	Perm Install (24-in)
Total # of piles	12	12	10	16
Vibratory Pile Driving				
Max # of piles/day	6	6	6	6
Time/pile (minutes)	10	10	10	10
Time/day (min)	60	60	60	60

TABLE 1—PHASE 1 PROJECT PILE INSTALLATION AND REMOVAL SUMMARY—Continued

Project component	Temp install (16-in)	Temp remove (16-in)	Perm install (16-in)	Perm Install (24-in)
# of days	2	2	1.7	2.7
Total # of hours	2	2	1.7	2.7
DTH Drilling				
Max # of piles/day			2	2
strikes/pile			36,000	54,000
strikes/sec			10	10
time/pile			60	90
time/day (min)			120	180
# of days			5	8
Total # of hours			10	24
Impact Pile Driving				
Max # of piles/day	4		4	4
strikes/pile	175		175	175
time/pile (min)	5		5	5
time/day (min)	20		20	20
# of days	3		2.5	4
Total # of hours	1		0.8	1.3

TABLE 2—PHASE 2 PROJECT PILE INSTALLATION AND REMOVAL SUMMARY

Project component	Temp install (16-in)	Temp remove (16-in)	Perm install (24-in)
Total # of piles	6	6	6
Vibratory Pile Driving			
Max # of piles/day	6	6	6
Time/pile (minutes)	10	10	10
Time/day (min)	60	60	60
# of days	1	1	1
Total # of hours	1	1	1
DTH Drilling			
Max # of piles/day			2
strikes/pile			54,000
strikes/sec			10
time/pile			90
time/day (min)			180
# of days			3
Total # of hours			9
Impact Pile Driving			
Max # of piles/day	4		4
strikes/pile	175		175
time/pile (min)	5		5
time/day (min)	20		20
# of days	1.5		1.5
Total # of hours	0.5		0.5

Additionally, this project would include in-water work that is not expected to result in take of marine mammals. During Phase I and II, CBS proposed to discharge fill below the high tide line. The excavated materials from above the high tide line would be placed below the high tide line to develop the seaplane base uplands. The fill would be placed using an excavator and dozer and then compacted using a vibratory soil compactor. The total area of placement of fill below the high tide line in Phase I would be 1.6 acres (6,475 square meters (m^2)) and in Phase II would be 1.3 acres (5,261 m^2). While marine mammals may behaviorally respond in some small degree to the noise generated by the placement of fill operations, given the slow, predictable movements of the equipment, and absent any other contextual features that would cause enhanced concern, NMFS does not expect CBS's planned placement of fill to result in the take of marine mammals and it is not discussed further.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' 2022 U.S. Alaska SAR. All values presented in table 3 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae*	Hawai'i	-,-,N	11,278 (0.56, 7,265, 2020).	127	27
		Mexico-North Pacific	T,D,Y	N/A (N/A, N/A, 2006)	UND	0.6
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-,-,N	N/A (N/A, N/A, 2018)		0
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern North Pacific	-,-,N	26,960 (0.05, 25,849, 2016).	801	131
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orca orcinus*	Northern Resident	-,-,N	302 (N/A, 302, 2018)	2.2	0.2
		Alaska Resident	-,-,N	1,920 (N/A, 1,920, 2019)	19	1.3
		Gulf of Alaska/Aleutian Islands/ Bering Sea Transient.	-,-,N	587 (N/A, 587, 2012)	5.9	0.8
		West Coast Transient	-,-,N	349 (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern Southeast Alaska	-,-,N	1,619 (0.26, 1,250, 2019)	13	5.6
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western Stock	E,D,Y	52,932 (N/A, 52,932, 2019).	318	254
		Eastern Stock	-,-,N	43,201 (N/A, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor seal	*Phoca vituline richardii*	Sitka/Chatham	-,-,N	13,289 (N/A, 11,883, 2015).	356	77

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

As indicated above, all 7 species (with 12 managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed action area are included in table 8 of the IHA application. While northern fur seal, Pacific white-sided

dolphin, Dall's porpoise, North Pacific right whale, sperm whale, fin whale, and Cuvier's beaked whale have been documented in or near Sitka Sound and Sitka Channel, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species are all considered to be rare (no sightings in recent years) or very rare (no local knowledge of sightings within the project vicinity) within Sitka Sound or near the action area. The take of these species has not been requested nor is proposed to be authorized and these species are not considered further in this document. In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further localized data and detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) is provided below.

Additionally, the Northern Sea Otter may be found in Sitka Sound. However, the Northern Sea Otter are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Baranof Island from late March to May and then return south in October and November (Jones *et al.* 1984, Ford *et al.* 2013). The project area is inside Sitka Sound on the northern shore of Japonski Island, adjacent to Baranof Island.

During 190 hours of observation from 1994 to 2002 from Sitka's Whale Park, three gray whales were observed (Straley *et al.,* 2017). During recent marine mammal surveys conducted in the vicinity of the project action area, no gray whales were sighted, and these species are not known or expected to occur near or within Sitka Channel (Windward 2017; Turnagain 2017; Straley *et al.,* 2017; Turnagain 2018; SolsticeAK 2019; SolsticeAK 2020; Halibut Point Marine Services 2021; SolsticeAK 2022). However, Sitka Sound is within a gray whale migratory route Biologically Important Area (BIA) (March–May; November–January) and a feeding BIA (March–June) (Wild *et al.,* 2023).

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. This event has been declared an UME, though a cause has not yet been determined. More information is available at *https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events.*

Humpback Whale

Humpback whales are the most commonly observed baleen whale in Sitka Sound. They have been observed in Southeast Alaska in all months of the year (Baker *et al.* 1985, 1986), although they are most common in Sitka Sound's Eastern Channel in November, December, and January (Straley *et al.,* 2017). In late fall and winter, herring sometimes overwinter in deep fjords in Silver Bay and Eastern Channel, and humpback whales aggregate in these areas to feed on them. In the summer when prey is dispersed throughout Sitka Sound, humpback whales also disperse throughout the Sound (Straley *et al.,* 2017).

Humpback whales have been frequently observed during construction projects in Sitka Sound, including the Biorka Island Dock Replacement Project (Turnagain Marine Construction, 2018) and the Sitka GPIP Multipurpose Dock Project (Turnagain Marine Construction, 2017). During 190 hours of observation from 1994 to 2002 from Sitka's Whale Park, 440 humpback whales were observed (Straley *et al.,* 2017). During 21 days of monitoring during the construction of GPIP Dock between October 9 and November 9, 2017, 39 humpback whales were observed (Turnagain 2017). No humpback whales were observed within Sitka Channel during the eight days of monitoring in January 2017 during the construction of the Sitka Petro Dock (Windward 2017). Near Biorka Island, about 25 kilometers south of the project, humpback whales were sighted in June (22 whales), July (3 whales), and September (2 whales) 2018 (Turnagain 2018). No whales were sighted in August during the Biorka Island monitoring effort. Humpback whales were not observed during recent monitoring conducted for short periods over 8 days in September 2018 within a 400-meter radius surrounding the O'Connell Bridge Lightering Float (SolsticeAK 2019). During 39 days of monitoring in January through March 2020 for the Crescent Harbor Float Rebuild Project, no humpbacks were observed. Humpback whales were not observed in the project area during 5 days of monitoring in March 2022 during the geotechnical survey for this project (SolsticeAK 2022).

Given their widespread range and their opportunistic foraging strategies, humpback whales may be in Sitka Sound year-round but are more likely to occur in the summer months, although they are not as frequent in the action area.

According to Wade *et al.* (2016), humpback whales in Southeast Alaska are most likely to be from the Hawaii DPS (distinct population segment, 98 percent probability), with a 2 percent probability of being from the threatened Mexico DPS. Sitka Sound is within seasonal humpback whale feeding BIAs from March–May and September–December (Wild *et al.,* 2023).

Steller Sea Lion

Steller sea lions occur year-round in the project area. Most are expected to be from the Eastern DPS; however, it is likely that some Steller sea lions in the action area are from the endangered Western DPS (Jemison *et al.* 2013; NMFS 2013). Jemison *et al.* (2013) estimated an average annual breeding season movement of 917 Western DPS Steller sea lions to Southeast Alaska. Based on surveys and analysis conducted by Hastings *et al.* (2020), an estimated 2.2 percent of Steller sea lions in the vicinity of the project are Western DPS Steller sea lions.

Critical habitat has been defined in Southeast Alaska at major haulouts and major rookeries (50 CFR 226.202), but the project action area does not overlap with Steller sea lion critical habitat. The Biorka Island haulout is the closest designated critical habitat and is approximately 25 kilometers southwest of the project area.

Based on Straley *et al.* (2017) and other vessel-based surveys conducted from 1994 to 2016, Steller sea lion numbers are highest near the project area in January and February. January was the most abundant month with about 190 Steller sea lions spotted. February and November were next with about 170 and 120 Steller sea lions spotted, respectively. The fewest Steller sea lions were spotted in the month of May (1995–2002).

Individual sea lions were seen on 19 of 21 days in Silver Bay and Easter Channel during monitoring for GPIP dock construction between October and November 2017 (Turnagain 2017). Near Biorka Island, sea lions were seen infrequently; sea lions were sighted in June (six animals), July (two animals), and no sea lions were seen in August 2018 (Turnagain 2018). During 8 days of monitoring in January 2017 for the Petro Marine dock, about 1.6 kilometers (1 mile) southwest of the Sitka SPB, individual sea lions were seen on 3 days (Windward 2017). Steller sea lions were observed 5 of 8 days during monitoring

conducted for 15-minute periods in September 2018 for the O'Connell Bridge Lightering Float (SolsticeAK 2019). During in-water construction work for the O'Connell Bridge Lightering Float Pile Replacement Project between June 9 and June 12, 2019, 42 Steller sea lions were sighted (SolsticeAK 2019). During 39 days of marine mammal monitoring for the Crescent Harbor Float Replacement Project in January and February 2020, six sea lions were observed southwest of Sitka Channel (SolsticeAK 2020). Steller sea lions were most often observed alone or in small groups of 2 or 3 during these monitoring efforts; however, a group of more than 100 was sighted on at least 1 occasion (Straley *et al.* 2017; Windward 2017; SolsticeAK 2019; SolsticeAK 2020). During the original construction of the Halibut Point Marine Services dock facility, no Steller sea lions were recorded within the 200-meter shutdown zone during pile driving operations; however, observers indicated observing individual sea lions outside the 200-meter zone four to five times per week (McGraw, 2019).

During the summer months, sea lions are seen in the project area daily. Two to three individual sea lions feed on fish carcasses dumped adjacent to the project site from fishing charter operations in a nearby private marina. However, during the fall and winter, the charter fishing operations are not underway and the sea lions are not as active in the area (McGraw, pers. com., 2019).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a

given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and DTH drilling. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (American National Standards Institute (ANSI) 1986; National Institute for Occupational Safety and Health (NIOSH) 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project: impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by the DTH method contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and non-impulsive sound source types simultaneously.

The likely or possible impacts of CBS's proposed activity on marine mammals involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the CBS's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving or drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran

(2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), and California sea lions (*Zalophus californianus*). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018).

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort

and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (National Research Council (NRC), 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and haulout sites (outside of Sitka Channel). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

CBS's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. However, its proposed location is within the Sitka harbor and is located in an area that is currently used by numerous commercial fishing and personal vessels. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH drilling, impact, and vibratory pile driving, elevated levels of underwater noise would ensonify the project area where both fish and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6 m) radius around the pile (Everitt *et al.,* 1980). The sediments of the project site would settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals as the project would not expand outside of the Sitka Channel, and no increases in vessel traffic in the area are expected as a result of this project. The total seafloor area likely impacted by the project is relatively small compared to the available habitat in Southeast Alaska. Sitka Sound is included as a BIA for humpback whales and gray whales, however the action area is within the breakwaters where baleen whales are rare. Additionally, the area already has elevated noise levels because of busy vessel traffic transiting through the area, and critical habitat impacts would not be permanent nor would it result long-term effects to the local population. No known rookeries or major haulouts would be impacted. Additionally, the total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving at the project site would not obstruct movements or migration of marine mammals.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, *etc.*). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, any effects on forage fish are expected to be minor or negligible.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for harbor porpoise, harbor seals and Steller sea lions. Harbor porpoise have larger predicted auditory injury zones and due to their small size they could enter the Level A harassment zone and remain undetected for sufficient duration to incur auditory injury. While Steller sea lion do not have large Level A harassment zones, they are frequently sighted in the project area and therefor have some potential for auditory injury. Additionally harbor seals have larger Level A harassment zones and are common in the action area, and therefore have potential for auditory injury. Auditory injury is unlikely to occur for all other species, based on the unlikelihood of the species in the action area and the smaller Level A harassment zones. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

CBS's proposed activity includes the use of continuous (vibratory hammer and DTH drilling) and impulsive (DTH drilling and impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). CBS's proposed activity includes the use of impulsive (impact pile-driving and DTH drilling) and non-impulsive (vibratory hammer and DTH drilling) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1 µPa^{2}s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (table 6). This analysis uses practical spreading loss, a standard assumption regarding sound propagation for similar environments, to estimate transmission of sound through water. For this analysis, the transmission loss factor of 15 (4.5 dB per doubling of distance) is used. A weighting adjustment factor of 2.5 or 2, a standard default value for vibratory pile driving and removal or impact driving and DTH respectively, were used to calculate Level A harassment areas.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.,* 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021) (table 1 and 2 includes number of piles and duration for each phase; table 6 includes peak pressure, sound pressure, and sound exposure levels for each pile type).

TABLE 6—ESTIMATES UNDERWATER PROXY SOURCE LEVEL FOR PILE INSTALLATION AND REMOVAL

Method and pile type	Sound source at 10 meters			Source
Vibratory Hammer	dB rms			
16 in	161			NAVFAC 2015.
24 in	161			NAVFAC 2015.
DTH Drill	dB rms	dB SEL	dB peak	
16 in	167	146	172	Heyvaert and Reyff 2021, Guan and Miner 2020.
24 in	167	159	184	Heyvaert and Reyff 2021.
Impact Hammer	dB rms	dB SEL	dB peak	
16 in	185	175	200	Caltrans 2020.
24 in	190	177	203	Caltrans 2015.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10} (R_1/R_2)$,

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for CBS's proposed underwater activities. The Level B harassment zones and approximate amount of area ensonified for the proposed underwater activities are shown in table 7.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile installation or removal, the optional User Spreadsheet

tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in tables 1 and 2. The maximum RMS SPL, SEL, and resulting isopleths are reported in tables 6 and 7.

TABLE 7—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES

Activity	Level A isopleth (m)					Level B isopleth (m)
	LF	MF	HF	Phocids	Otariids	
Vibratory Pile Removal/Installation						
Phase I:						
16-in temp install	6.8	0.6	10.1	4.2	0.3	5,411.7
16-in temp removal	6.8	0.6	10.1	4.2	0.3	5,411.7
16-in perm install	6.8	0.6	10.1	4.2	0.3	5,411.7
24-in perm install	6.8	0.6	10.1	4.2	0.3	5,411.7
Phase II:						
16-in temp install	6.8	0.6	10.1	4.2	0.3	5,411.7
16-in temp removal	6.8	0.6	10.1	4.2	0.3	5,411.7
24-in perm install	6.8	0.6	10.1	4.2	0.3	5,411.7
DTH Pile Installation						
Phase I:						
16-in perm install	59	2.1	70.3	31.6	2.3	[1] 8,500
24-in perm install	568.9	20.2	677.6	304.4	22.2	[1] 8,500
Phase II:						
24-in perm install	568.9	20.2	677.6	304.4	22.2	[1] 8,500
Impact Pile Installation						
Phase I:						
16-in temp install	231	8.2	275	123	9	464.2
16-in perm install	231	8.2	275	123	9	464.2
24-in perm install	313	11.1	373	168	12.2	1,000
Phase II:						
16-in temp install	231	8.2	275	123	9	464.2
24-in perm install	313	11.1	373	168	12.2	1,000

[1] The calculated Level B harassment zone is 13,594 m. However, the farthest distance that sound will transmit from the source is 8,500 m before transmission is stopped by landmasses.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Daily occurrence probability of each marine mammal species in the action area is based on consultation with previous monitoring reports, local researchers and marine professionals. Occurrence probability estimates are based on conservative density approximations for each species and factor in historic data of occurrence, seasonality, and group size in Sitka Sound and Sitka Channel. A summary of proposed occurrence is shown in table 9. To accurately describe species occurrence near the action area, marine mammals were described as either common (species sighted consistently during all monitoring efforts in the project vicinity, assume one to two groups per day), frequent (species sighted with some consistency during most monitoring efforts in the project vicinity, assume one group per week), or infrequent (species sighted occasionally during a few monitoring efforts in the project vicinity, assume one group per 2 weeks).

TABLE 8—ESTIMATED OCCURRENCE OF GROUP SIGHTINGS OF MARINE MAMMAL SPECIES

Species	Frequency	Average group size	Expected occurrence
Humpback whale	Frequent	3.4	1 group/week.
Minke whale [1]	Infrequent	3.5	1 group/2 weeks.
Gray whale	Infrequent	3.5	1 group/2 weeks.
Killer whale	Frequent	6.6	1 group/week.
Harbor porpoise	Infrequent	5.0	1 group/2 weeks.
Harbor seal [2]	Common	2.1	1–2 groups/day.
Steller sea lion [2]	Common	2.0	1–2 groups/day.

[1] Minke whale considered rare in Sitka Channel, but to be conservative they are treated as infrequent for take estimation as there is a small likelihood they could be in the area during the activity.

[2] Likelihood of one group/day in the Level A harassment zone and likelihood of two groups/day in the level B harassment zone.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

For the total underwater take estimate, the daily occurrence probability for a species was multiplied by the estimated group size and by the number of days of each type of pile driving activity. Group size is based on the best available published research for these species and their presence in the action area.

Estimated take = Group size × Groups per day × Days of pile driving activity

Take by Level A harassment is requested for Steller sea lions and harbor seals. Although Steller sea lion Level A harassment zones are small, as previously discussed they are known to spend extended periods of time within the breakwaters in Sitka sound and in the project area. Harbor seals are also common in the project area and although their Level A harassment zones are farther from the project area, CBS has requested a maximum shutdown zone of 125 m for harbor seals and therefor there is likelihood for take by Level A harassment of harbor seals. Take by Level A harassment is also requested for harbor porpoise. We are proposing a maximum shutdown zone for high frequency species of 300 m and therefor there is likelihood for some take by Level A harassment. Even though they are not as common within the breakwaters, their Level A harassment zone extends beyond the breakwaters and they are elusive in nature. The take by Level A harassment for both pinniped species, are based on a lower daily occurrence rate based on the frequency of sightings within the smaller Level A harassment zone of the breakwaters (table 8).

Additionally, for species that are large and/or infrequent (gray whale, minke whale, humpback whale, and harbor porpoise) in Sitka Sound and are unlikely to be within the breakwaters where the proposed action will take place, take by Level B harassment is only anticipated to occur incidental to vibratory and DTH methods, given the larger Level B harassment zones which will extend beyond the breakwaters. Anticipated take by Level A harassment for harbor seal and harbor porpoise would likely occur only incidental to impact pile driving and DTH drilling, and anticipated take of Steller sea lion by Level A harassment would likely occur only incidental to DTH drilling, due to the larger Level A harassment zones for these activities. See table 7.

TABLE 9—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE TAKEN

Species	Stock	Phase 1			Phase 2		
		Level A	Level B	Percent of stock	Level A	Level B	Percent of stock
Humpback whale [1]	Hawai'i	0	11	0.1	0	*4	0
	Mexico-North Pacific [2]	0	0	0	0	0	0
Gray Whale	Eastern North Pacific	0	6	0	0	*4	0
Minke Whale	Alaska	0	6	NA	0	*4	NA
Killer whale	West Coast Transients	0	3	0.9	0	1	0.3
	Gulf, Aleutian, Bering Transient	0	6	0.9	0	2	0.3
	Northern Resident	0	3	0.9	0	1	0.3
	Alaska Resident	0	18	0.9	0	6	0.3
Harbor porpoise	Northern Southeast Alaska	*5	8	0.9	*5	*5	0.7
Harbor seal	Sitka/Chatham Alaska	48	130	1.3	13	38	0.4
Steller sea lion	Eastern US	16	121	0.3	6	35	0.1
	Western US	0	3	0	0	2*	0

[1] Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in project area. Humpback whale probability by stock based on Southeast Alaska estimates from NMFS 2021 (98 percent Hawaii DPS; 2 percent Mexico DPS).

[2] ESA listed Mexico humpback whales take calculation resulted in less than 0.5 takes, therefore no takes are anticipate or are proposed for authorization.

* Where proposed calculated take was less than the average group size, the take was rounded up to a group size as that is likely what would be encountered.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation Measures

For each IHA, CBS must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant CBS staff are trained prior to the start of all pile driving and DTH drilling activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ Protected Species Observers (PSOs) and establish

monitoring locations as described in the application and the IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

- The placement of the PSOs during all pile driving and removal and DTH drilling activities will ensure that the entire shutdown zone is visible during pile installation;
- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH drilling activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH drilling activity;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 10 are clear of marine mammals. Pile driving and DTH drilling may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;
- CBS must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and
- If a marine mammal is observed entering or within the shutdown zones indicated in table 10, pile driving and DTH drilling must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (table 11) or 15 minutes have passed without re-detection of the animal.

As proposed by the applicant, in water activities will take place only between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort sea state of 4 or less. Pile driving and DTH drilling may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

Shutdown Zones

CBS will establish shutdown zones for all pile driving and DTH drilling activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable, as shown in table 10.

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work will stop and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10 m shutdown zone serves to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 10 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, construction activities including in-water work will continue and the animal's presence within the estimated harassment zone will be documented.

CBS would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS will be notified about species and precautions taken. Pile driving will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by CBS or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 10—PROPOSED SHUTDOWN AND MONITORING ZONES

Activity	Level A isopleth (m)					Level B isopleth (m)
	LF	MF	HF [2]	Phocids [1]	Otariids	
Vibratory Pile Removal/Installation						
Phase I:						
16-in temp install	10	10	20	10	10	5,415
16-in temp removal	10	10	20	10	10	5,415
16-in perm install	10	10	20	10	10	5,415
24-in perm install	10	10	20	10	10	5,415
Phase II:						
16-in temp install	10	10	20	10	10	5,415
16-in temp removal	10	10	20	10	10	5,415
24-in perm install	10	10	20	10	10	5,415
DTH Pile Installation						
Phase I:						
16-in perm install	60	10	75	35	10	8,500

TABLE 10—PROPOSED SHUTDOWN AND MONITORING ZONES—Continued

Activity	Level A isopleth (m)					Level B isopleth (m)
	LF	MF	HF [2]	Phocids [1]	Otariids	
24-in perm install	570	30	300	125	30	8,500
Phase II:						
24-in perm install	570	30	300	125	30	8,500
Impact Pile Installation						
Phase I:						
16-in temp install	235	10	275	125	10	465
16-in perm install	235	10	275	125	10	465
24-in perm install	315	20	300	125	20	1,000
Phase II:						
16-in temp install	235	10	275	125	10	465
24-in perm install	315	20	300	125	20	1,000

[1] Maximum shutdown for phocids is reduced to 125 m as they are a common species within the breakwaters of Sitka Sound.
[2] Maximum shutdown for high frequency species is reduced to 300 m, given the difficulty observing harbor porpoise at greater distances.

Protected Species Observers

The placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and the remaining Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving or DTH drilling of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in table 10, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHA.

Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' following requirements:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

- CBS must employ up to five PSOs depending on the size of the monitoring and shutdown zones. A minimum of two PSOs (including the lead PSO) must be assigned to the active pile driving location to monitor the shutdown zones and as much of the Level B harassment zones as possible.
- CBS must establish monitoring locations with the best views of monitoring zones as described in the IHA and Monitoring Plan posted on our website.
- Up to four monitors will be used at a time depending on the size of the monitoring area. PSOs would be deployed in strategic locations around the area of potential effects at all times during in-water pile driving and removal. PSOs will be positioned at locations that provide full views of the monitoring zones and the Level A harassment Shutdown Zones. All PSOs would have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cell phones for maintaining contact with work crews.
- Up to four PSOs will be stationed at the following locations: the project site, Sandy Beach Day use site, O'Connell lightering float, and Whale Park.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

CBS shall conduct briefings between construction supervisors and crews, PSOs, CBS staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities for each IHA, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory, or DTH drilling) and the total equipment duration for vibratory removal for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
- Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting);
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones and shutdown zones; by species; and
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports will constitute the final reports. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the

incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, CBS must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all species listed in table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. In addition, because both the number and nature of the estimated takes anticipated to occur are identical in Phase I and II, the analysis below applies to both of the IHAs.

Pile driving and DTH drilling activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving and DTH drilling. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for killer whales, humpback whales, gray whales, or minke whales due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for the species, the rarity of the species near the action area, and the small Level A harassment zones (for killer whales only). The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for three species (harbor porpoise, Steller sea lion, and harbor seal) as the Level A harassment isopleths exceed the size of the shutdown zones for specific construction scenarios, the Level A harassment zones are large, and/or the species is frequent near the action area. Therefore, there is the possibility that an animal could enter a Level A harassment zone and remain within that zone for a duration long enough to incur PTS. Level A harassment of these species is therefore proposed for authorization. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment is very low for the marine mammal stocks and species. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

The Level A harassment zones identified in table 7 are based upon an animal exposed to pile driving or DTH drilling of several piles per day (six piles per day for vibratory removal and installation, four piles per day of impact driving, and two piles per day of DTH drilling). Given the short duration to impact drive or vibratory install or remove, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement patterns in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone

adversely affect rates of recruitment or survival of the species or stock.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. The intensity and duration of take by Level A and Level B harassment would be minimized through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removals, and DTH drilling in Sitka Channel and the surrounding Sitka Sound are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH drilling are temporary activities and effects would cease when equipment is not operating, any harassment occurring would be temporary. Additionally, many of the species present in the region would only be present temporarily based on seasonal patterns or during transit between other habitats. These species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

Nearly all inland waters of southeast Alaska, including Sitka Sound, are included in the southeast Alaska humpback whale feeding BIA (Wild *et al.,* 2023), though humpback whale distribution in southeast Alaska varies by season and waterway (Dahlheim *et al.,* 2009). Humpback whales could be present within Sitka Sound year round, however the action area is within the breakwaters where humpback whales are not commonly found and therefore, the BIA is not expected to be affected. Therefore, the proposed project is not expected to have significant adverse effects on the foraging of humpback whales.

Sitka Sound is also within a gray whale migratory corridor BIA (Wild *et al.,* 2023). Construction is expected to occur while the BIA is active during the southbound migration (November to January) and northbound migration (March–May). The Sound is also a Gray whale feeding BIA. Construction is expected to overlap with the feeding BIA (March–June). However, as noted for humpback whales, project activities will only overlap seasonally in the gray whale migratory and feeding BIAs, and the overall 2 year project (Phase I and Phase II) is expected to occur over just 40 in-water workdays, further reducing the temporal overlap with the BIAs. Additionally, the area of the feeding BIA in which impacts of the planned project may occur is small relative to both the overall area of the BIA and the overall area of suitable gray whale habitat outside of this BIA. The area of Sitka Sound affected by this project is also small relative to the rest of the Sound, such that it allows animals within the migratory corridor to still utilize Sitka Sound without necessarily being disturbed by the construction. Specifically, all Level A harassment isopleths for gray whale are within the breakwaters where gray whales are not expected. Therefore, take of gray whales using the feeding and migratory BIAs is not expected to impact feeding or migratory behavior and, therefore, would not impact reproduction or survivorship.

As noted previously, since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. The event has been declared an UME, though a cause has not yet been determined. While 6 takes by Level B harassment in phase I and 4 takes by Level B harassment in phase II of gray whale are proposed to be authorized for each year this is an extremely small portion of the stock (<1 percent), and CBS will be required to implement a shutdown zone that includes the entire Level A harassment zone for low-frequency cetaceans such as gray whales.

The same regions are also a part of the Western DPS Steller sea lion ESA critical habitat. While Steller sea lions are common in the project area, there are no essential physical and biological habitat features, such as haulouts or rookeries, within the proposed project area. The nearest haulout is approximately 25 km away from the proposed project area. Therefore, the proposed project is not expected to have significant adverse effects on the critical habitat of Western DPS Steller sea lions. No areas of specific biological importance (*e.g.,* ESA critical habitat, other BIAs, or other areas) for any other species are known to co-occur with the project area.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Level A harassment would be very small amounts and of low degree;
- Level A harassment takes of only harbor porpoise, Steller sea lions and harbor seals;
- For all species, the Sitka Sound and channel are a very small and peripheral part of their range;
- Anticipated takes by Level B harassment are relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- CBS would implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take, specific to each of the 2 consecutive

years of proposed activity, would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize, for each of the 2 consecutive years of proposed activity, is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than 2 percent of the abundance of the affected stocks, see table 9). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

There is no current or historical estimate of the Alaska minke whale stock, but there are known to be over 1,000 minke whales in the Gulf of Alaska (Muto *et al.* 2018), so the 10 takes by Level B harassment proposed over the 2 years of the project duration is small relative to estimated survey abundance, even if each take occurred to a new individual. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and CBS's project would only impact a small portion of this range.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that, specific to each of the two consecutive years of proposed activity, small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Sitka Channel and other nearby areas are within the traditional territory of the Sheet'ká Kwáan. Alaska natives have traditionally harvested marine mammals in Sitka, however today a majority of the subsistence harvest is of species other than marine mammals. Alaska Department Fish and Game reported that in 2013, around 11 percent of Sitka households used subsistence-caught marine mammals (ADF&G, 2023), however this is the most recent data available and there has not been a survey since.

The proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or impact subsistence harvest of marine mammals in the region because:

- There is no recent recorded subsistence harvest of marine mammals in the area;
- Construction activities are temporary and localized primarily within Sitka Channel;
- Construction will not take place during the herring spawning season when subsistence species are more active;
- Mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,
- The project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures; NMFS has preliminarily determined that, specific to each of the two consecutive years of proposed activity, there will not be an unmitigable adverse impact on subsistence uses from CBS's proposed activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS Alaska Regional Office (AKR).

NMFS OPR has requested initiation of section 7 consultation with the NMFS AKR for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two sequential IHAs, each lasting 1 year, to CBS for conducting Seaplane Base construction in Sitka, Alaska, starting in July 2024 for Phase I and July 2025 for Phase II, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHAs for the proposed construction project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for these IHAs or subsequent renewal IHAs.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities

as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 5, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD640]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Chevron U.S.A. Inc. (Chevron) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from January 5, 2024 through February 19, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

This LOA covers work that was not completed under Chevron's 2023 LOA that expired on January 2, 2024 (88 FR 40209, June 21, 2023). Chevron requested an additional LOA covering 26 days of work. There are no other changes from the previously analyzed and issued LOA (88 FR 40209, June 21, 2023) other than a reduction in the

amount of surveys, reflecting the remaining portion of the original survey plan.

Chevron plans to conduct a three-dimensional (3D) ocean bottom node (OBN) survey over Walker Ridge Lease Blocks 758, 759, and 802, and the surrounding lease blocks, with approximate water depths ranging from approximately 2,000 to 2,400 meters (m). Chevron anticipates using a single dual source vessel, towing airgun array sources consisting of 42 elements, with a total volume of 5,380 cubic inches (in^3). Please see Chevron's previous LOA application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Chevron in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern. The planned 3D OBN survey will involve a single source vessel sailing along closely spaced survey lines that are approximately 100–150 m apart and approximately 40 kilometers (km) in length. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Chevron is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 10 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Chevron in terms of predicted Level B harassment exposures.

All available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in the airgun array (43 elements, 5,380 in^3), as compared to the source modeled for the rule.

The survey will take place over approximately 26 days. The entire survey would occur within Zone 7. Chevron plans to conduct all 26 survey days in the ''Winter'' season.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5442, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public. For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for one marine mammal species produces results inconsistent with what is known regarding its occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for the species as described below.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach results in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [3]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5334 (January 19,

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

2021), and similarly informs our analysis here.

The rarity of encounters during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water (>700 m). This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species, such as killer whales in the GOM, through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021 and 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to seven animals).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See table 1 in this notice and table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	n/a	51	n/a
Sperm whale	138	58.2	2,207	2.6
Kogia spp	[4] 77	22.8	4,373	0.7
Beaked whales	1,216	122.8	3,768	3.3
Rough-toothed dolphin	226	64.9	4,853	1.3
Bottlenose dolphin	[5] 21	6.0	176,108	0.0
Clymene dolphin	596	171.2	11,895	1.4
Atlantic spotted dolphin	0	n/a	74,785	n/a
Pantropical spotted dolphin	5,921	1,699.5	102,361	1.7
Spinner dolphin	139	39.9	25,114	0.2
Striped dolphin	310	88.9	5,229	1.7
Fraser's dolphin	97	28.0	1,665	1.7
Risso's dolphin	96	28.4	3,764	0.8
Melon-headed whale	384	113.4	7,003	1.6
Pygmy killer whale	187	55.2	2,126	2.6

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
False killer whale	212	62.4	3,204	1.9
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	30	9.0	1,981	0.5

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] Includes 6 takes by Level A harassment and 71 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

[5] Modeled take of 6 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Chevron's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Chevron authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: January 5, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00368 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD589]

Marine Mammals; File No. 27099

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Pacific Whale Foundation (Responsible Party: Jens Curie), 300 Ma'alaea Rd. Ste. 211, Wailuku, Hawaii 96793, has applied for an amendment to Scientific Research Permit No. 27099.

DATES: Written comments must be received on or before February 12, 2024.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27099 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27099 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 27099 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 27099, issued on April 28, 2023 (88 FR 31737, May 18, 2023), authorizes the permit holder to harass up to 1200 of the following cetaceans species, annually, during vessel, underwater, and unoccupied aerial systems (UAS) surveys within waters of the Main Hawaiian Islands: Blainville's beaked (*Mesoplodon densirostris*), Bryde's (*Balaenoptera brydei*), Cuvier's beaked (*Ziphius cavirostris*), dwarf sperm (*Kogia sima*), false killer (*Pseudorca crassidens;* including the endangered Main Hawaiian Islands insular Distinct Population Segment), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), killer (*Orcinus orca*), melon-headed (*Peponocephala electra*), minke (*Balaenoptera acutorostrata*), pygmy killer (*Feresa attenuata*), pygmy sperm (*Kogia breviceps*), short-finned pilot (*Globicephala macrorhynchus*), and sperm (*Physeter macrocephalus*) whales; and common bottlenose (*Tursiops truncatus*), Fraser's (*Lagenodelphis hosei*), pantropical spotted (*Stenella attenuata*), Risso's (*Grampus griseus*), rough-toothed (*Steno bredanensis*), short-beaked common (*Delphinus delphis*), spinner (*Stenella longistrostris longirostris*), and striped (*Stenella coeruleoalba*) dolphins. The objective of research is to assess the human impacts on, and the distribution, abundance, social organization, population structure, population size, foraging, diet, reproduction, movements, habitat use, body condition, health, and behavior of Hawaiian cetaceans. Permitted research procedures include photo-ID, photogrammetry, underwater filming, suction-cup tagging, biopsy collection, fecal sampling, sloughed skin collection, and exhaled air sample collection. Up to 10 suction-cup tags and up to 40 biopsy samples may be taken from the above-listed species. The permit holder is requesting the permit be amended to include authorization to import up to 40 humpback whale (East Australia Distinct Population Segment) biopsy samples from Australia. The imported samples will be used to

address a new study objective to understand the factors influencing humpback whale migration along the east coast of Australia within the context of a rapidly changing environment. Specifically, the study aims to analyze the size, age, and body condition of the sub-population of whales undertaking migration in a given year to provide insights into the overall health and status of the regional humpback whale population. The permit is valid through April 30, 2028. All other terms and conditions of the permit would remain the same.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 8, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00450 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD644]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day hybrid meeting with both in-person and remote participation to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, January 30, January 31, and February 1, 2024, beginning at 9 a.m. each day.

ADDRESSES: The meeting will take place at The Venue at Portwalk Place, 22 Portwalk Place, Portsmouth, NH 03801; telephone (603) 422–6114; online at *https://www.thevenueatportwalkplace.com.* Join the webinar at *https://attendee.gotowebinar.com/register/4656306835494284629.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 30, 2024

The Council will begin this meeting in Closed Session to discuss appointments to its Scientific and Statistical Committee. At 9:30 a.m., the open session will begin with brief announcements, followed by reports on recent activities from the Council's Chair and Executive Director, the GARFO Regional Administrator, the NOAA Office of General Counsel, the Northeast Fisheries Science Center (NEFSC) Director, the Mid-Atlantic Fishery Management Council liaison, and representatives from the Atlantic States Marine Fisheries Commission (ASMFC), the U.S. Coast Guard, NOAA's Office of Law Enforcement, the U.S. Fish and Wildlife Service, and the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Council then will receive a progress report from its Risk Policy Working Group that will focus on addressing Terms of Reference 1 and 2 to revise the Council's Risk Policy. Next, the Council will receive an update from GARFO and the NOAA National Centers for Coastal Ocean Science on revised siting for the Blue Water Fisheries offshore aquaculture project in federal waters off the coast of New Hampshire.

After the lunch break, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received both in person and through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf.* The Council then will hear from its Herring Committee, which will provide an update on Amendment 10 to the Atlantic Herring Fishery Management Plan. This is an action to minimize user conflicts in the herring fishery. The Council will review a draft scoping document and scoping meeting schedule to gather public input on the range of issues that potentially could be addressed in this amendment. To close out the day, the Council will receive a congressional update on current legislative activities. Following the adjournment of official business, the Council will host a public outreach session to foster open lines of communication among Council members, staff, industry, and all meeting attendees. This event will be held at the AC Hotel on the Lobby Level, 299 Vaughn Street, which is a four-minute walk from the Council meeting room at The Venue at Portwalk Place in Portsmouth, NH.

Wednesday, January 31, 2024

The Council will begin the second day of its meeting with a presentation on the three-year review of the Northeast Region's Standardized Bycatch Reporting Methodology. Next, the Council will receive a report on activities within the Northeast Fisheries Science Center's Fishery Monitoring and Research Division, including: (1) the status of ongoing responsibilities; (2) at-sea monitoring and observer program activities; and (3) cooperative research updates. This report will be followed by an overview of a Northeast Fisheries Science Center white paper outlining potential plans for industry-based surveys to complement federal spring and fall bottom trawl surveys on the NOAA ship *Henry B. Bigelow.* The Council will have an opportunity to provide input on research priorities for consideration in future industry-based survey as they relate to its own research priorities.

Following the lunch break, the Council will receive a NOAA Fisheries presentation on the Marine Recreational Information Program (MRIP), which will include an update on the status of MRIP's Fishing Effort Survey (FES). This will be followed by the Groundfish Committee report, which will cover four items as follows. (1) Recreational Measures: the Council will provide recommendations to GARFO on fishing year 2024 recreational measures for Georges Bank cod, Gulf of Maine cod, and Gulf of Maine haddock. (2) The Atlantic Cod Management Transition Plan: the Council will receive an update on transition planning. (3) Metrics for the Groundfish Amendment 23 Monitoring System Review: the Council will receive a progress report on this action. And (4) 2024 Groundfish Priorities: the Council will receive a preliminary overview of the groundfish

workplan for year ahead. As the final item of business for the day, the Council will revisit fishing year 2024–2026 specifications approved in December 2023 for the small-mesh multispecies (whiting) fishery to address southern red hake rebuilding.

Thursday, February 1, 2024

The Council will lead off the third day of its meeting with a Spiny Dogfish Committee report, where it will review, discuss, and approve fishing year 2024–2026 spiny dogfish specifications. Next, the Council will receive a progress report on Monkfish Framework 15, which is part of a joint New England/Mid-Atlantic Council action to reduce monkfish/dogfish large-mesh gillnet fishery interactions with Atlantic sturgeon. Then, the Council will receive an update from its On-Demand Fishing Gear Conflict Working Group on activities to prevent or reduce potential gear conflicts between mobile, fixed, and recreational gear and on-demand (ropeless) fishing gear. This update will be followed by a presentation on the peer-reviewed 2023 Black Sea Bass Research Track Stock Assessment. The Council then will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Executive Director Cate O'Keefe (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 8, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–00471 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD638]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Withdrawal of notice of intent to prepare an environmental impact statement.

SUMMARY: NMFS is issuing this notice to advise Federal, state, and local government agencies and the public of withdrawal of the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed operation of salmon hatchery programs in the Nooksack River Basin in Washington.

FOR FURTHER INFORMATION CONTACT: Morgan Robinson, Lacey, WA (phone: 253–307–2670, email: *morgan.robinson@noaa.gov*).

SUPPLEMENTARY INFORMATION: NMFS published a NOI in the **Federal Register** on June 20, 2016 (81 FR 39911) to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to analyze the impacts on the human environment resulting from the operation of salmon hatchery programs in the Nooksack River Basin in Washington. NMFS hereby advises the public of the rescission of this NOI. This change occurred because the proposed hatchery and genetic management plans jointly submitted by the Washington Department of Fish and Wildlife, the Lummi Nation, the Nooksack Indian Tribe, the Upper Skagit Indian Tribe, and the Swinomish Indian Tribal Community as co-managers were withdrawn since the NOI was published.

Any future hatchery and genetic management plans submitted by the above parties to NMFS will comply with the environmental review requirements of NEPA.

Dated: January 8, 2024.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00473 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0005]

Privacy Act of 1974; Matching Program

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

ACTION: Notice of a new matching program.

SUMMARY: This Computer Matching Agreement (CMA) verifies the eligibility of Military Health System (MHS) beneficiaries who are Medicare eligible to receive TRICARE Benefits.

DATES: Comments will be accepted on or before February 12, 2024. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Mindy Smith, Management and Program Analyst, Privacy and Civil Liberties Directorate at (703) 571–0070.

SUPPLEMENTARY INFORMATION: The DoD, Defense Manpower Data Center (DMDC) will provide the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) a list of specific data elements for all DoD eligible beneficiaries both over and under the age of 65. CMS will: (1) match the Social Security Numbers (SSNs) of beneficiaries provided by DMDC against the information found in CMS's ''Enrollment Database (EDB)'' system of records; (2) validate the identification of the individual against CMS beneficiary records based on SSN and date of birth

provided by DMDC; (3) provide the individual's Medicare Beneficiary ID (MBI), Medicare enrollment status and address in the response file to DMDC. After receipt of the response file from CMS, DMDC will update the Defense Enrollment Eligibility Reporting System (DEERS) with appropriate Medicare information provided in the response file. The verified identification of eligible beneficiaries and their current Medicare enrollment status is maintained in DEERS for use by the Defense Health Agency in the management of its programs.

Participating Agencies: The Department of Defense, Defense Manpower Data Center, and the Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Authority for Conducting the Matching Program: 10 U.S.C. 1086(d).

Purpose(s): This matching program verifies the eligibility of MHS beneficiaries who are Medicare eligible to receive TRICARE benefits.

Categories of Individuals: The categories of individuals whose information is involved in the matching program is all members and retirees of the DoD and all the Uniformed Services, and DoD beneficiaries (*e.g.,* dependent family members, legal guardians and other protectors and prior military members eligible for Department of Veterans Affairs benefits).

Categories of Records: The categories of records involved in the matching program are SSN, date of birth, sex code, and Medicare data, including the assigned MBI, Medicare enrollment status, and address. DMDC will provide CMS with a finder file for the Under and Over 65 Populations to match against an assigned CMS Health Insurance Claim Number (HICN) or MBI which are contained within EDB. The finder file sent from DoD will contain SSN, date of birth, sex code, and first and last name. The finder file will be used for SSN matching against an assigned HICN or MBI number. CMS will provide DoD with a reply file which will contain SSN, date of birth, sex code, first name, last name, and Medicare data. DMDC will provide data for approximately 10 million beneficiaries from DEERS to CMS for matching on a weekly basis. CMS will provide a reply file containing all appropriate matched and failed responses.

System of Records: ''Defense Enrollment Eligibility Reporting System (DEERS),'' DMDC 02 DoD, published in full at 87 FR 32384 (May 31, 2022). ''Military Health Information System (MHIS),'' EDHA 07, published at 85 FR 36190 (June 15, 2020). ''Enrollment Database (EDB),'' 09–70–0502, published in full at 73 FR 10249 (February 26, 2008), updated at 78 FR 23938 (April 23, 2013), 81 FR 8204 (February 18, 2016), and 83 FR 6591 (February 14, 2018).

Dated: January 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–00589 Filed 1–9–24; 4:15 pm]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0004]

Agency Information Collection Activities; Comment Request; Office of State Support Progress Check Quarterly Protocol

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 11, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0004. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Office of State Support Progress Check Quarterly Protocol.

OMB Control Number: 1810–0733.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 212.

Total Estimated Number of Annual Burden Hours: 636.

Abstract: The Office of School Support and Accountability (SSA) administers Title I, Sections 1001–1004 (School Improvement); Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies); Title I, Part B Grants for State Assessments and Related Activities; Title II, Part A (Supporting Effective Instruction); Title I, Part D (Neglected, Delinquent, or At-Risk); Title IV, Part B (21st Century Community Learning Centers); and McKinney-Vento Education for Homeless Children and Youth Program. Quarterly progress checks, phone or in-person conversations every three months of a fiscal year with State

directors and coordinators, help ensure that State Educational Agencies (SEAs) are making progress toward increasing student achievement and improving the quality of instruction for all students through regular conversations about the quality of SEA implementation of SSA administered programs. The information shared with SSA helps inform the selection and delivery of technical assistance to SEAs and aligns structures, processes, and routines so SSA can regularly monitor the connection between grant administration and intended outcomes. Progress checks also allow SSA to proactively engage with SEAs to identify any issues ahead of formal monitoring visits, decreasing the need for enforcement actions and minimizing burden for SEAs. This is a request for a renewal without change of this collection.

Dated: January 8, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–00438 Filed 1–10–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR24–2–000]

Husky US Marketing LLC and Phillips 66 Company v. TransCanada Keystone Pipeline, LP; Notice of Complaint

Take notice that on January 3, 2024, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2022), Husky US Marketing LLC and Phillips 66 Company filed a complaint against TransCanada Keystone Pipeline, LP challenging the lawfulness of rates charged by TransCanada Keystone Pipeline, LP.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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. 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 Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.*

Comment Date: 5 p.m. eastern time on February 02, 2024.

Dated: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00426 Filed 1–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–000]

Georgia Power Company; Notice of Authorization for Continued Project Operation

The license for the Lloyd Shoals Hydroelectric Project No. 2336 was issued for a period ending December 31, 2023.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2336 is issued to Georgia Power Company for a period effective January 1, 2024, through December 31, 2024, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2024, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Georgia Power Company is authorized to continue operation of the Lloyd Shoals Hydroelectric Project under the terms and conditions of the prior license until the issuance of a

subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00420 Filed 1–10–24; 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: RP24–301–000.

Applicants: Rockies Express Pipeline LLC.

Description: 4(d) Rate Filing: REX 2024–01–04 Negotiated Rate Agreement Amendment to be effective 1/5/2024.

Filed Date: 1/4/24.

Accession Number: 20240104–5163.

Comment Date: 5 p.m. ET 1/16/24.

Docket Numbers: RP24–302–000.

Applicants: Guardian Pipeline, L.L.C.

Description: 4(d) Rate Filing: Amendment to Summary of Non-Conforming and Negotiated Rate Agreements to be effective 2/5/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5025.

Comment Date: 5 p.m. ET 1/17/24.

Docket Numbers: RP24–303–000.

Applicants: Rockies Express Pipeline LLC.

Description: 4(d) Rate Filing: REX 2024–01–05 Negotiated Rate Agreement to be effective 1/6/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5115.

Comment Date: 5 p.m. ET 1/17/24.

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.

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: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00419 Filed 1–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–501–000]

Port Arthur LNG, LLC, PALNG Common Facilities Company, LLC; Notice of Revised Schedule for Environmental Review of the Port Arthur Liquified Natural Gas Amendment

This notice identifies the Federal Energy Regulatory Commission (Commission or FERC) staff's revised schedule for the completion of the environmental assessment (EA) for Port Arthur LNG, LLC's and PALNG Common Facilities Company, LLC's (collectively, PALNG) Port Arthur Liquified Natural Gas Amendment. The first notice of schedule, issued on August 30, 2023, identified December 19, 2023 as the EA issuance date. However, changes to the amendment scope by PALNG and deficient responses to environmental and engineering data requests precluded FERC staff from completing the environmental review by the EA issuance date.[1] As a result, staff has revised the schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of EA—March 15, 2024

90-day Federal Authorization Decision Deadline[2]—June 13, 2024

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the amendment's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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 amendment 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'' (*i.e.,* CP23–501), 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

[1] On November 15, 2023, the Commission issued an environmental information request to PALNG requesting additional information needed to complete the environmental review for the amendment. The request stated that a schedule change was necessary for the issuance of the EA based on changes to the amendment scope identified in information provided by PALNG on November 6 and November 13, 2023. FERC staff also stated that a revised notice of schedule would be issued once the information needs identified in the environmental information request are reviewed for completeness to issue the EA.

[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.

Commission, such as orders, notices, and rule makings.

Dated: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00427 Filed 1–10–24; 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 rate filings:

Docket Numbers: ER20–1977–006.

Applicants: Versant Power.

Description: Compliance filing: Joint Offer of Settlement Re: MPD 2023–2024 Charges (ER20–1977–) to be effective N/A.

Filed Date: 1/5/24.

Accession Number: 20240105–5092.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER23–2212–002.

Applicants: New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc.

Description: Compliance filing: Consolidated Edison Company of New York, Inc. submits tariff filing per 35: Con Edison Compliance: Rate Schedule 19 Formula Rate Template to be effective 8/22/2023.

Filed Date: 1/4/24.

Accession Number: 20240104–5161.

Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–89–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Response to Commission's 12/8/2023 Deficiency Letter in ER24–89–000 to be effective 9/13/2023.

Filed Date: 1/5/24.

Accession Number: 20240105–5147.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–821–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 363 to be effective 12/6/2023.

Filed Date: 1/5/24.

Accession Number: 20240105–5082.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–822–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 12 to be effective 3/5/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5086.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–823–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–01–05_ALLETE–GRE Zonal Agreement Filing to be effective 1/1/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5097.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–824–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Camellia Solar (Camellia II) LGIA Filing to be effective 12/21/2023.

Filed Date: 1/5/24.

Accession Number: 20240105–5099.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–825–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–01–05_SA 2905 ALLETE–GRE WDS to be effective 1/1/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5105.

Comment Date: 5 p.m. ET 1/26/24.

Docket Numbers: ER24–826–000.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: CSU Midway SISA & FAC 736–NOC to be effective 1/6/2024.

Filed Date: 1/5/24.

Accession Number: 20240105–5144.

Comment Date: 5 p.m. ET 1/26/24.

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: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00418 Filed 1–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1922–052]

Ketchikan Public Utilities; Notice of Intent To Prepare an Environmental Assessment

On October 27, 2022, Ketchikan Public Utilities (KPU) filed an application for a new major license for the 7.1-megawatt Beaver Falls Hydroelectric Project (Beaver Falls Project; FERC No. 1922). The Beaver Falls Project is located on Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. The project currently occupies 478.4 acres of United States lands administered by U.S. Forest Service.

In accordance with the Commission's regulations, on October 10, 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 a draft and final Environmental Assessment (EA) on the application to relicense the Beaver Falls 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 draft EA ..	June 2024.
Comments on draft EA due ...	July 2024.
Commission issues final EA ...	December 2024.[1]

Any questions regarding this notice may be directed to Golbahar Mirhosseini at *Golbahar.Mirhosseini@ferc.gov.*

Dated: January 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00421 Filed 1–10–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11622–01–OW]

National Drinking Water Advisory Council; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water is announcing a meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act (SDWA). The primary purpose of the meeting is for EPA to consult with the NDWAC as required by the SDWA on a final National Primary Drinking Water Regulation: Lead and Copper Rule Improvements. Additional details will be provided in the meeting agenda, which will be posted on EPA's NDWAC website prior to the meeting. See the **SUPPLEMENTARY INFORMATION** section of this announcement for more information.

DATES: The meeting will be held on January 31, 2024, from 10:30 a.m. to 5:30 p.m., eastern time.

ADDRESSES: This will be a virtual meeting. There will be no in-person gathering for this meeting. For more information about attending, providing oral statements, and accessibility for the meeting, as well as sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this announcement.

FOR FURTHER INFORMATION CONTACT: Elizabeth Corr, NDWAC Designated Federal Officer, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3798; email address: *corr.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Attending the Meeting: The meeting will be open to the general public. The meeting agenda and information on how to register for and attend the meeting online will be provided on EPA's website at: *https://www.epa.gov/ndwac* prior to the meeting.

Oral Statements: EPA will allocate one hour for the public to present oral comments during the meeting. Oral statements will be limited to three minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Persons interested in presenting an oral statement should send an email to *NDWAC@epa.gov* by noon, eastern time, on January 24, 2024.

Written Statements: Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements by email to *NDWAC@epa.gov* or see the **FOR FURTHER INFORMATION CONTACT** section if sending statements by mail. Written statements received by noon, eastern time, on January 24, 2024, will be distributed to all members of the Council prior to the meeting. Statements received after that time will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the NDWAC website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Elizabeth Corr by email at *corr.elizabeth@epa.gov,* or by phone at (202) 564–3798, preferably at least 10 days prior to the meeting to allow as much time as possible to process your request.

National Drinking Water Advisory Council: The NDWAC was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The NDWAC was established to advise, consult with, and make recommendations to the EPA Administrator on matters relating to activities, functions, policies, and regulations under the SDWA. General information concerning the NDWAC is available at: *https://www.epa.gov/ndwac.*

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2024–00413 Filed 1–10–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX, OMB 3060–0848; FR ID 195711]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection

[1] 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, 4336a, 137 Stat. 42.

of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 12, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *https://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (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; and (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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC 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: Request For Religious Accommodation.

Form Number: FCC Form-5652.

Type of Review: New Collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 3 respondents; 3 responses.

Estimated Time per Response: 2.5 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained Title VII of the Civil Rights Act of 1964, as amended, 29 U.S.C. Part 1605; U.S. Equal Employment Opportunity Commission's Compliance Manual, Section 12: Religious Discrimination (January 15, 2021); U.S. Equal Employment Opportunity Commission's Questions and Answers: Religious Discrimination in the Workplace (July 22, 2008); U.S. Office of Personnel Management's Fact Sheet: Adjustment of Work Schedules for Religious Observances.

Total Annual Burden: 8 hours.

Total Annual Cost: $600.

Needs and Uses: In order to file a religious accommodation request, requesters must provide certain information to allow the FCC's Office of Workplace Diversity to determine that the employee or applicant satisfies the requirements of the Title VII of the Civil Rights Act of 1964 for filing a request. The information requested in the Religious Accommodation Form assists requesters to provide information to ascertain if the requesters sincerely held religious beliefs, observances or practices conflict with a specific task or requirement of the position or an application process. Specifically, the FCC Form 5652, the Religious Accommodation Request Form provides information regarding the type of accommodation or modification requested, the requesters sincerely held belief, and which FCC requirement, policy, or practice that conflicts with the requesters sincerely held religious observance, practice, or belief.

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 750 respondents; 9,270 responses.

Estimated Time per Response: 3.54 hours (average burden per response).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 201 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 251.

Total Annual Burden: 32,845 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements implement sections 201 and 251 of the Communications Act of 1934, as amended, to provide for physical collocation on rates, terms and conditions that are just, reasonable and nondiscriminatory, and to promote deployment of advanced telecommunications services without significantly degrading the performance of other services. All of the requirements will be used by the Commission and competitive local exchange carriers (LECs) to facilitate the deployment of telecommunications services, including advanced telecommunications services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–00376 Filed 1–10–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1046; FR ID 196008]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction

Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before March 11, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060–1046.

Title: Part 64, Modernization of Payphone Compensation Rules, *et al.,* WC Docket No. 17–141, *et al.*

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 216 respondents; 1,456 responses.

Estimated Time per Response: 0.50–122 hours.

Frequency of Response: On occasion, one-time, and quarterly reporting requirements; third party disclosure requirements; and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 276.

Total Annual Burden: 22,524 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 276 of the Communications Act, as amended (the Act), requires that the Federal Communications Commission (Commission or FCC) establish rules ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call. The Commission's Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. A 2003 Report and Order (FCC 03–235) established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call pursuant to section 276 of the Communications Act, as amended (the Act), which the Commission revised in a 2018 Report and Order (FCC 18–21). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The Payphone Compensation Rules: (1) place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as ''Completing Carriers'' and require them to develop their own system of tracking calls to completion; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by a company official, including but not limited to the chief financial officer (CFO), that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as ''Intermediate Carriers;'' and (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system. The revisions adopted in the 2018 Report and Order significantly decreased the paperwork burden on carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–00379 Filed 1–10–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA40

Notice of Inflation Adjustments for Civil Money Penalties

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of monetary penalties 2024.

SUMMARY: The Federal Deposit Insurance Corporation is providing notice of its maximum civil money penalties as adjusted for inflation.

DATES: The adjusted maximum amounts of civil money penalties in this notice are applicable to penalties assessed after January 15, 2024, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Graham N. Rehrig, Counsel, Legal Division, 703–314–3401, *grehrig@fdic.gov;* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This notice announces changes to the maximum amount of each civil money penalty (CMP) within the Federal Deposit Insurance Corporation's (FDIC) jurisdiction to administer to account for inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act).[2] Under the 1990 Adjustment Act, as amended, federal agencies must make annual adjustments to the maximum amount of each CMP the agency administers. The Office of Management and Budget (OMB) is required to issue guidance to federal agencies no later than December 15 of each year providing an inflation-adjustment multiplier (*i.e.,* the inflation-adjustment factor agencies must use) applicable to CMPs assessed in the following year.

Agencies are required to publish their CMPs, adjusted under the multiplier provided by the OMB, by January 15 of the applicable year. Agencies like the FDIC that have codified the statutory

[1] Public Law 101–410, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

[2] Public Law 114–74, 701(b), 129 Stat. 599, codified at 28 U.S.C. 2461 note.

formula for making the CMP adjustments may make annual inflation adjustments by providing notice in the **Federal Register**.[3]

On December 19, 2023, the OMB issued guidance to affected agencies on implementing the required annual adjustment, which guidance included the relevant inflation multiplier.[4] The FDIC has applied that multiplier to the maximum CMPs allowable in 2023 for FDIC-supervised institutions and other parties subject to the FDIC's jurisdiction to calculate the maximum amount of CMPs that may be assessed by the FDIC in 2024.[5] There were no new statutory CMPs administered by the FDIC during 2023.

The following charts provide the inflation-adjusted maximum CMP amounts for use after January 15, 2024—the effective date of the 2024 annual adjustments—under 12 CFR part 308, for conduct occurring on or after November 2, 2015:

MAXIMUM CIVIL MONEY PENALTY AMOUNTS

U.S. Code citation	Current maximum CMP (through January 14, 2024)	Adjusted maximum CMP[6] (beginning January 15, 2024)
12 U.S.C. 1464(v):		
Tier One CMP[7]	$4,745	$4,899
Tier Two CMP	47,454	48,992
Tier Three CMP[8]	2,372,677	2,449,575
12 U.S.C. 1467(d)	11,864	12,249
12 U.S.C. 1817(a):		
Tier One CMP[9]	4,745	4,899
Tier Two CMP	47,454	48,992
Tier Three CMP[10]	2,372,677	2,449,575
12 U.S.C. 1817(c):		
Tier One CMP	4,339	4,480
Tier Two CMP	43,377	44,783
Tier Three CMP[11]	2,168,915	2,239,210
12 U.S.C. 1817(j)(16):		
Tier One CMP	11,864	12,249
Tier Two CMP	59,316	61,238
Tier Three CMP[12]	2,372,677	2,449,575
12 U.S.C. 1818(i)(2):[13]		
Tier One CMP	11,864	12,249
Tier Two CMP	59,316	61,238
Tier Three CMP[14]	2,372,677	2,449,575
12 U.S.C. 1820(e)(4)	10,846	11,198
12 U.S.C. 1820(k)(6)	390,271	402,920
12 U.S.C. 1828(a)(3)	148	153
12 U.S.C. 1828(h):[15]		
For assessments <$10,000	148	153
12 U.S.C. 1829b(j)	24,793	25,597
12 U.S.C. 1832(c)	3,446	3,558
12 U.S.C. 1884	345	356
12 U.S.C. 1972(2)(F):		
Tier One CMP	11,864	12,249
Tier Two CMP	59,316	61,238
Tier Three CMP[16]	2,372,677	2,449,575
12 U.S.C. 3909(d)	2,951	3,047
15 U.S.C. 78u–2:		
Tier One CMP (individuals)	11,162	11,524

[3] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M–24–07, *Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* 4 (Dec. 19, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf* (OMB Guidance); *see also* 12 CFR 308.132(d) (FDIC regulation that guides readers to the **Federal Register** to see the annual notice of CMP inflation adjustments).

[4] *See* OMB Guidance at 1 (providing an inflation multiplier of 1.03241).

[5] Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the FDIC's regulations in effect prior to the enactment of the 2015 Adjustment Act.

[6] The maximum penalty amount is per day, unless otherwise indicated.

[7] 12 U.S.C. 1464(v) provides the maximum CMP amounts for the late filing of certain Call Reports. In 2012, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing. *See* 77 FR 74573, 74576–78 (Dec. 17, 2012), codified at 12 CFR 308.132(e)(1). These adjusted subdivided amounts are found at the end of this chart.

[8] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[9] 12 U.S.C. 1817(a) provides the maximum CMP amounts for the late filing of certain Call Reports. In 1991, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing. *See* 56 FR 37968, 37992–93 (Aug. 9, 1991), codified at 12 CFR 308.132(e)(1). These adjusted subdivided amounts are found at the end of this chart.

[10] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[11] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[12] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[13] These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2601, 2804(b), 3108(b), 3349(b), 4009(a), 4309(a), 4717(b); 15 U.S.C. 1607(a), 1681s(b), 1691(b), 1691c(a), 1693*o*(a); and 42 U.S.C. 3601.

[14] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[15] The $153-per-day maximum CMP under 12 U.S.C. 1828(h) for failure or refusal to pay any assessment applies only when the assessment is less than $10,000. When the amount of the assessment is $10,000 or more, the maximum CMP under section 1828(h) is 1 percent of the amount of the assessment for each day that the failure or refusal continues.

[16] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

MAXIMUM CIVIL MONEY PENALTY AMOUNTS—Continued

U.S. Code citation	Current maximum CMP (through January 14, 2024)	Adjusted maximum CMP [6] (beginning January 15, 2024)
Tier One CMP (others)	111,614	115,231
Tier Two CMP (individuals)	111,614	115,231
Tier Two CMP (others)	558,071	576,158
Tier Three CMP (individuals)	223,229	230,464
Tier Three CMP (others)	1,116,140	1,152,314
15 U.S.C. 1639e(k):		
First violation	13,627	14,069
Subsequent violations	27,252	28,135
31 U.S.C. 3802	13,508	13,946
42 U.S.C. 4012a(f)	2,577	2,661

CFR citation	Current presumptive CMP (through January 14, 2024)	Adjusted presumptive CMP (beginning January 15, 2024)
12 CFR 308.132(e)(1)(i):		
Institutions with $25 million or more in assets.		
1 to 15 days late	$651	$672.
16 or more days late	1,302	1,344.
Institutions with less than $25 million in assets.		
1 to 15 days late [17]	218	225.
16 or more days late [18]	433	447.
12 CFR 308.132(e)(1)(ii):		
Institutions with $25 million or more in assets.		
1 to 15 days late	1,084	1,119.
16 or more days late	2,168	2,238.
Institutions with less than $25 million in assets.		
1 to 15 days late	1/50,000th of the institution's total assets.	1/50,000th of the institution's total assets.
16 or more days late	1/25,000th of the institution's total assets.	1/25,000th of the institution's total assets.
12 CFR 308.132(e)(2)	47,454	48,992.
12 CFR 308.132(e)(3):		
Tier One CMP	4,745	4,899.
Tier Two CMP	47,454	48,992.
Tier Three CMP [19]	2,372,677	2,449,575.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 8, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–00409 Filed 1–10–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 12, 2024.

A. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44114. Comments can also be sent electronically to *comments.applications@clev.frb.org:*

1. *KFB Holdings, Inc.,* to become a bank holding company by acquiring Kentucky Farmers Bank Corporation, both of Ashland, Kentucky.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Prairie Bell Holdings, Inc., Tulsa, Oklahoma;* to become a bank holding company by acquiring Spiro Bancshares, Inc., and thereby indirectly acquiring Spiro State Bank, both of Spiro, Oklahoma.

[17] The maximum penalty amount for an institution is the greater of this amount or 1/100,000th of the institution's total assets.

[18] The maximum penalty amount for an institution is the greater of this amount or 1/50,000th of the institution's total assets.

[19] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–00480 Filed 1–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10718]

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 February 12, 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:* Model Medicare Advantage and Medicare Prescription Drug Plan Individual Enrollment Request Form; *Use:* The enrollment form is considered a ''model'' under Medicare regulations at §§ 422.2262 and 423.2262, for purposes of communication and marketing review and approval; therefore, MA and Part D plans are able to modify the language, content, format, or order of the enrollment form. The model enrollment form includes the minimal amount of information to process the enrollment, located in Section 1 of the MA/PDP enrollment form, and other limited information, in Section 2, that the sponsor is required (*i.e.,* race and ethnicity data, accessible format preference) or chooses (*i.e.,* premium payment information) to provide to the beneficiary.

CMS expects MA and PDP organizations to ensure the enrollment form complies with CMS' instructions regarding content and format. New and current enrollees that utilize the enrollment form to elect an MA or Part D plan must acknowledge the requirement to: (1) maintain Medicare Part A and B to stay in MA, or Part A or B to stay in Part D; (2) reside in the plan's service area; (3) make a valid request during a valid election period; (4) follow plan rules; (5) consent to the disclosure and exchange of information between the plan and CMS; and (6) enroll in only one Medicare health plan and that enrollment in the MA or Part D plan automatically disenrolls them from any other Medicare health plan and prescription drug plan.

CMS will use this information to: track beneficiary enrollment, including tracking patterns in enrollment by race and ethnicity, sexual orientation, and gender identity over time; to identify, monitor, and develop effective and efficient strategies and incentives to reduce and eliminate health and health care inequities; to validate existing race and ethnicity imputation methods; and to ensure that clinically appropriate and equitable care (in terms of payment, access and quality) is consistently provided to all Medicare beneficiaries. *Form Number:* CMS–10718 (OMB control number: 0938–0832); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Private sector—(Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 19,815,897; Total *Annual Responses:* 39,632,597; *Total Annual Hours:* 10,557,541. (For policy questions regarding this collection contact AnhViet Nguyen at 410–786–4548).

Dated: January 8, 2024.

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–00474 Filed 1–10–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Survey on Where Parents Look for and Find Information and How They Use Information When Selecting Child Care (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect

nationally representative survey data to learn more about where parents look for and find information about Child Care and Early Education (CCEE); how parents assess the people, places, or things that may offer CCEE information; what types of CCEE information parents look for; and how parents use information to make CCEE selections. The study aims to gather information that may be used by Child Care Lead Agencies to inform their consumer education efforts.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF has contracted with NORC to implement this study, which is part of the Consumer Education and Parental Choice in Early Care and Education (CEPC) project. The study will select a nationally representative sample from NORC's probability-based AmeriSpeak panel. The AmeriSpeak panel provides sample coverage of approximately 97 percent of the U.S. population. It currently contains 48,900 panel members age 13 and over residing in over 40,000 households. U.S. households are randomly selected with a known, non-zero probability from the NORC National Frame, and then recruited by mail, telephone, and by field interviewers face-to-face. NORC's in-person recruitment enhances representativeness for young adults, lower socio-economic households, non-internet households, and other households that are typically hard to reach for statistical surveys of the population.

We will collect information about (a) where parents look for and find information about CCEE; (b) how parents assess the people, places, or things that may offer CCEE information; (c) how easy or hard it is for parents to find CCEE information, (d) the types of CCEE information that parents look for and say are helpful in choosing CCEE; (e) information about the last time parents made a decision about CCEE and what information they tried to learn about at that time; (f) parent's assessments of the CCEE options at the time they made their last CCEE decision; (g) how well parents' CCEE decision met their family's needs; and (h) demographic information about families.

Respondents: AmeriSpeak panelists who indicated that they have a young child in the household will be invited to complete the survey if they are at least 18 years of age. If a household has two or more panel members who reside in a household with a young child, one will be selected at random to complete the survey, with preference given to parents/legal guardians. Selected panelists will be asked questions to confirm eligibility for the survey, including that the household has at least one child under the age of 6 but not in kindergarten.

Annual Burden Estimates:

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Parent Survey Questionnaire (Section AE Only)	2,100	1	.08	168
Parent Survey Questionnaire (Section A–DA)	1,500	1	.25	375

Estimated Total Annual Burden Hours: 543.

Authority: Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 *et seq.*).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–00395 Filed 1–10–24; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3743]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by February 12, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0303. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Records; Electronic Signatures—21 CFR Part 11

OMB Control Number 0910–0303—Revision

This information collection supports implementation of statutory and regulatory authorities that govern criteria for the acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Agency regulations in part 11 (21 CFR part 11) provide for the submission of records and reports and establish that information may be submitted to FDA electronically provided that we have stated our ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met. The regulations apply to records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted, under any records requirements set forth in Agency regulations and to electronic records submitted under requirements of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, even if such records are not specifically identified in Agency regulations.

Regulations in part 11, subpart B (§§ 11.10 through 11.70) require the establishment of standard operating procedures to ensure appropriate use of and precautions for systems using electronic records and signatures, including the following: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; and (3) § 11.50 specifies procedures and controls for persons who use electronic signatures.

Regulations in subpart C (§§ 11.100 through 11.300) require specific controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords.

On March 2, 2023 (88 FR 13018) (Docket No. FDA–2019–N–0646), we revised the regulations. Before using an electronic signature in an electronic record required by FDA, a person must submit a letter of nonrepudiation to FDA (§ 11.100(c)). Letters of nonrepudiation are required under § 11.100(c)(1) to certify that a person's electronic signatures are intended to be the legally binding equivalent of traditional handwritten signatures. The regulations were amended to update the address for submission of a certification in paper form and to provide an option for electronic submission. The regulations were also amended to communicate that information on where to submit the certification may be found on FDA's website, currently available at: *https://www.fda.gov/industry/about-esg/appendix-g-letters-non-repudiation-agreement.*

In the **Federal Register** of September 19, 2023 (88 FR 64441), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 11.100; submission of nonrepudiation letters	5,000	1	5,000	1	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of record per recordkeepers	Total annual records	Average burden per recordkeeping	Total hours
§ 11.10; controls for closed systems	2,500	1	2,500	20	50,000
§ 11.30; controls for open systems	2,500	1	2,500	20	50,000
§ 11.50; signature manifestations	5,000	1	5,000	20	100,000
§ 11.300; controls for identifications and passwords	5,000	1	5,000	20	100,000
Total					300,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have increased our estimated burden. We assume 5,000 nonrepudiation letters will be submitted annually. We arrived at this figure by looking at the average number of nonrepudiation letters received through March 2023. We further assume that half of the estimated respondents will establish controls for open systems and half will establish controls for closed systems. Finally, we assume all respondents will establish controls for the remaining technical specifications required by the regulations.

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00406 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5868]

Requests for Reconsideration at the Division Level Under the Generic Drug User Fee Amendments; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled ''Requests for Reconsideration at the Division Level Under GDUFA.'' This draft guidance provides recommendations on the procedures for applicants of abbreviated new drug applications (ANDAs) that wish to pursue a request for reconsideration within the review discipline at the division level or original signatory authority. This draft guidance revises the draft guidance of the same title issued in October 2017. This revision is being issued to reflect the most recent reauthorization of the Generic Drug User Fee Amendments (GDUFA) and to clarify what matters are appropriate for requests for reconsideration.

DATES: Submit either electronic or written comments on the draft guidance by March 11, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by March 11, 2024.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–5868 for ''Requests for Reconsideration at the Division Level Under GDUFA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *With regard to the draft guidance:* Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20903, 240–695–3412, *Martha.Nguyen@fda.hhs.gov; With regard to the proposed collection of information:* Duong T (Diane) Nhu, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–402–3953, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Requests for Reconsideration at the Division Level Under GDUFA.'' This draft guidance provides recommendations on the procedures for applicants of ANDAs that wish to pursue a request for reconsideration within the review discipline at the division level or original signatory authority. Requests within the scope of this guidance document should concern certain actions that relate to an ANDA and have scientific significance.

During the assessment of an ANDA, FDA considers important issues that are central to product evaluation. Sometimes, an applicant may disagree with FDA, and because these disagreements often involve intricate matters, it is critical to have procedures in place to ensure open and prompt consideration of an applicant's concern(s). The procedures and policies described in this guidance are intended to formalize FDA's current and historical practices and to continue to promote rapid and fair resolution of eligible requests between an applicant and FDA. This draft guidance revises the draft guidance of the same title issued on October 12, 2017 (82 FR 47531). This revision is being issued to reflect the most recent reauthorization of GDUFA in the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (Division F, Title III, Pub. L. 117–180, 136 Stat. 2155), and to clarify what matters are appropriate for requests for reconsideration.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Requests for Reconsideration at the Division Level Under GDUFA.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

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. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Applications for FDA Approval To Market a New Drug

OMB Control Number 0910–0001—Revision

The information collection request supports the Agency's draft guidance entitled, ''Requests for Reconsideration at the Division Level Under GDUFA.'' As discussed in section I of this notice, this draft guidance provides information to respondents regarding procedures for submitting requests for reconsideration, including details on the content and format of the submission. Respondents to the collection of information are applicants of ANDAs. Based on available data with regard to similar information collections, FDA's Center for Drug Evaluation and Research will receive approximately 310 requests for reconsideration annually from 155 respondents. Because we estimate it will take 5 hours to prepare a request for reconsideration, we estimate it will take an average of 1,550 total hours annually for respondents to prepare and submit requests for reconsideration.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section of guidance/reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Section IV: Procedures for Submitting and Responding to a Request for Reconsideration	155	2	310	5	1,550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This draft guidance refers to previously approved FDA collections of information found in FDA regulations. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information pertaining to the GDUFA III commitment letter, meetings related to generic drug development, and the Generic Drug User Fee Program have been approved under OMB control number 0910–0727.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00403 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act)

authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that FILSUVEZ (birch triterpenes), manufactured by Amryt Pharmaceuticals, meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that FILSUVEZ (birch triterpenes), manufactured by Amryt Pharmaceuticals, meets the criteria for a priority review voucher. FILSUVEZ (birch triterpenes) gel is indicated for the treatment of wounds associated with dystrophic and junctional epidermolysis bullosa in adult and pediatric patients 6 months of age and older.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about FILSUVEZ (birch triterpenes), go to the ''Drugs@FDA'' website at *http://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00400 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that ADZYNMA (ADAMTS13, recombinant-krhn), manufactured by Takeda Pharmaceuticals U.S.A., Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that ADZYNMA (ADAMTS13, recombinant-krhn), manufactured by Takeda Pharmaceuticals U.S.A., Inc., meets the criteria for a priority review voucher.

ADZYNMA (ADAMTS13, recombinant-krhn) is indicated for prophylactic or on-demand enzyme replacement therapy in adult and pediatric patients with congenital thrombotic thrombocytopenic purpura.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/industry/developing-products-rare-diseases-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs.* For further information about ADZYNMA (ADAMTS13, recombinant-krhn), go to the Center for Biologics Evaluation and Research's Approved Blood Products website at *https://www.fda.gov/vaccines-blood-biologics/adzynma.*

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00401 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2512]

Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived From Cell Lines of Human or Animal Origin; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin.'' The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The guidance is intended to describe risk-based principles and mitigation strategies to assure the viral safety of biotechnology products, including the data necessary to submit in a marketing application. The guidance also finalizes the updates based on advances in scientific knowledge and regulatory expectations to the first version of the ICH guidance for industry ''Q5A Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin,'' issued in September 1998. Lastly, the guidance replaces the draft guidance ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin'' issued on November 14, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on January 11, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2512 for ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Kathryn King, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993–0002, 240–402–9634, *kathryn.kingk@fda.hhs.gov;* or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin.'' The guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of November 14, 2022 (87 FR 68176), FDA published

a notice announcing the availability of a draft guidance entitled ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin.'' The notice gave interested persons an opportunity to submit comments by January 13, 2023. After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in November 2023.

This guidance revises and finalizes the updates included in the draft guidance issued on November 14, 2022. Like the draft guidance, the final guidance reflects updates in scientific advances and regulatory expectations since the publication of the ICH guidance for industry, ''Q5A Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin,'' issued in September 1998. These revisions include descriptions of new classes of products now in scope, inclusion of new virus detection technologies, clarification of new validation strategies, and considerations specific to new manufacturing approaches, such as continuous manufacturing. The final guidance expands on the draft by including additional detail on the strategy for replacement of conventional testing methods with alternatives and additional details to better describe the scope of products addressed in the guidance. Additional definitions were added to the glossary to better align with terminology elsewhere in the guidance as well as guidances that may be read in parallel (*e.g.,* ICH guidance for industry ''Q13 Continuous Manufacturing of Drug Substances and Drug Products,'' available at *https://www.fda.gov/media/165775/download*).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Q5A(R2) Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 210 and 211 pertaining to current good manufacturing practice have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 312 for the submissions of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 601 for the submissions of biologics license applications have been approved under OMB control number 0910–0338. The collections of information 21 CFR part 58 pertaining to good laboratory practices for nonclinical laboratory studies have been approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Dated: January 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–00407 Filed 1–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be held virtually and is open to the public as indicated below. Individuals who plan to attend the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following links: *http://videocast.nih.gov/* or *https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: February 6, 2024.

Closed: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Rockville, MD 20892 (Virtual Meeting).

Open: 11:00 a.m. to 2:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Virtual Access: https://www.nhlbi.nih.gov/about/advisory-and-peer-review-committees/advisory-council.

Please note, the link to the videocast meeting will be posted within a week of the meeting date.

Contact Person: Valerie L. Prenger, Ph.D., MPH, Deputy Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–C, Bethesda, MD 20892–7924, 301–435–0270, *Valerie.Prenger@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 8, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00440 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

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: Eunice Kennedy Shriver, National Institute of Child Health and Human Development, Initial Review Group, Population Sciences Study Section.

Date: March 1, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver, National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch (SRB), DER, Eunice Kennedy Shriver, National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121B, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00369 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Member Conflict: Biobehavioral and Behavioral Sciences Study Section.

Date: March 12, 2024.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: Magnus A. Azuine, Ph.D., Scientific Review Branch Eunice Kennedy Shriver National Institute, of Child Health & Human Development, NIH 6710B Rockledge Drive, Room 2125C Bethesda, MD 20817, (301) 480–4645, *magnus.azuine@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 8, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00442 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of 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: Neurological Sciences Training Initial Review Group; Neurological Sciences Training 3 Study Section.

Date: February 5–6, 2024.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130.

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *lataisia.jones@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00370 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–23–017: Tobacco Regulatory Science B.

Date: February 6, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Pathophysiology in Mental Illness.

Date: February 6, 2024.

Time: 5:00 p.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: Brittany L. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 5, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00372 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Understanding and Mitigating Health Disparities experienced by People with Disabilities caused by Ableism (R01)—OCT compatible.

Date: March 21–22, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helen Huang, Ph.D., Scientific Review Officer, Scientific Review Branch Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, (301) 496–8558, *helen.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 8, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00441 Filed 1–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds of Customs Duties

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

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning January 1, 2024, the interest rates for underpayments will be 8 percent for both corporations and non-corporations. The interest rate for overpayments will be 8 percent for non-corporations and 7 percent for corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2023–22, the IRS determined the rates of interest for the calendar quarter beginning January 1,

2024, and ending on March 31, 2024. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%) for both corporations and non-corporations. For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remain the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning April 1, 2024, and ending on June 30, 2024.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	033122	3	3	2

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
040122	063022	4	4	3
070122	093022	5	5	4
100122	123122	6	6	5
010123	093023	7	7	6
100123	033124	8	8	7

Dated: January 5, 2024.

Crinley S. Hoover,

Acting Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2024–00389 Filed 1–10–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2401]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arkansas: Washington	City of Fayetteville (23–06–0884P).	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	City Hall, 113 West Mountain Street, Fayetteville, AR 72701.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	050216
Colorado:						
Boulder	City of Lafayette (23–08–0459P).	The Honorable J. D. Mangat, Mayor, City of Lafayette, 1290 South Public Road, Lafayette, CO 80026.	Planning Department, 1290 South Public Road, Lafayette, CO 80026.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2024	080026
Boulder	Unincorporated areas of Boulder County (23–08–0459P).	Claire Levy, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 1739 Broadway, Suite 300, Boulder, CO 80306.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2024	080023
Broomfield	City and County of Broomfield (23–08–0459P).	The Honorable Guyleen Castriotta, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2024	085073
Delaware: New Castle	Unincorporated areas of New Castle County (23–03–0137P).	Matthew Meyer, New Castle County Executive, 87 Read's Way, New Castle, DE 19720.	New Castle County Government Center, 87 Read's Way, New Castle, DE 19720.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 15, 2024	105085
Florida:						
Lee	Unincorporated areas of Lee County (23–04–3191P).	David Harner, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2024	125124
Miami-Dade	Town of Surfside (23–04–5056P).	The Honorable Shlomo Danzinger, Mayor, Town of Surfside, 9293 Harding Avenue, Surfside, FL 33154.	Town Hall, 9293 Harding Avenue, Surfside, FL 33154.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 18, 2024	120659
Sarasota	City of Sarasota (23–04–4295P).	The Honorable Kyle Scott Battie, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Service Department, 1565 1st Street, Room 101, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2024	125150
Massachusetts:						
Middlesex	City of Lowell (23–01–0132P).	Thomas A. Golden, Jr., Manager, City of Lowell, 375 Merrimack Street, 2nd Floor, Room 43, Lowell, MA 01852.	Fire Department Administration Office, 99 Moody Street, Lowell, MA 01852.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 23, 2024	250201
Middlesex	Town of Chelmsford (23–01–0132P).	Paul Cohen, Manager, Town of Chelmsford, 50 Billerica Road, Chelmsford, MA 01824.	Community Development Department, 50 Billerica Road, Chelmsford, MA 01824.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 23, 2024	250188
Suffolk	City of Revere (24–01–0009P).	The Honorable Patrick M. Keefe, Jr., Acting Mayor, City of Revere, 281 Broadway, Revere, MA 02151.	City Hall, 281 Broadway, Revere, MA 02151.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2024	250288
Montana: Lewis and Clark	Unincorporated areas of Lewis and Clark County (23–08–0467P).	Tom Rolfe, Chair, Lewis and Clark County Board of Commissioners, 316 North Park Avenue, Room 345, Helena, MT 59623.	Lewis and Clark County Department of Floodplain Development, 316 North Park Avenue, Room 230, Helena, MT 59623.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2024	300038
North Carolina:						
Buncombe	Unincorporated areas of Buncombe County (24–04–0526P)	Brownie Newman, Chair, Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801.	Buncombe County Planning and Development, 46 Valley Street, Asheville, NC 28801.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	370031
Forsyth	City of Winston-Salem (24–04–0523P)	The Honorable Allen Joines, Mayor, City of Winston-Salem, P.O. Box 2511, Winston-Salem, NC 27102.	Planning and Development Services Department, 100 East 1st Street, Winston-Salem, NC 27101.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 2, 2024	375360
Forsyth	Unincorporated areas of Forsyth County (24–04–0523P)	The Honorable David Plyler, Chair, Forsyth County Board of Commissioners, 201 North Chestnut Street, Winston-Salem, NC 27101	Forsyth County Planning and Development Services, 100 East First Street, Winston-Salem, NC 27101	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 2, 2024	375349

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Madison	Unincorporated areas of Madison County (24–04–0526P)	Matthew Wechtel, Chair, Madison County Board of Commissioners, P.O. Box 579, Marshall, NC 28753.	Madison County Development Services Development, 5707 U.S. Highway 25/70, Marshall, NC 28779.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	370152
Rowan	Town of Landis (22–04–3669P)	The Honorable Meredith Smith, Mayor, Town of Landis, P.O. Box 8165, Landis, NC 28088.	Town Hall, 312 South Main Street, Landis, NC 28088.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	370213
Rowan	Unincorporated areas of Rowan County (22–04–3669P)	The Honorable Greg Edds, Chair, Rowan County Board of Commissioners, 130 West Innes Street, Salisbury, NC 28144	Rowan County Planning and Development Department, 402 North Main Street, #204, Salisbury, NC 28144	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	370351
Wake	Town of Rolesville (24–04–0517P)	The Honorable Ronnie Currin, Mayor, Town of Rolesville, P.O. Box 250, Rolesville, NC 27571.	Planning Department, 502 Southtown Circle, Rolesville, NC 27571.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2024	370468
Wake	Town of Wake Forest (24–04–0517P)	The Honorable Vivian A. Jones, Mayor, Town of Wake Forest, 301 South Brooks Street, Wake Forest, NC 27587.	Planning Department, 301 South Brooks Street, Wake Forest, NC 27587.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2024	370244
Wake	Unincorporated areas of Wake County (24–04–0517P)	Shinica Thomas, Chair, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, 337 South Salisbury Street, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2024	370368
Oklahoma:						
Logan	City of Guthrie (23–06–0569P).	The Honorable Steven J. Gentling, Mayor, City of Guthrie, 101 North 2nd Street, Guthrie, OK 73044.	City Hall, 101 North 2nd Street, Guthrie, OK 73044.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 7, 2024	400099
Logan	Unincorporated areas of Logan County (23–06–0569P).	Monty Piearcy, Chair, Logan County Board of Commissioners, 312 East Harrison Avenue, Guthrie, OK 73044.	Logan County Emergency Management Department, 219 South Broad Street, Guthrie, OK 73044.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 7, 2024	400096
Texas:						
Collin	City of Blue Ridge (23–06–0921P).	The Honorable Rhonda Williams, Mayor, City of Blue Ridge, 200 South Main Street, Blue Ridge, TX 75424.	Public Works Department, 200 South Main Street, Blue Ridge, TX 75424.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2024	481628
Collin	City of Celina (23–06–0718P).	The Honorable Ryan Tubbs, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	480133
Collin	City of McKinney (23–06–1123P).	The Honorable George Fuller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	City Hall, 222 North Tennessee Street, McKinney, TX 75069.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	480135
Collin	City of Murphy (23–06–1486P).	The Honorable Scott Bradley, Mayor, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	City Hall, 206 North Murphy Road, Murphy, TX 75094.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 29, 2024	480137
Dallas	City of Dallas (23–06–1122P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Floodplain Management Department, 2245 Irving Boulevard, 2nd Floor, Dallas, TX 75207.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2024	480171
Dallas	City of Garland (23–06–1006P).	The Honorable Scott LeMay, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	City Hall, 200 North 5th Street, Garland, TX 75040.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2024	485471
Dallas	City of Mesquite (23–06–1636P).	The Honorable Daniel Alemán, Jr., Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	City Hall, 757 North Galloway Avenue, Mesquite, TX 75149.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2024	485490
Dallas	City of Rowlett (23–06–1006P).	The Honorable Blake Margolis, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	Community Development Department, 5702 Rowlett Road, Rowlett, TX 75089.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2024	480185

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Dallas	City of Sachse (23–06–1006P).	The Honorable Jeff Bickerstaff, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	City Hall, 3815 Sachse Road, Building B, Sachse, TX 75048.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2024	480186
Denton	Town of Argyle (23–06–1120P).	The Honorable Rick Bradford, Mayor, Town of Argyle, P.O. Box 609, Argyle, TX 76226.	Town Hall, 308 Denton Street, Argyle, TX 76226.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 1, 2024	480775
Denton	Town of Flower Mound (23–06–1120P).	The Honorable Derek France, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Town Hall, 2121 Cross Timbers Road, Flower Mound, TX 75028.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 1, 2024	480777
Grayson	City of Denison (23–06–0905P).	The Honorable Janet Gott, Mayor, City of Denison, 300 West Main Street, Denison, TX 75020.	Department of Public Works, 300 West Main Street, Denison, TX 75020.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 20, 2024	480259
Harris	Unincorporated areas of Harris County (22–06–2700P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 1111 Fannin Street, 8th Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2024	480287
Medina	Unincorporated areas of Medina County (23–06–1697P).	The Honorable Keith Lutz, Medina County Judge, 1300 Avenue M, Room 250, Hondo, TX 78861.	Medina County Old Jail Building, 1502 Avenue K, Hondo, TX 78861.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 8, 2024	480472
Travis	Unincorporated areas of Travis County (23–06–1281P).	The Honorable Andy Brown, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 1, 2024	481026
Utah: Washington	Town of Springdale (23–08–0323P).	Rick Wixom, Manager, Town of Springdale, 118 Lion Boulevard, Springdale, UT 84767.	Community Development Department, 118 Lion Boulevard, Springdale, UT 84767.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 18, 2024	490179
Virginia: Chesterfield	Unincorporated areas of Chesterfield County (23–03–0270P).	Joseph P. Casey, Chesterfield County Administrator, 9901 Lori Road, Chesterfield, VA 23832.	Chesterfield County Community Development Department, 9800 Government Center Parkway, Chesterfield, VA 23832.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2024	510035
West Virginia: Tucker	Unincorporated areas of Tucker County (23–03–0296P).	Michael Rosenau, President, Tucker County Commission, 211 1st Street, Suite 307, Parsons, WV 26287.	Tucker County Floodplain Administration, 211 1st Street, Suite 1, Parsons, WV 26287.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 8, 2024	540191

[FR Doc. 2024–00479 Filed 1–10–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2400]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2400, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Mineral County, Colorado and Incorporated Areas Project: 19–08–0036S Preliminary Date: January 13, 2023	
City of Creede	Town Hall, 2223 North Main Street, Creede, CO 81130.
Unincorporated Areas of Mineral County	Mineral County Courthouse, 1201 North Main Street, Creede, CO 81130.

[FR Doc. 2024–00478 Filed 1–10–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of May 22, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Shasta County, California and Incorporated Areas Docket No.: FEMA–B–2322	
City of Redding	Permit Center, 777 Cypress Avenue, 1st Floor, Redding, CA 96001.
Unincorporated Areas of Shasta County	Shasta County Department of Public Works, 1855 Placer Street, Redding, CA 96001.
Linn County, Iowa and Incorporated Areas Docket No.: FEMA–B–2279	
City of Cedar Rapids	City Services Center, 500 15th Avenue Southwest, Cedar Rapids, IA 52404.
City of Center Point	City Hall, 200 Franklin Street, Center Point, IA 52213.
City of Marion	City Hall, 1225 6th Avenue, Suite 200, Marion, IA 52302.
City of Palo	City Hall, 2800 Hollenbeck Road, Palo, IA 52324.
Unincorporated Areas of Linn County	Linn County Planning and Development Department, 935 2nd Street Southwest, Cedar Rapids, IA 52404.
Kingsbury County, South Dakota and Incorporated Areas Docket No.: FEMA–B–2292	
City of De Smet	City Hall, 106 Calumet Avenue SE, De Smet, SD 57231.
City of Iroquois	City Hall, 320 East Washita Street, Iroquois, SD 57353.
Unincorporated Areas of Kingsbury County	Kingsbury County Courthouse, 202 2nd Street SE, De Smet, SD 57231.
Cumberland County, Virginia and Incorporated Areas Docket No.: FEMA–B–2300	
Unincorporated Areas of Cumberland County	Cumberland County Courthouse, Building Inspector's Office, 1 Courthouse Circle, Cumberland, VA 23040.
Skamania County, Washington and Incorporated Areas Docket No.: FEMA–B–2215	
City of North Bonneville	City Hall, 214 CBD Mall Drive, North Bonneville, WA 98639.
City of Stevenson	City Hall, 7121 East Loop Road, Stevenson, WA 98648.
Unincorporated Areas of Skamania County	Skamania County Courthouse Annex, 170 Northwest Vancouver Avenue, Stevenson, WA 98648.

[FR Doc. 2024–00477 Filed 1–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7090–N–01]

30 Day Notice of Proposed Information Collection: Generic Solution for Solicitation for HUD's Competitive Discretionary Funding Opportunity Announcements, OMB Control No.: 2501–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 12, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from

individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 6, 2023 at 88 FR 69647.

A. Overview of Information Collection

Title of Proposal: Generic Solution for Solicitation for Competitive Discretionary Funding Opportunity Announcements.

Type of Request: New Information Collection Request.

OMB Control Number, if applicable: 2501–NEW.

Additional OMB control numbers applicable to government-wide standardized forms are also noted in this collection. As the burden is accounted for in those separate collections, it is not included in this calculation.

SF 424, OMB Control No. 4040–0004
SF 424–A, OMB Control No. 4040–0006
SF 424–B, OMB Control No. 4040–0007
SF 424–C, OMB Control No. 4040–0008
SF 424 D, OMB Control No. 4040–0009
SF LLL, OMB Control No. 4040–0013
Lobbying Form, OMB Control No. 4040–0013
Projects Abstract Summary, OMB Control No. 4040–0019

Description of the need for the information and proposed use: HUD is required by 2 CFR 200.204 to publicly announce the availability of discretionary awards that are competed. To ensure grants and cooperative agreements are awarded to applicants best suited to perform the functions of the awards, applicants are generally required to perform two pre-award steps, the submission of the application and the negotiation of the individual award terms. The first part of HUD's funding applications consists of submitting the Standard Form 424 (SF–424), ''Application for Federal Assistance'' along with mandatory and optional standard government-wide and HUD forms. The burden associated with these government-wide forms are reflected in separate OMB-sponsored government-wide information collections and are not reflected in this collection.

After the applicants have been selected as part of an objective competition process, HUD usually requires negotiation between HUD and the selected applicant to determine the terms of the award. A technical proposal (or technical submission) is required during the negotiation process. The technical proposal demonstrates the selected applicant's capabilities in accordance with the application or statement of work submitted with the application and/or selection criteria and other related information as specified in the funding announcement.

The provisions of 2 CFR 200.207 instruct Federal agencies to comply with the requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms or collection of additional information used by HUD in place of or as a supplement to the SF–424 series.

Respondents: Applicants for HUD's competitively funded financial assistance programs.

Information Collection/Form Number: SF 424 (4040–0004); SF–424B (4040–0007); SF–424D (4040–0009); SF 424A (4040–0006); SF–424C (4040–0008); SF LLL (4040–0013); Lobbying Form (4040–0013); Project Abstract Summary (4040–0019); HUD–424B; HUD–424CB (2501–0017); HUD–424CBW (2501–0017); HUD–424M (2501–0017); HUD–2880 (2501–0017); HUD–50070; Rural Partners Network (RPN) Community Networks (CN) Certification Form and Instructions; HUD 50153 (2501–0033); HUD 2991; HUD 2993; and Program specific requirements and rating factors (narrative and other attachments).

Estimated Number of Respondents: HUD bases the following estimates on historical experience. HUD's average of 45 funding announcements per fiscal year will fall under this generic request, plus an expected average of 10 NOFOs derived from supplemental funding enacted outside of the regular appropriations process. Additionally, the Department projects that it will receive approximately 30,000 applications annually.

Frequency of Response: Refer to Table 1.

Responses per Annum: Refer to Table 1.

Average Burden Hours per Response: HUD estimates it takes an average of 60 working hours to prepare and submit an application in grants.gov in response to a funding announcement. For applications submitted through *esnaps.gov*, HUD estimates it takes an average of 100 working hours, including completing the registration in *esnaps.hud.gov,* preparing and submitting an application and technical submission, and proper storage of records.

Total Estimated Burdens: For purposes of this information collection request, the HUD has used the average hourly earnings of a Project Management Specialist ($48.85 per hour) to monetize the value of respondent time. Therefore, the burden for these reporting activities is as follows using average response times:

30,000 applications * 160 hours * 1.2 frequency = 5,760,000 hours

5,760,000 hours * $48.85 = $281,376,000

TABLE 1—ESTIMATED BURDEN FOR RESPONDENTS

Information collection (OMB control No.)	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
SF 424 (4040–0004)	0	0		0	0	0	0
SF–424B (4040–0007)	0	0		0	0	0	0
SF–424D (4040–0009)	0	0		0	0	0	0
SF 424A (4040–0006)	0	0		0	0	0	0
SF–424C (4040–0008)	0	0		0	0	0	0
SF LLL (4040–0013)	0	0		0	0	0	0
Lobbying Form (4040–0013)	0	0		0	0	0	0
Project Abstract Summary (4040–0019)	0	0		0	0	0	0
HUD–424B	30,000	1.2	36,000	0.5	$18,000.00	$48.85	$879,300.00
HUD–424CB	1,375	1.2	1,650	3	4,950.00	48.85	241,807.50
HUD–424CBW	1,375	1.2	1,650	3	4,950.00	48.85	241,807.50
HUD–424M	250	1.2	300	0.5	150.00	48.85	7,327.50
HUD–2880	30,000	1.2	36,000	2	72,000.00	48.85	3,517,200.00

TABLE 1—ESTIMATED BURDEN FOR RESPONDENTS—Continued

Information collection (OMB control No.)	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–50070	30,000	1.2	36,000	0.25	9,000.00	48.85	439,650.00
Rural Partners Certification	800	1.2	960	0.50	480.00	48.85	23,448.00
HUD 50153	800	1.2	960	0.25	240.00	48.85	11,724.00
HUD 2991	30,000	1.2	36,000	3	108,000.00	48.85	5,275,800.00
HUD 2993	30,000	1.2	36,000	0.25	9,000.00	48.85	439,650.00
Program specific requirements and rating factors (narrative and other attachments)	30,000	1.2	36,000	140	5,040,000.00	48.85	246,204,000.00

HUD bases the following estimates on historical experience. HUD estimates it takes an average of 30 working hours for HUD to complete its pre-award activities associated with competitive applications, including parts 1 and 2 of the pre-award process. This includes activities related to proper storage of related records. For purposes of this information collection request, HUD has used a GS 13 step 5 rate ($51.25 per hour) to monetize the value of HUD time. Therefore, the burden for pre-award activities is as follows using average response times:

30,000 applications * 30 hours * 1.2 frequency = 1,080,000 hours

1,080,000 hours * $51.25 = $55,350,000

If the Department incurs any unique start-up or operational and maintenance costs with the collection of information covered by this ICR, HUD will include them on the request to OMB.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

C. Authority

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–00430 Filed 1–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037220; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 12, 2024.

ADDRESSES: Dr. Jayne-Leigh Thomas, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by Indiana University.

Description

The 27 cultural items were removed from unknown locations and given at various times to the university. The 27 sacred objects are nine rattles, four whistles, two necklaces, three dance accessories, three pipe bowls, three pipe stems, two otter skins, and one beaver pelt.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Indiana University has determined that:

- The 27 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Pawnee Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00435 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037216; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: University of Minnesota Twin Cities, Minneapolis, MN; Minnesota Indian Affairs Council, St. Paul/Bemidji, MN; Science Museum of Minnesota, Saint Paul, MN; University of Colorado Museum (Boulder), Boulder, CO; Milwaukee Public Museum, Milwaukee, WI; Denver Art Museum, Denver, CO; Yale Peabody Museum, New Haven, CT; and Cleveland Museum of Art, Cleveland, OH

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Minnesota Twin Cities (UMN); Minnesota Indian Affairs Council; Science Museum of Minnesota; University of Colorado Museum (Boulder); Milwaukee Public Museum; Denver Art Museum; Yale Peabody Museum; and Cleveland Museum of Art, hereafter the Collaborating Museums, have amended a Notice of Inventory Completion published in the **Federal Register** on February 24, 2023. This notice amends the number of associated funerary objects in a collection removed from Grant and Catron Counties, NM.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Alejandra Peña Gutiérrez, Weisman Art Museum, University of Minnesota, 333 East River Road, Minneapolis, MN 55455, telephone (612) 624–5934, email *apenagut@umn.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Collaborating Museums. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Collaborating Museums.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (88 FR 11932–11934, February 24, 2023). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This amendment is being made because physical inventory has identified additional items which were previously unreported, and because additional known items were subsequently identified to be associated funerary objects.

ASSOCIATED FUNERARY OBJECTS

Site	Original number	Amended number	Amended description
Cameron Creek and Warm Springs sites in Grant County, NM.	571	575	One carved jade pendant, 92 stone tools or other items, two carved shell or stone items, 43 shell items, one shell pendant, 16 bead lots, seven turquoise item lots, 45 bone tools or other items, 191 ceramic vessels, one non-vessel ceramic item, 167 ceramic sherds or sherd lots, four organic items including charcoal, and one adobe lot. In addition, the Collaborating Museums continue to look for two ceramic vessels and two turquoise pendants which are documented but not physically located.
Galaz Ruin site in Grant County, NM.	3,236	3,256	1,009 ceramic vessels, 23 ceramic non-vessel items, 798 ceramic sherds or sherd lots, three copper bell fragments, 51 bead lots, 738 stone tools or other items, 16 stone vessels, four lots of faunal material, 205 shell items, 51 turquoise items or lots, 260 bone tools or other items, 17 horn items, 13 mineral samples or objects, 20 unidentified organic items, and two unidentified residue samples. In addition, the Collaborating Museums continue to look for the missing 46 associated funerary objects, which are 34 pottery vessels, four bead lots, four shell adornments, one stone pendant, one stone axe, one stone palette, and one projectile point.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Collaborating Museums have determined that:

- The human remains described in this amended notice represent the physical remains of 198 individuals of Native American ancestry.
- The 4,234 objects described in this amended notice are reasonably believed to have been placed with or near

individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Okhay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Ysleta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the Collaborating Museums must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Collaborating Museums is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00431 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037221; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Indiana University (IU) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from an unknown location.

DATES: Repatriation of the human remains in this notice may occur on or after February 12, 2024.

ADDRESSES: Dr. Jayne-Leigh Thomas, Indiana University, Student Building 318, 701 E Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Indiana University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Indiana University.

Description

Human remains representing, at minimum, three individuals were removed from an unknown location. The collection was transferred to IU prior to 1956 by the Cincinnati Society for Natural History. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: oral history, expert opinion, and historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Indiana University has determined that:

• The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, Indiana University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Indiana University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00436 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037218; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Chatham County, GA.

DATES: Repatriation of the human remains in this notice may occur on or after February 12, 2024.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email *megan.murphy@ucr.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of California, Riverside.

Description

Human remains representing, at minimum, one individual were removed from Chatham County, GA. In 1983, a partially fossilized human jaw representing one Native American adult individual was removed from the Forest River in Savannah, Georgia by Bobby Schauber, a local bait shrimper, who reportedly found the jaw in his shrimping net after dragging the river bed. Schauber displayed the human remains in a display case at the Coffee Bluff Fishing Camp where it was noticed by members of an amateur archeological society who contacted assistant professor, Clark Larson, at Northern Illinois University. The jaw was subsequently studied at the Center for Study of Early Man, University of Maine under the direction of Robson Bonnichsen. In 1988, Dr. R.E. Taylor, director of the University of California, Riverside Radiocarbon Laboratory, obtained a sample of the individual for radiocarbon dating. The residual sample material was subsequently stored by Dr. Taylor at an off-campus storage facility and never reported to the UCR NAGPRA Program Staff. In February of 2022, the sample from the individual was discovered by NAGPRA Program Staff during a collections inventory. No associated funerary objects were found with the individual.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, kinship, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Alabama-Quassarte Tribal Town; Catawba Indian Nation; Eastern Band of Cherokee Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00433 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037217; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Riverside, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email *megan.murphy@ucr.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of California, Riverside.

Description

Human remains representing, at minimum, one individual were removed from Riverside County, CA. In 1972, the human remains of at least one Native American individual were removed from archeological site CA–RIV–64 (also known as the Indian Wells Site) during an archeological field school for students of Cabrillo College and the University of California, Riverside. The human remains, identified as a human canine tooth, were not initially identified as human in the field, but were noted as being possibly human in the original catalog records. This identification went unnoticed until 2023 during consultation with Tribal representatives and an osteological consultant, who confirmed the tooth to be human. During consultation the Tribal representatives also identified associated funerary objects. The seven lots of associated funerary objects are one lot of ceramics, one lot of clay, one lot of lithic artifacts, one lot of animal bone, one lot of floral/organic materials, one lot of fire-altered rock, and one lot of geological materials.

Human remains representing, at minimum, one individual were removed from Riverside County, CA. In 1985, the human remains of at least one Native American individual were removed by the University of California, Riverside Archaeological Research Unit under direction of Philip Wilke during the excavation of Burns Ranch (also known as Rancho del Gato, and La Quinta Cove, archeological sites CA–RIV–1179 and CA–RIV–2827). The excavation was contracted by the Crystal Canyon Country Club ahead of the building of a housing property and golf course that would destroy the sites. Native American human remains of at least nine individuals were removed during excavation and a sample of human bone was submitted to the UCR Radiocarbon Laboratory which yielded an age of 720 +/− 120 years BP. According to catalog records, 51 catalog numbers representing human bone and associated funerary objects, were reportedly removed from the collection to be reburied in La Quinta in 1990 at the request of the Tribe who was monitoring the project. During NAGPRA consultation in 2023, an osteological consultant identified additional human bone fragments and cremation elements in the collection which were not returned in 1990. Tribal representatives also identified associated funerary objects that were also not reburied in 1990. It is unclear how many individuals are still represented in the collection as the original catalogs do not differentiate between specific individuals and the human remains are too fragmentary to make a reliable determination beyond a minimum of one individual. The 15 associated funerary objects are two lots of animal bone, two lots of ceramics, two lots of lithic materials and tools, one lot of metal objects, one lot of shell beads, one lot of basketry, two lots of other organic/floral materials, one lot of geological materials, two lots of unmodified shell, and one lot of fire-altered rock.

Human remains representing, at minimum, one individual were removed from Riverside County, CA. In 1990, the University of California, Riverside Archaeological Research Unit was contracted by the Chateau Development Company to conduct an archeological assessment of a tract of land in the city of La Quinta ahead of plans for a residential development. During the archeological excavation, five archeological sites were identified including CA–RIV–1182, CA–RIV–3143, CA–RIV–3144, CA–RIV–3868, and CA–RIV–3882. A cremation locus was identified in the boundaries of CA–RIV–3144 and the human remains of one adult, male Native American were removed from the surface of the area. Following the conclusion of the archeological excavations, 2,648 cremated human bone fragments were returned to a local Tribe and were reburied nearby in La Quinta on August 16, 1990. The funerary objects buried with the individual, however, were not returned and remained in the collections housed at UCR. In 2023, during Tribal consultation, an osteological consulted identified additional human remains that were still present in the collections. Tribal representatives also identified a number of funerary objects present in the collections. The 16 associated funerary objects are three lots of ceramics, three lots of lithics, two lots of shell beads, three lots of faunal remains, three lots of floral material, and two lots of unmodified shell.

Human remains representing, at minimum, three individuals were removed from Riverside County, CA. In 1989, the University of California, Riverside Archaeological Research Unit was contracted by the Transpacific Development Company to conduct an archeological assessment of a tract of land at the northeast corner of Washington Street and State Highway 111 in the city of La Quinta. During the archeological excavation, which was in the vicinity of the historic Cahuilla village of Pal Kavinic, six archeological sites were identified including CA–RIV–2200, CA–RIV–2936, CA–RIV–3679, CA–RIV–3680, CA–RIV–3681, and CA–RIV–3682. One human tarsal bone was removed from CA–RIV–3682 but was not identified as human during the project analysis. In 2023, during Tribal consultation, an osteological consultant identified the bone as human. Additionally, the osteologist identified one cranial fragment and one juvenile long-bone fact from CA–RIV–3680 and one humerus fragment from CA–RIV–3681. Tribal representatives also identified associated funerary objects in the collection. The 19 associated funerary objects are three lots of animal bones, three lots of ceramic, two lots of lithics, one lot of metal, two lots of shell objects, two lots of floral material, one lot of other organic material, two lots of geological materials, two lots of unmodified shell, and one lot of fire-altered rock.

Human remains representing, at minimum, two individuals were removed from Riverside County, CA. In 1992, the Keith Companies, Archaeology Division, were contracted by the Shadowridge Creek Country Club to conduct a field survey for a parcel of land proposed for the development of a golf course and residential area. During the survey two prehistoric sites were identified, CA–RIV–785 and CA–RIV–4729, and surface materials were collected. At CA–RIV–785, archeologists observed a hearth feature and collected ceramic sherds, animal bone, and cremated human remains from the surface. They also collected surface materials from a small nearby scatter assigned the trinomial CA–RIV–4729. These collections were subsequently housed at UCR. In 1993, a Tribe requested that the Keith Companies return the cremated human bone and associated shell beads that were collected from CA–RIV–785 to the Tribe

for reburial. On October 29, 1993, Tribal representatives for the Tribe reburied 118 human bone elements and five associated shell beads that were returned to them. The other materials in the collection, however, remained at UCR and Tribes were not given the opportunity to review them. In 2023, during NAGPRA consultation, an osteological consultant identified additional human remains in the collections that were not returned to the Tribe in 1993, including one cremated infant bone and cremated adult bone fragments. Tribal representatives also identified additional associated funerary objects in the collection that were not returned in 1993. The 10 associated funerary objects are two lots of ceramic, one lot of glass, two lots of lithic flakes and objects, one lot of metal, one lot of shell beads, two lots of animal bone, and one lot of floral material and charcoal.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, kinship, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- The 67 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Indians, California; Cabazon Band of Cahuilla Indians (*Previously* listed as Cabazon Band of Mission Indians, California); Cahuilla Band of Indians; Los Coyotes Band of Cahuilla and Cupeno Indians, California; Morongo Band of Mission Indians, California; Ramona Band of Cahuilla, California; Santa Rosa Band of Cahuilla Indians, California; and the Torrez Martinez Desert Cahuilla Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00432 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037219; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Denver Museum of Nature & Science (DMNS) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from the Magic Mountain site, 5JF223, Jefferson County, CO.

DATES: Repatriation of the human remains in this notice may occur on or after February 12, 2024.

ADDRESSES: Michele L. Koons, Curator of Archaeology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6457, email *Michele.Koons@dmns.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Denver Museum of Nature & Science. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Denver Museum of Nature & Science.

Description

Between 1939 and 1941, human remains representing, at minimum, one individual were removed from the Magic Mountain site, 5JF223, in Jefferson County, CO, by Harold and Elizabeth (Betty) Huscher. In 1940, the Huschers donated the collection to the Colorado Museum of Natural History, now DMNS. In 2019, DMNS staff processed several bags labeled ''faunal remains'' from the Huscher excavation. Analysis shows that nine of those ''faunal remains'' are actually human bone fragments (A540.18–R). The Huschers excavated animal remains from the site and inadvertently mixed in human remains. The bone fragments are associated with the Early Ceramic period occupational component of the site, which dates approximately 200 to 1000 C.E. No associated funerary objects are present.

Between 1971 and 1972, human remains representing, at minimum, five individuals were removed from the Magic Mountain site, 5JF223, in Jefferson County, CO, by Metropolitan State College of Denver (now the Metropolitan State University of Denver). In 2007, the Center of

Southwest Studies, Fort Lewis College, acquired part of the Magic Mountain collection from the Rimrocker Historical Society. The Rimrock Historical Society originally accepted the materials as part of a larger donation in 1998 from Dr. Jonathan Kent of Metropolitan State College of Denver (now the Metropolitan State University of Denver). In April 2023, DMNS staff learned of the Center of Southwest Studies, Fort Lewis College Magic Mountain collection. Both parties agreed to transfer the materials to DMNS in 2023 since the Museum holds the majority of the collections from the site. Prior to transfer analysis conducted by Dr. Dawn Mulhern identified 31 bone fragments. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, biological information, folklore, geographical information, historical information, kinship, linguistics, oral tradition, other relevant information, or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Denver Museum of Nature & Science has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Ute Mountain Ute Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the Denver Museum of Nature & Science must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Denver Museum of Nature & Science is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 4, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00434 Filed 1–10–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 19, 2024 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–576–577 and 731–TA–1362–1367 (Review) (Cold-Drawn Mechanical Tubing (CDMT) from China, Germany, India, Italy, South Korea, and Switzerland). The Commission currently is scheduled to complete and file its determinations and views of the Commission on February 9, 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: January 9, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–00544 Filed 1–9–24; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Quarterly Census of Employment and Wages Business Supplement.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 11, 2024.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov*.

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages Business Supplement (QBS) is a versatile collection instrument designed to capture information on the US economy quickly and efficiently. The QBS collection is designed to incorporate new questionnaires as the need arises to allow BLS to collect and publish information quickly so that stakeholders and data users can understand the impact of specific events, or economic issues of relevance, on the US economy.

The BLS will primarily use the Annual Refiling Survey (ARS) as a platform for conducting the QBS. Each year, the BLS Quarterly Census of Employment and Wages (QCEW) Program conducts the ARS by reaching out to approximately 1.5 million establishments requesting verification of their main business activity, and their mailing and physical location addresses. The fully web-based ARS allows for an accelerated timeframe for collection and provides a low-cost platform for conducting the quick, short surveys of the QBS. The QBSs accompanying the ARS have little data collection overhead, leveraging the respondent contact process undertaken as part of the production ARS. QBS respondents already logged into the ARS secure website are directed to a QBS and asked to answer a limited number of additional survey questions after completing the ARS. QBS respondents that are not in the ARS are solicited using established contact methods (email and/or printed letters) and directed to a stand-alone interface to access and answer the QBS questions online.

II. Current Action

Office of Management and Budget clearance is being sought for a revision of the QCEW Business Supplement (QBS).

The QBS is designed to encourage a fast response and minimize respondent burden on the public by limiting the number of questions on each survey and by asking questions that respondents should be able to answer without research or referring to records. In this manner, BLS can provide information that is needed quickly and is not collected elsewhere. The QBS will incorporate new questionnaires as the need for data arises, as frequently as twice a year. The BLS plans to conduct multiple small surveys under the QBS clearance. The 2024 survey will focus on establishments' telework policies and practices, recent experiences in hiring, and how they advertise vacancies. These questions were previously asked in the 2022 QBS collected under this clearance (the 2022 Business Response Survey). Asking these questions again, a full two years later, will provide an understanding of how these business operations have changed.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: QCEW Business Supplement.

OMB Number: 1220–0198.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions, and farms.

Total Number of Respondents: 80,000.

Frequency: Once.

Total Responses: 80,000.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 6,667 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on January 5, 2024.

Eric Molina,

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2024–00374 Filed 1–10–24; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 5 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *travisd@arts.gov,* or call 202–682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

NEA Jazz Masters Fellowships Panel A (review of applications): This meeting will be closed.

Date and time: February 6, 2024; 2:00 p.m. to 4:00 p.m.

NEA Jazz Masters Fellowships Panel B (review of applications): This meeting will be closed.

Date and time: February 6, 2024; 2:00 p.m. to 4:00 p.m.

Shakespeare in American Communities Cooperative Agreement

Panel (review of applications): This meeting will be closed.

Date and time: February 13, 2024; 1:00 p.m. to 3:00 p.m.

NEA Big Read Cooperative Agreement Panel (review of applications): This meeting will be closed.

Date and time: February 14, 2024; 2:00 p.m. to 4:00 p.m.

Creative Placemaking Technical Assistance (review of applications): This meeting will be closed.

Date and time: February 15, 2024; 2:00 p.m. to 4:00 p.m.

Dated: January 8, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024–00429 Filed 1–10–24; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Civil Penalty Adjustments for 2024

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of civil penalty adjustments for 2024.

SUMMARY: The National Endowment for the Humanities (NEH) is giving notice of the adjusted maximum and minimum civil monetary penalties that may be imposed for violations of its New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The updated penalty amounts are adjusted for inflation and are effective from January 15, 2024, through January 14, 2025.

DATES: The updated civil penalties in this notice are applicable to penalties assessed on or after January 15, 2024, if the associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Inflation Adjustment Act) [1] directs each Executive agency to make an annual inflation adjustment for each civil monetary penalty provided by law within the jurisdiction of the agency, and to publish notice of each such adjustment in the **Federal Register**. An agency adjusts a civil monetary penalty by increasing the maximum amount of such penalty (or the range of minimum and maximum amounts, as applicable) by the percentage by which the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October preceding the date of adjustment (in this case, October 2023) exceeds the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment (in this case, October 2022), then rounding each amount to the nearest dollar.

NEH administers two civil monetary penalties subject to adjustment pursuant to the Inflation Adjustment Act: A civil monetary penalty that NEH may impose for violation of its New Restrictions on Lobbying regulation (the Lobbying Civil Monetary Penalty) [2] and a civil monetary penalty that NEH may impose under its Program Fraud Civil Remedies Act Regulations (the PFCRA Civil Monetary Penalty).[3] NEH made the initial ''catch-up'' adjustments to the Lobbying Civil Monetary Penalty for years 2016–2020 when it amended its New Restrictions on Lobbying regulation on April 21, 2020,[4] and to the PFCRA Civil Monetary Penalty for years 2016–2021 when it adopted its Program Fraud Civil Monetary Penalties Act regulations on August 13, 2021.[5] NEH then adjusted the amount of those civil monetary penalties accordingly when it codified the statutory formula for inflation adjustments in NEH's New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations on March 30, 2023.[6] Each regulation provides for subsequent annual adjustment of its respective civil monetary penalty by notice in the **Federal Register**.[7]

2. 2024 Adjustments for Inflation

OMB has issued guidance on implementing and calculating the 2024 adjustment under the Inflation Adjustment Act.[8] Per this guidance, the CPI–U adjustment multiplier for this annual adjustment is 1.03241.[9] The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2022 and October 2023, the CPI–U increased by a multiplier of 103.241% Therefore, NEH will adjust each civil monetary penalty amount by multiplying it by 1.03241 and rounding to the nearest dollar.

A. 2024 Adjustment To Lobbying Civil Monetary Penalty

For 2023, the Lobbying Civil Monetary Penalty had a minimum amount of $23,727 and a maximum amount of $237,268. Therefore, the adjusted minimum Lobbying Civil Monetary Penalty for 2024 is $24,496 ($23,727 multiplied by 1.03241) and the adjusted maximum Lobbying Civil Monetary Penalty for 2024 is $244,958 ($237,268 multiplied by 1.03241).

Thus, the Lobbying Civil Monetary Penalty, following the 2024 adjustment, has a minimum amount of $24,496 and a maximum amount of $244,958.

B. 2024 Adjustment to PFCRA Civil Monetary Penalty

For 2023, the PFCRA Civil Monetary Penalty had a maximum amount of $13,508. Therefore, the new, post-adjustment maximum penalty for 2024 under NEH's PFCRA regulation is $13,946 ($13,508 multiplied by 1.03241).

Dated: January 8, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–00405 Filed 1–10–24; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0151]

Information Collection: Licenses and Radiation Safety Requirements for Irradiators

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of

[1] 28 U.S.C. 2461 note.

[2] 45 CFR 1168.400(a), (b), (e).

[3] 45 CFR 1174.3(a), (b).

[4] 85 FR 22025.

[5] 86 FR 44626.

[6] 88 FR 18998.

[7] 45 CFR 1168.400(g), (h), 1174.3(f), (g).

[8] Office of Management and Budget (OMB) Memorandum M–24–07 (December 19, 2023).

[9] *Id.*

information. The information collection is entitled, ''Licenses and Radiation Safety Requirements for Irradiators.''

DATES: Submit comments by March 11, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0151. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0151 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0151.
- *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 supporting statement is available in ADAMS under Accession No. ML23332A046.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0151, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 36, ''Licenses and Radiation Safety Requirements for Irradiators.''

2. *OMB approval number:* 3150–0158.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NA.

5. *How often the collection is required or requested:* Applications for new licenses and amendment may be submitted at any time (on occasion). Applications for renewal are submitted every 15 years. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Applicants for and holders of specific licenses authorizing the use of licensed material for irradiators.

7. *The estimated number of annual responses:* 1,527.2 (19.2 for reporting [2.2 NRC licensees and 17 Agreement State licensees], 52 for recordkeepers [6 NRC licensees and 46 Agreement State Licensees], and 1,456 for third-party disclosures [168 NRC licensees and 1,288 Agreement State licensees]).

8. *The estimated number of annual respondents:* 52 (6 NRC licensees and 46 Agreement State licensees).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 29,781 hours (687 reporting hours + 21,762 recordkeeping hours + 7,332 third-party disclosure hours).

10. *Abstract:* Part 36 of title 10 of the Code of Federal Regulations, establishes radiation safety requirements for the use of radioactive material for irradiators. The information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that the licensee possession and use of source or byproduct material is in compliance with license and regulatory requirements.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: January 8, 2024.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–00463 Filed 1–10–24; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Privacy Act of 1974; System of Records

AGENCY: Peace Corps.

ACTION: Notice of a modified system of records.

SUMMARY: The Peace Corps Office of Inspector General is issuing public notice of its intent to amend a system of records that it maintains subject to the Privacy Act of 1974. PC–19, entitled ''Office of Inspector General Investigative Records'' is being amended to reflect two new routine uses for information contained in the system and to make various technical corrections and/or clarifications. The amendments also reflect the expanded authority granted to the Peace Corps Inspector General since the initial publication of PC–19.

DATES: This modified system of records is effective 30 days upon publication; however, comments on the Routine Uses will be accepted on or before February 9, 2024. The Routine Uses are effective at the close of the comment period.

ADDRESSES: Send written comments, identified by the docket number and title, to the Peace Corps, ATTN: James Olin, FOIA/Privacy Act Officer, 1275 First Street NE, Washington, DC 20526, or by email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin, FOIA/Privacy Act Officer, 1275 First Street NE, Washington, DC 20526; *pcfr@peacecorps.gov;* or 202–692–2507.

SUPPLEMENTARY INFORMATION: The Peace Corps is amending a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Specifically, PC–19, entitled ''Office of Inspector General Investigative Records'' is being amended to reflect two new routine uses at paragraphs M and N:

''(M). Disclosure to all appropriate agencies, entities, and persons when (1) the Peace Corps suspects or has confirmed that there has been a breach of the system of records; (2) the Peace Corps has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Peace Corps (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Peace Corps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

''(N). Disclosure to another Federal agency or Federal entity, when the Peace Corps determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

The Peace Corps is also making technical amendments to references to the Inspector General Act, which has been amended and is now cited at 5 U.S.C. 401–424.

Pursuant to 5 U.S.C. 552a(j)(2), there is one substantive change being made to the exemptions promulgated for the system. The addition of this exemption is in keeping with the Inspector General's delegated law enforcement authority from the Attorney General. The added exemption also aligns with the Peace Corps' published rule, entitled, ''Privacy Act Regulations,'' establishing its procedures relating to access, maintenance, disclosure and amendment of records which are in a Peace Corps system of records per the Privacy Act, promulgated at 22 CFR part 308 (*https://www.ecfr.gov/current/title-22/chapter-III/part-308*). In accordance with 5 U.S.C. 552a(r), the Peace Corps has provided a report of this amended system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Office of Inspector General Investigative Records, PC–19.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, Peace Corps, 1275 First Street NE, Washington, DC 20526.

SYSTEM MANAGER(S):

Inspector General, Peace Corps, 1275 First Street NE, Washington, DC 20526.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. 401–424; The Peace Corps Act of 1961, as amended, 22 U.S.C. chapter 34.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to enable the Peace Corps Office of Inspector General to carry out its responsibilities under the Inspector General Act of 1978, as amended, 5 U.S.C. 401–424, and the Peace Corps Act of 1961, as amended, including the affirmative responsibility to conduct and supervise investigations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The investigative record subject, individuals who are part of an investigation of fraud, waste, or abuse concerning Peace Corps programs or operations; individuals interviewed or involved in the death of a Volunteer; current and former Peace Corps employees, Peace Corps Volunteers, Returned Peace Corps Volunteers, contractors, witnesses, complainants, informants, suspects or other persons associated with an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include the correspondence related to investigations; information provided by subjects, witnesses, or investigatory or law enforcement organizations; reports of investigation, including affidavits, statements, transcripts of testimony, or other documents pertinent to investigations, as well as medical and behavioral health records.

RECORD SOURCE CATEGORIES:

The information sources include Peace Corps office and program officials, employees, contractors, grantees, and other individuals or entities associated with Peace Corps; subjects of an investigation; individuals, businesses, or entities with whom the subjects are or were associated (*e.g.,* colleagues, business associates, acquaintances, or relatives); Federal, State, local, international, and foreign investigative or law enforcement agencies; other government agencies; confidential sources; complainants; witnesses; concerned citizens; and public source materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the Peace Corps may disclose all or a portion of

the records or information contained in this system outside of the Peace Corps without the consent of the subject individual, if the disclosure is compatible with the purpose for which the record was collected, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. Disclosure for Law Enforcement Purposes. Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information. Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. Disclosure to Requesting Agency. Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's 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 part or all of the record 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.

D. Disclosure to Office of Management and Budget. Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices. Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice. Information may be disclosed for purposes of litigation, provided that in each case the disclosure is compatible with the purpose for which the records were collected. Disclosure for these purposes may be made to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when: 1. The Peace Corps, or any component thereof; 2. Any employee of the Peace Corps in his or her official capacity; 3. Any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to represent the employee; or 4. The United States (when the Peace Corps determines that litigation is likely to affect the Peace Corps or any of its components) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. Disclosure to the National Archives. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others. Information may be disclosed to contractors, grantees, consultants, or Volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints, and Appeals. Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding, Agencies that may obtain information under this routine use include, but are not limited to: the Office of Personnel Management, Office of Special Counsel, Federal Labor Relations Authority, U.S. Equal Employment Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management. Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Litigation. Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Peace Corps, including public filings with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under Section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to U.S. Ambassadors. Information from this system of records may be disclosed to a U.S. Ambassador or his or her designee in a country where the Peace Corps serves when the information is needed to perform an official responsibility, to allow the Ambassador to knowledgeably respond to official inquiries and deal with in-country situations that are within the scope of the Ambassador's responsibility.

M. Disclosure to all appropriate agencies, entities, and persons when (1) the Peace Corps suspects or has confirmed that there has been a breach of the system of records; (2) the Peace Corps has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Peace Corps (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Peace Corps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

N. Disclosure to another Federal agency or Federal entity, when the Peace Corps determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Additionally, records may also be disclosed to:

1. To non-governmental parties where those parties may have information the

OIG seeks to obtain in connection with an investigation or inquiry.

2. To qualified individuals or organizations in connection with the performance of a peer review or other study of the OIG's audit or investigative functions.

3. To a Federal agency responsible for considering debarment or suspension action if the record would be relevant to such action.

4. To the Department of Justice for the purpose of obtaining its advice on Freedom of Information Act matters.

5. To the Office of Government Ethics (OGE) to comply with agency reporting requirements established by OGE in 5 CFR 2638.604.

6. To the Council of the Inspectors General on Integrity and Efficiency, another Federal Office of Inspector General, or other Federal law enforcement office in connection with an allegation of wrongdoing by the Inspector General or staff members of the OIG.

7. To a grand jury agent pursuant to a federal or state grand jury subpoena or in response to a prosecution request that such record or information is released for the purpose of its introduction to a grand jury.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Investigative Records are maintained in electronic and paper format. Electronic records are stored in computerized databases. Paper records and other media (photographs, audio recording, CDs, etc.) are stored in locked containers in a secured restricted area.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The paper or physical case records are retrieved by case number. Electronic records may be retrieved by case number, case name, subject, cross referenced item key word search, batch retrieval applications, or by any available field or metadata element recorded in the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Investigative records are retained, retired and destroyed in accordance with the Peace Corps' published record disposition schedule that is approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Peace Corps safeguards records in this system in accordance with applicable laws, rules, and policies to protect personally identifiable information against unauthorized access or disclosure. The Peace Corps has imposed strict controls to minimize such risks. Administrative safeguards include but not limited to: access to the information in this system is limited to authorized personnel with official duties requiring access, and whose roles have been authorized with such access permissions. All such individuals receive the appropriate privacy and cybersecurity training on an annual basis.

The physical controls in place include the servers storing electronic data are located offsite in a locked facility with access limited to authorized personnel. The servers are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Computerized records are safeguarded in a secured environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption and Security Assessment and Authorization. The paper or other physical records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices at all other times.

The technical controls in place include multiple firewalls, system access, encrypted data at rest, encrypted data in motion, periodic vulnerability scans to ensure security compliance, and security access logs. Security complies with applicable Federal Information Processing Standards (FIPS) issued by NIST. Access is restricted to specific authorized Peace Corps individuals who have internet access through work computers using a Personally Identity Verification (PIV). Individual users can only access records with the proper pre-approved accreditation.

RECORD ACCESS PROCEDURES:

Records in this system are exempt from the provisions of the Privacy Act of 1974 that permit access, correction, and notification to the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(j)(2), (k)(2), and 22 CFR 308.14. At the Inspector General's discretion, individual requests for access and correction may be granted if it is determined that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Individuals seeking access to their records should follow the procedures in 22 CFR part 308. Individuals should address written inquiries to the OIG FOIA Officer at *foia@peacecorpsoig.gov.* Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308. Requesters will be required to provide adequate identification. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought.

CONTESTING RECORD PROCEDURES:

Requests must follow the ''Records Access Procedures,'' above. Clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3)–(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

HISTORY:

58 FR 39839; 65 FR 53772; 72 FR 44878.

Dated: January 5, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024–00371 Filed 1–10–24; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–160 and CP2024–166]

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 16, 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:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–160 and CP2024–166; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 170 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* January 16, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–00423 Filed 1–10–24; 8:45 am]

BILLING CODE 7710–FW–P

[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).

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:* January 11, 2024.

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 January 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 169 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–158, CP2024–164.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–00381 Filed 1–10–24; 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:* January 11, 2024.

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 January 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–159, CP2024–165.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–00387 Filed 1–10–24; 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:* January 11, 2024.

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 January 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 170 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2024–160, CP2024–166.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–00380 Filed 1–10–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99277; File No. SR–LCH SA–2023–007]

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Liquidity Risk Modelling Framework

January 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by LCH SA. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

LCH SA is proposing to amend its Liquidity Risk Modelling Framework (the ''Framework''), which describes the Liquidity Stress Testing framework by which the Collateral and Liquidity Risk Management department (''CaLRM'') of LCH SA assures that LCH SA has enough cash available to meet any financial obligations, both expected and unexpected, that may arise over the liquidation period for each of the clearing services that LCH SA offers (the ''Proposed Rule Change'').[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Proposed Rule Change is being adopted primarily to enhance the manner in which the Liquidity Coverage Ratio (''LCR'') is calculated, thereby increasing the robustness of LCH SA's liquidity profile.[4] The changes implement recommendations made by LCH SA's Model Validation Team following validation exercises in 2020 and 2021.

In particular, the Proposed Rule Change will: (a) revise the manner in which the settlement obligation liquidity requirements are calculated by aligning it to the actual process used by the Operations Team during a default management event and ensuring that no netting is allowed between Members of the same Group; (b) revise the manner in which securities pledged to the Banque de France (''BdF'') are calculated by providing that such securities be valued at the stressed mark-to-market price rather than the contract price; [5] (c) extend from five (5) days to seven (7) days the length of time for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements; [6] (d) include the liquidity needs generated by the expiration of physically settled stock futures in the liquidity monitoring; and (e) require LCH SA, in calculating its required liquidity resources, to take into account that Clearing Members may switch from depositing non-cash collateral in a Full Title Transfer Account, which may be pledged at the BdF to obtain a liquidity line of credit, to depositing non-cash collateral instead in a Pledge Account, which permits no re-hypothecation rights.[7]

The proposed revisions to the Framework are set out in four of the Framework's six sections: Section 1, *Model Scope, Purpose and Use;* Section 4, *Model Specifications;* Section 5, *Model Performance Testing and Ongoing Monitoring* and Section 6, Appendix.[8]

Section 1 of the Framework will be amended as follows:

Section 1.1, *Model Objective, Business Scope and Intended Use,* will be revised to specify that the review of the Framework will be performed at least on an annual basis rather than quarterly to align the frequency of the review with the frequency defined for the regular update of the Liquidity Risk Policy.

Section 1.1.1, *Reminder of SA's activities,* will be revised to specify that the Default Funds are calibrated on the assumption of default of the two most exposed Member Groups (Cover 2). In particular, LCH SA's Framework ensures that the liquid resources are sufficient to cover the simultaneous default of the two most exposed Member Groups in term of liquidity that are identified by taking into consideration all of the possible liquidity needs, including the settlement obligation. This is approach incorporates the Cover 1 Clearing Member Group plus the next most exposed Clearing Member Group.[9]

Section 1.1.2, *Investment activities,* will be revised to clarify the responsibilities of the Collateral and Liquidity Management (''CaLM'') Front Office team. Specifically, the sentence: ''Three main tasks have been assigned to the team: liquidity management, non-cash collateral *settlement* in case of a clearing member's default and investment management'' has been revised to read: ''Three main tasks have been assigned to the team: liquidity management, non-cash collateral *liquidation* [10] in case of a clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] LCH SA, a subsidiary of LCH Group and an indirect subsidiary of the London Stock Exchange Group plc (''LSEG''), manages its liquidity risk pursuant to, among other policies and procedures, the Group Liquidity Risk Policy and the Group Liquidity Plan applicable to each entity within LCH Group. In addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear). LCH SA also maintains an interoperability link with Euronext Clearing, formerly Cassa di Compensazione e Garanzia, in Milan, Italy.

[4] LCH SA uses a Cover 2 approach for conducting stress tests and assessing its liquidity resources on a daily basis. This approach assumes that the two Clearing Member groups with the largest liquidity exposure will default on the same day. Cover 2 is computed by taking into account the liquidity risks related to clearing members within the same group across all services of the CCP that are then aggregated.

[5] See, Framework, § 4.2.5.

[6] See, *e.g.,* Framework, §§ 4.2.1, 5.1, 5.3.

[7] See, Framework, § 4.2.5.2.4.

[8] No revisions are being proposed to Section 2, Limitations and Compensating Controls, or Section 3, Justification of Modeling Approach. The Framework also has a number of appendices, set out in Section 6, that supplement the matters discussed elsewhere in the Framework.

[9] Per SEC Rule 17Ad–22(e)(7)(i), LCH SA is required to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions.

[10] Such liquidation includes the possible liquidation of securities underlying reverse

member's default and investment management''. The purpose of this change is to provide a more accurate description on the actual responsibilities of the CaLM Front Office team which is in charge of performing all the relevant activities necessary to *liquidate* a member's non-cash collateral in case of defaults.

Section 1.3, *Model dependency and interconnectivity,* will be revised to describe more fully the purpose of the various policies and procedures that LCH SA employs to manage its liquidity risk in a manner that is consistent with defined risk appetites, as well as with regulatory and internal requirements. These policies and procedures include:

- *LCH SA Liquidity Plan,* which sets out the principles and procedures for liquidity management within LCH SA. Its main objectives are to:
  - Ensure that LCH SA maintains sufficient liquidity at all times in accordance with policies set by the appropriate governance authority and monitored and reported by Risk Management;
  - Ensure that liquidity management and resources are aligned with LCH SA's operational requirements to meet payment obligations as they fall due under business as usual and stressed liquidity conditions; and
  - Ensure effective liquidity risk identification and escalation within CaLM service and other relevant LCH SA departments.
- *Group Liquidity Risk Policy,* which ensures that each central counterparty (''CCP'') of LCH Group has enough liquid resources on hand to meet all the expected and unexpected financial obligations that arise during the course of the day. The policy lays out how a CCP will measure whether there are enough available liquid resources.
- *Group Financial Resource Adequacy Policy,* which describes the standards by which financial resources should be assessed against Clearing Member exposures, including variation margins, initial margins, margin add-ons for liquidity risk, concentration risk, wrong-way risk, where appropriate, as well as the sizing and re-sizing of the default funds across the LCH Group CCPs.
- *Group Collateral Risk Policy,* which sets out the standards for managing collateral risk across the LCH Group CCPs and ensures that CCPs must have a robust mechanism in place to process and control the collateral posted by Members.
- *Group Investment Risk Policy,* which sets out the standards for the management of investment risk across the LCH Group CCPs.
- *LCH SA Collateral Control Framework,* which describes the actions undertaken by the CaLRM team to implement the collateral limits laid out in the Group Collateral Risk Policy and to ensure that the prices integrated on a daily basis by the Margin Team are accurate and fairly priced.
- *Group Risk Policy: Default Management,* which describes the minimum standards that each CCP within the LCH Group must meet in dealing with the default of a Member.[11]
- Section 1.4, *Model Governance,* will be revised by adding a footnote specifying that core liquidity reverse stress tests [12] are performed monthly in line with that stated in the Liquidity Risk Policy. In particular LCH SA performs two set of reverse stress test:
  - On a monthly basis, in line with the methodology applied to perform any reverse stress tests in LCH SA, risk factors (defined in section 5.3.1) are independently stressed (one single factor at time) to assess extreme market conditions necessary to observe a breach of the LCR limit.
  - In addition, combined reverse stress test scenarios (defined in section 5.3.2) are also performed on at least a quarterly basis. These combined scenarios are considered as ''non-core reverse stress tests'' with combined stress shocks applied on risks factors to determine the joint market conditions necessary to breach the LCR limit and assess their plausibility. This change to the Framework is being proposed to align it with the updated Liquidity Risk Policy text approved during the 2022 review and in compliance with the SEC rule 17Ad–22(e)(7)(vi)(B).[13]
  - Finally, Section 1.6.1, *Liquidity Sources,* will be revised to expand the tools available to CaLM to meet LCH SA's non-Euro liquidity requirements in the event of a default. This proposed change aims to align the Framework with the updated Liquidity Plan text approved during the 2022 review.

Specifically, these tools include:

- Non-Euro cash deposited as collateral in accordance with SEC Rule 17Ad–22(a)(14)(i) [14] as being cash held at creditworthy commercial banks;
- Sale of non-Euro securities of the defaulting member in accordance with SEC Rule 17Ad–22(a)(14)(ii) [15]:
  - These highly liquid and available securities would be converted into cash via an outright sale in the open market; or
  - in the intermediary period between the default of the member and the auction settlement, these securities might be converted into cash via the repo arrangement in place at CaLM Front Office.
- Repo transactions, including: (a) bilateral repo transactions (non-Euro cash taker and non-Euro collateral giver); (b) cross-currency bilateral repo (non-Euro cash taker and Euro collateral giver); (c) cross-currency triparty repo (non-Euro cash taker and Euro collateral giver). LCH SA considers these transactions to be classified as prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions due to (a) their contractual nature; and (b) the highly liquid and overall resilience of the repo markets for the major currencies cleared by LCH SA.
- Use of the multicurrency overdraft facility. In accordance with SEC Rule 17Ad–22(a)(14),[16] LCH SA considers this facility to be classified as a prearranged funding arrangement determined to be highly reliable even in extreme but plausible market conditions due to (a) its contractual nature; and (b) the high credit quality, based on the conservative internal credit score required of the bank providing the facility.
- Use of the FX spot market transactions. In accordance with SEC Rule 17Ad–22(a)(14),[17] LCH SA considers this facility to be classified as a prearranged funding arrangement determined to be highly reliable even in extreme but plausible market conditions as (a) numerous counterparties are already onboarded on the FX platform; and (b) the highly liquid and overall resilience of the FX markets observed for the major currencies cleared by LCH SA.
- ECB weekly tender in U.S. Dollars (''USD'').[18] In accordance with SEC Rule 17Ad–22(a)(14) [19] LCH SA considers this facility to be a prearranged funding arrangement determined to be highly reliable even in extreme but plausible market conditions given LCA SA's banking license and the central bank

repurchase activities of a defaulting clearing member.

[11] The CaLM Risk Procedures: Investment Risk Monitoring, and Default Management Guidelines, which currently are included among these policies and procedures, have been removed.

[12] *See,* Framework, § 5.3.

[13] 17 CFR 240.17Ad–22(e)(7)(vi)(B).

[14] 17 CFR 240.17Ad–22(a)(14)(i).

[15] 17 CFR 240.17Ad–22(a)(14)(ii).

[16] 17 CFR 240.17Ad–22(a)(14).

[17] *Id.*

[18] As a credit institution, LCH SA has access to the ECB Open Market Operations in USD. LCH SA considers this resource as a last resort.

[19] 17 CFR 240.17Ad–22(a)(14).

status of the institution providing such resource.

• Replace LCH SA's liabilities in non-Euro by Euro, as permitted by LCH SA's Rule Book (Article 4.2.3.2 of CDSClear Rulebook).[20] In accordance with SEC Rule 17Ad–22(a)(14)[21] Euros used to cover liabilities would be cash held at central bank.

Furthermore, the committed liquidity line previously noted is being removed as LCH SA has replaced the committed liquidity line with a multicurrency overdraft facility at a major international bank.

In summary, LCH SA classifies the different liquidity tools pursuant to SEC Rule 17Ad–22(a)(14),[22] as follows:

• *Cash*—Euros cash held at central bank/non euros cash held at creditworthy commercial banks; replacement of LCH SA's liabilities in non euros by euros

• *Uncommitted prearranged*—readily available assets convertible to cash through prearranged funding arrangements, that are determined to be highly reliable even in extreme but plausible market conditions by the BoD following a review to be conducted not less than annually:

a. Sale of non-Euro securities of the defaulting members;

b. Repo transactions (bilateral repo, cross currency bilateral repo, and cross currency triparty repo);

c. Multicurrency overdraft facility;

d. FX spot market transactions; and

e. ECB weekly tender in U.S. dollars

Additionally, a footnote (8) has been removed as the relevant report has been taken out from the appendix in the context of the reorganisation of the appendix 5 as described below in the relevant section in the present 19b4.

Section 1.6.1.1, *Collateral transfer,* will be revised to recognize that a Clearing Member may deposit non-cash collateral either (a) by Full Title Transfer Accounts that LCH SA maintains at various central securities depositories or (b) by a Single Pledged Account, without the right of re-hypothecation, that LCH SA maintains at Euroclear Bank.[23] This section will be further revised to clarify that non-cash collateral deposited in Full Title Transfer Accounts may be pledged at the BdF to obtain a liquidity line of credit that can be drawn on intraday or overnight, if needed. Additionnaly, precisions have been added regarding:

—the existing limits applied on Repoclear SA/€GC Plus and EquityClear SA for pledge

—the fact that FFTA is used in majority by Clearing Members

Finally, to enhance the wording, a precision has been added to precise that only resources received in FFTA can be pledged to 3G pool.

The change aims to improve the clarity of the document as there is no change applied on the actual offer of collateral account.

Section 1.6.1.2, *Assessment of assets' liquidity,* will be revised to provide that Tier 1 assets, *i.e.,* securities that are deemed to be of sufficient quality and demand to generate liquidity in the event of a default or a major market stress at little or no loss, will include, in addition to all European Central Bank (''ECB'') eligible collateral, UK Gilts and U.S. Treasury Bills, along with Dutch and Belgian central bank guarantees (but only for the defaulting Clearing Member). In addition, recognized Tier 3 assets, *i.e.,* assets that are deemed to have little or no liquidity value in the event of a default or major market stress, or are deemed to be too illiquid to be converted in the timeframe that LCH SA would need the liquidity, will be revised to include non-cash collateral denominated Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Francs, Canadian Dollars and Australian Dollars.

Section 1.6.1.3, *Synthesis,* will be revised to clarify that LCH SA does not retain the right of collateral re-hypothecation for collateral deposited under the pledge regime unless the Clearing Member is in default. The reference specific to CDS has been removed as now the pledge is offered for all LCH SA services. It will confirm that CaLM demonstrated in 2021 and 2022 the ability to raise Euro liquidity from non-Euro non cash collateral in USD and GBP. Moreover, it will clarify that when considering non-Euro non cash collateral as a liquidity source, a conservative buffer of ten percent (10%) is applied to absorb market stress that may occur beyond the volatility already captured by the all-in haircut. In addition, it will confirm that Central Bank guarantees can be considered for liquidity purposes only if the relevant Member posting them is in default because only in that situation the CCP would acquire full ownership of the guarantee provided by the Central Bank.

Section 1.6.2.1, *Liquidity needs arising from members' defaults,* will be revised to clarify the description of the liquidity needs that may arise from settlement. The following sentence: ''Cash outflows are generated when SA has to step in on behalf of the defaulted member to post cash to non-defaulting member(s) and take in the underlying *collateral*'' has been revised to read: ''Cash outflows are generated when SA has to step in on behalf of the defaulted member to post cash to non-defaulting member(s) and take in the underlying *securities*''. This change is being made to increase the accuracy of the document and does not represent a change in the methodology or procedure of LCH SA.

Moreover, LCH SA will also specify that the value of the bonds pledged at the ECB to raise liquidity takes into account stress market conditions.[24] The addition of the ''stress market conditions'' is thus performed for clarity in line with adjustments performed in the LCR model assumptions.

Section 4 of the Framework, which explains the modelling Framework in detail, will be amended, as noted above, to enhance the manner in which the LCR is calculated, thereby increasing the robustness of LCH SA's liquidity profile. This section discusses first, the calculation of the Operational Target, *i.e.,* the amount of liquidity required to be held to satisfy LCH SA's liquidity needs related to the operational management of LCH SA in a stressed environment, but one that does not lead to a Clearing Member's default. The Operational Target ensures that LCH SA's liquidity resources are always greater than its operational liquidity requirements.

Section 4.1.2, *Model inputs and Variable selection,* will be revised to clarify that the repayment of excess cash as well as excess ECB eligible securities deposited to cover margin requirements are considered in the liquidity requirement of the Operational Target. Two footnotes will be updated to specify that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets (repayment of excess cash and stressed margin reduction) because these securities are not transferrable to the BdF due to operational constraints. These changes will increase the accuracy of the document and does not represent a change in the methodology or procedure of LCH SA. Finally, the change of branding from CC&G to

[20] See Article 4.2.3.2., *https://www.lch.com/system/files/media_root/Supplementary%20Materials%20-%20LCH%20SA%20-%20CDSClear%20SA%20Rule%20Book_1.pdf.*

[21] 17 CFR 240.17Ad–22(a)(14).

[22] *Id.*

[23] Currently, non-cash collateral may be pledged without limits only with regard to the CDSClear service. Moreover, there are limits on the amount of pledge collateral that may be deposited for RepoClear, €GC (Tri-Party Repo) and EquityClear. The majority of the collateral that LCH SA currently collects is by Full Title Transfer.

[24] A detailed presentation of the model enhancement is reflected in Section 4.2.5.1.1.2 of the Framework.

Euronext Clearing has been performed in line with the change of branding performed in the whole documentation and described below in the present 19b4.

Section 4.1.4, *Mathematical formula, derivation and algorithm, and numerical approximation,* will be revised to clarify that the Operational Target is calculated as the sum of the liquidity requirements described in Section 4.1.2 and that the liquidity requirements must always be lower than the resources available. This change will increase the accuracy of the Framework and does not represent a change in the methodology or procedure of LCH SA.

Section 4.1.5, *Model assumptions,* will be revised to provide that liquidity resources must be sufficient to meet LCH SA's liquidity requirements for the next seven (7) days in stressed situations. This section currently provides that liquidity resources must be sufficient to meet LCH SA's liquidity requirements for the next five (5) days.[25] The change incorporates a model validation recommendation to extend the LCR and consequently also the Operational Target to a 7 day period in order to align the liquidity monitoring time horizon to the RepoClear service new maximum holding period to manage a default (changed from a 3-day to 5-day holding period since the end of June 2022, to which LCH SA added 2 days of settlement convention). Additionally, to enhance the clarity, details related to the management of the former horizon have been removed in order to clearly state that the horizon is 7 days and results will be displayed without any aggregation.

In addition (4.1.5.d), the provisions of this section describing the liquidity requirements drivers, which assume, in part, that 100 percent (100%) of the excess cash and excess ECB eligible securities will be withdrawn over the 3-day period will be revised. Specifically, the assumptions that the two largest individual Clearing Members will withdraw their excess on day one (T) and that the third and fourth largest Clearing Members will withdraw their excess on day two (T+1) will be revised to provide instead that (a) the two Clearing Member Groups that have the largest amount of excess collateral will withdraw their excess on T, and (b) the third and fourth Clearing Member Groups that have the next largest amount of excess collateral will withdraw their excess on T+1. In each case, the remaining Clearing Members will withdraw their excess on the third day (T+2). Precision on the footnote to specify that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets as these securities are not transferrable to the BdF due to operational constraints.

For the liquidity requirement that aims to quantify the potential substitution of cash collateral/ECB eligible securities (4.1.5.e), LCH SA will take into account the maximum daily switches from cash and ECB eligible cash securities to non-Euro denominated securities observed over seven (7) days rather than five (5) days as currently provided to incoroporate the model valitation recommendation. In order to be consistent with this change from five to seven days in the time horizon, two additional definition of amount of switch corresponding to T+5 and T+6 have been added. Moreover, it will be clarified that on Q3 2022 CaLM Front Office demonstrated the ability to transfer ECB eligible securities to BdF within 30 minutes for all eligible countries. The list of specific countries will be removed from the Framework as it is dynamic and depends on the collateral eligible at the CCP that can be found on the LCH SA website (a footnote will be added to point towards website). With respect to the amount of equity lodged, as LCH SA takes the maximum amount of switched observed, the reference to 100 million will be removed as the amount is a dynamic figure. It will also be precised that the amount of equity deposited over the past 3 years which is also a dynamic figure remains negligible. These changes will improve the accuracy of the Framework and do not represent a change in the methodology or procedure of LCH SA.

For Section 4.1.5.f which describes the potential intraday additional liquidity injection that may generate securities carried overnight it will be specified that the amount is calibrated as the maximum EOD securities carried over night over the whole time series available. This change will increase the accuracy and clarity of the Framework and does not represent a change in the methodology or procedure of LCH SA.

Moreover, Section 4.1.5.g will be revised to modify the targeted estimated margin reduction of non-defaulting Clearing Members. Currently, estimated margin reduction is calculated over a three-day period. As revised, targeted estimated margin reduction will be calculated over seven (7) consecutive days to address model validation recommendation.[26] To reflect this change, a detailed table has been added describing the margin reduction rate per day of the horizon period in line with the above In order to enhance the wording, two bullet points have been revised to state that (a) margin reduction applied is greater than the biggest one observed in the historical window considered for the calibration (b) for each day, the reduction is over the 99,7% percentile on the available set of data. In order to precise the size of the lookback period of observation, a footnote will be added detailing the current start date and end date. One footnote will be also updated to provide that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets because such securities are not transferrable to the BdF due to operational constraints.

These additional changes will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Finally, Section 4.1.5.h will be reworded to specify that the liquidity requirements stemming from estimated Variation Margin payment to be processed towards the interoperable CCP is calculated on the basis of the Initial Margin actually posted at LCH SA to cover a 5-days holding period to be spread out over a 5-days period according to a simulated market stress based on historical yield shifts (third bullet point). The rewording of the introduction of 4.1.5.h aims to clarify the computation of the theoretical allocation of IM (leading to the removal of one footnote that was duplicated) as well as to reflect the change of branding. These changes will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of the LCH SA.

As mentioned, Please also note that reference to the depth of time series (4.1.5.e and 4.1.5.f) are proposed to be removed as available set of data are wider and every points are considered. This would avoid LCH to periodically review the depth in the wording.

Finally, the notion ''DF'' has been added in 4.1.5.i to reflect the usual acronym of the default fund. The review was the opportunity also to correct a typo in the third bullet point of this section.

Section 4.2 of the Framework, *LCR,* which describes the manner in which

[25] Consistent with this change, LCH SA will take into account the maximum daily switches from cash and ECB eligible cash securities to non-Euro denominated securities observed over seven (7) days rather than five (5) days, as currently provided.

[26] The overall compounded margin reduction will be above the maximum historical 7-day margin reduction observed.

the LCR is calculated, will be revised as follows:

Section 4.2.1, *Model overview,* will be revised to provide that the purpose of the LCR Cover 2 scenario is to allow LCH SA to ensure that it has enough liquidity in the case of default of the two largest Members Groups during the seven (7) days following the default, rather than five (5) days, as is currently provided. Moreover the sentence: ''*3* days holding period of margin *collateral, i.e.,* SA ensures it has sufficient liquidity to meet non-defaulting member's cash requests even if SA is waiting for the defaulter's *margin collateral* to be liquidated'' will be revised to read: ''*5* days holding period of margin *requirement, i.e.,* SA ensures it has sufficient liquidity to meet non-defaulting member's cash requests even if SA is waiting for the defaulter's *position* to be liquidated''. These changes will enhance the accuracy and clarity of the document and do not represent a change in the methodology or procedure of LCH SA (*i.e.,* ''requirement'' is an enhanced wording as the objective is to cover the clean risk (collateral might include excess). Similarly, ''positions'' better clarifies the liquidity needs that are present until the final liquidation of the complete position of the Defaulted Members.

Further, the sentence: ''The ERCO has approved the *5* days liquidity horizon as per *the article 22 of* the Group liquidity risk policy'' will be revised to read: ''The ERCO has approved the *7* days liquidity horizon as per the Group liquidity risk policy''. The change will remove a dependency between the two documents as the number of articles may change when the Group Liquidity Policy is updated on an annual basis, while ensuring that the policy content is referred in the Framework.

Finally, the sentence: ''The cover 2 is computed by taking into account the liquidity risks related to clearing members within the same group across all services *within* the CCP that are aggregated'' will be revised to read: ''The cover 2 is computed by taking into account the liquidity risks related to clearing members within the same group across all services *of* the CCP that are *then* aggregated''. These last changes do not trigger any methodology changes but have been amended to enhance the clarity. The reference to footnote (24) is proposed to be removed as it refers to a non existing footnote (typo).

Section 4.2.2, *Model inputs and Variable selection,* and Section 4.2.4, *Mathematical formula derivation and algorithm and numerical approximation,* will be revised to provide that securities pledged at the BdF and included among Total Available Assets will be valued at stressed market prices and include the ECB haircut effect on the resulting figures. The notion of ''for each market'' is proposed to be removed to preserve clarity. At the same time for the computation of VM erosion, the market risk impact arising from the contractual settlement of RepoClear will be excluded from the computation of the component as treated on the asset side as previously described (*i.e.,* the component that was previously considered in liabilities will be incorporated in the assets as a reduction of the amount of liquidity sourced from the clearing securities pledged to BdF, cf 4.2.4.c). For this purpose, the sentence ''on top of which is added the market stress risk impact on the contractual settlement for repoClear'' will be removed. These changes have the purpose of adressing a model validation recommendation to enhance the treatment of market stress in the computation of liquidity sourced by the Central Bank.

Moreover an update of wording will be done to consider the Total Default Liabilities and Total Available Assets as plural rather than singular as currently the case. It will be specified that in the VM Erosion calulation all LCH SA services are considered that is Cash & Derivatives, Repoclear, EGC, and CDS markets. Two footnotes will be updated to specify that Portuguese and Finnish government bonds posted via the triparty solution are excluded from the liquid assets because not transferrable to the BdF due to operational constraints (4.2.2/4.2.4). These changes have will increase the accuracy and clarity of the document and do not represent a change in the methodology or procedure of LCH SA.

Finally, additional clarifications will be made regarding the treatment of FCM/BD client resources in the LCR. In particular, LCH SA will further specify that in a context of default (and purpose of the LCR monitoring) LCH SA will only treat FCM/BD client collateral as available liquidity resources if and only if this FCM/BD client defaults and generates some liquidity needs. Its resources will not be considered as available liquidity assets for any other FCM/BD clients and/or the FCM/BD clearing member or any other clearing member of the CCP. In particular, in case of one FCM/BD client defaulting, other FCM/BD clients assets will not be considered to cover the liquidity needs of the defaulting FCM/BD client. These changes are also replacing ''clearing member'' with client where relevant to increase clarity.

The changes will enhance the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5, *Model Assumptions,* describes the various risks that each business line must consider in determining liquidity requirements as well as other liquidity requirements that LCH SA must meet.[27] Title of Section 4.2.5.1 will be changed to 'Description of risks per Business line' to reflect that different risks are tackled in different sub section.

Section 4.2.5.1.1, *RepoClear,* will be revised to provide that settlement cash outflows will be calculated over a period of 7 days and on a gross basis, aggregated by ISIN, settlement date and Clearing Member level. The final settlement outflows are then aggregated at the Clearing Member Group level without allowing any netting across members of the same Clearing Member Group. The objective of these changes is to address two model validation recommendations: to align the LCR liquidity monitoring period to the RepoClear new maximum holding period to manage a default (5 days holding period of margin +2 of settlement convention); and to not allow any netting between entity of the same Group. Moreover, a table summarizing the liquidity requirements according to the direction of the repo transactions as well as a paragraph describing the specific treatment of forward starting repo in the calculation of the settlement obligation outflows have been removed because a new enhanced algorithm was designed and described in the new sections 4.2.5.1.1.1 and 4.2.5.1.1.2 as described later in the present form. One bullet point is proposed to be removed as well as the sentence ''Note that the post default date forward start leg of cash borrower transaction are excluded for the LCR calculation (*e.g.,* starts date: Default date + 1 day and returns legs: Default date +2). The transactions are performed through DVP so LCH SA will fail to deliver the securities leading no liquidity requirements related to the returns legs to factor in the LCR to keep consistency with the new algorithm.

Section 4.2.5.1.1.1, *Liabilities contractual obligations on physical delivery,* will describe the methodology

[27] As noted earlier, in addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear). LCH SA also maintains an interoperability link with Euronext Clearing.

to compute liabilities due to settlement obligations. In particular, in case of default, LCH SA shall assume and honour the obligations of the defaulted Members. In case of securities with physical settlement, this may represent substantial liquidity needs for LCH SA. The enhanced methodology presented in this section leverages on the actual management of settlement instructions performed by the Fixed Income Operations department during an event of default to fully take into account in the calculation of the liquidity needs the specific settlement dynamics over the time horizon of the LCR with the objective to more closely align the computation of the LCR with the actual default management process.

To model the settlement obligation, the DCO would start by constructing the contractual balance of net buyer/seller position by Clearing Member, ISIN and date within the LCR time horizon:

1. Identify transactions (each leg independently for repos) that settles within the time horizon of the LCR and allocate, to the settlement date, the contractual cash amount to be settled and the corresponding nominal of securities to be delivered; and

2. Aggregate cash amounts and nominals by member, ISIN and date.

This contractual view of cash and security flows is then adjusted to take into account the eventual effect of carrying forward the liquidity position (the effect of one day fails on the contractual flows of the following dates). In fact, in case of a net seller position on date t, LCH SA would fail to deliver securities if they are not already sourced and/or pledged at the BdF and would continue to fail until the date t' on which the balance is net buyer (or until the end of the time horizon when the portfolio would be perfectly matched again). In that case, LCH SA would receive no cash on date t for the securities in which it fails to deliver and would need to inject less cash into the settlement system on date t' because of the netting effect of carrying forward. The real cash injection flows obtained are aligned with the Operations Team view of the settlement obligation in case of default.

When the real cashflow injections are obtained as described above for each member they are then aggregated at group level.

A simplified numerical example is provided to demonstrate the sequence of steps used to calculate the liquidity needs deriving from settlement obbligation.

The changes described in this section will improve the liquidity monitoring of LCH SA and address two model validation recommendations: to improve the liquidity needs estimation related to Settlement Risk and to not allow any netting between entity of the same Group.

Section 4.2.5.1.1.2, *Assets: settlement securities pledged at Central Bank,* will describe the methodology to compute the liquidity raised through the pledge at a Central Bank of the settlement securities withdrawn from the settlement system on behalf of the defaulter. In particular, when LCH SA pledges eligible securities at the Central Bank in exchange of liquidity, two important factors need to be considered:

—the market price of the securities that may be decreased by unfavorable market conditions therefore reducting the value of the collateral and consequently the amount of liquidity that can be sourced out of it; and

—the haircut applied by the Central Bank when lending cash to LCH SA in exchange of securities.

The changes described in the following paragraph provide a summary of the calculation performed by the DCO when modelling the liquidity that it would be able to source from the Central Bank.

The amount raised is the sum of the unstressed assets value after taking into account the ECB haircut and a stress price market impact applied to the value of the securities. In order to calculate the amount of liquidity raised from the BdF, LCH SA will consider the real security flows calculated in Section 4.2.5.1.1.1 which are equivalent to securities pledged at/retrieved from the BdF (with an opposite direction with respect to settlement). The securities are then valued at current market price at the moment of default with the application of an ECB haircut. To quantify the market impact, a preliminary screening is applied in order to identify correctly only the subset of transactions to which the market impact applies because they are not covered by offsetting inflow. In particular for long cash transactions or Cash Borrower Repo—Return Leg:

- *Before the settlement date:* an eventual bond price decrease would result in a margin decrease of the non-defaulting member due to Variation Margin credit which is accounted for in the LCR liabilities in a separate entry.
- *On the settlement date:* LCH SA would get the securities from the non-defaulting member, pledge them at the BdF and receive an amount of cash equal to the stressed price of the bond minus the haircut. The additional liquidity impact, with regards to the unstressed assets described previously, rises from the bond price move from the default date until the settlement date. Hereunder, we will refer to this component by ''Settlement Market Price Impact''.
- *After the settlement date:* once the bond is pledged overnight, the price decrease afterwards would trigger an additional liquidity impact to cover the cash that needs to be returned to the BdF because of the lower amount of the collateral deposited, *i.e.,* the price move from the settlement date until the date on which LCH SA will have a settlement obligation to deliver the bond (or until the book is perfectly matched again after the settlement of the auction). Hereunder, we will refer to this component by ''Pledge Market Price Impact''.

The total market impact is calculated as the sum of Settlement Market Price Impact and Pledge Market Price Impact. The bond prices moves generating the market impact is calculated in accordance with RepoClear stress test scenarios. The final amount of liquidity retrieved from the BdF resulting from the pledge of securities retrieved from settlement on behalf of the defaulted members will be:

Liquidity retrieved from the BdF (t) = Real Security Flow * Market Price at moment of default * (1 − ECB Haircut) − Settlement Market Price Impact − Pledge Market Price Impact.

A simplified numerical example is added to the Framework to demonstrate the sequence of steps used to calculate the liquidity amount retrieved from the BdF.

The change will improve the liquidity monitoring of LCH SA and address a model validation recommendation to improve the liquidity needs estimation related to Market Risk.

To remain consistent with the calculation of settlement obligations, after calculating the Liquidity retrieved from the BdF for all dates in the LCR period at Member level, the amounts are aggregated at the Clearing Member Group level. This change address a model validation recommendation.

Section 4.2.5.1.1.3, *Market Risk,* will be revised to provide that, in addition to the settlement obligations driven flows, the position of the defaulter may generate a liquidity drain for LCH SA in the form of negative mark to market to be paid to non-defaulting members. The formula to estimate this amount is changed and will consider the worst stress loss of the defaulter position according to the relevant RepoClear stress test scenario and add additional margin to model any concentration,

market liquidity issues. The purpose of this change is to address a model validation recommendation by improving the liquidity needs estimation related to Market Risk in the LCR. Additionally, a footnote will be added to disclose that a list of stress scenario is reported in appendix 6.7.

Section 4.2.5.1.2, *€GCPlus,* will be revised to provide that, when calculating the settlement driven cash outflows, the aggregation is based on data provided by the triparty agent and that only positions in which the defaulter is a cash borrower (collateral giver) in the first leg of the repo and, therefore, collateral taker when the repo closes, generate a liquidity need. Therefore, in case of default of a Member collateral giver in the first leg, LCH SA has to inject cash and withdraw securities when the repo closes (cf new footnotes).

Finally a repetition of words have been cancelled to remove redundancy in the text. The changes will enhance the accuracy and clarity of the Framework and do not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5.1.2.1, *Market risk,* will be revised to provide that for €GCPlus the additional liquidity needs generated by negative mark to market payments to non-defaulting members is estimated in line with what is done for RepoClear [28] as the worst stress loss of the defaulter position according to the relevant €GCPlus stress test scenario and adding additional margins. The change will incorporate a model validation recommendation by improving the liquidity needs estimation related to Market Risk in the LCR.

Moreover, a numerical example has been added to the Framework to demonstrate that the eventual BdF haircut will always be covered by the collateral posted by the collateral giver as requested by the current margin methodology (corresponding to ''Example''). The change will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5.1.3.1, *Cash Equity,* will be revised to provide that the settlement cash outflows will be calculated on a gross basis at the Clearing Member level and then aggregated at the Clearing Member Group level without allowing any netting across the Clearing Members of the same Group. The objective of the change is to enhance the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Moreover, the methodology to consider among the liquidity requirements the equity settlement arising from the expiration of *physically* settled futures is detailed. In particular, in case the defaulting member is long futures which expire during the LCR horizon, LCH SA will have to pay the future price to the non-defaulting counterparty in order to settle the physical underlying. Therefore the enhanced algorithm daily identifies all the potential maturing long futures positions on the day of the computation and on the upcoming business day as well, identifies the positions of the Cover 2 Members Group and finally, given the potential physical settlement, adds the relevant liquidity needs to the computation of the LCR. A numerical example is included to provide a sample of the calculation.This change has the purpose of addressing a model validation recommendation by including the liquidity needs related to the expiry of physical delivery single stock futures in the LCR.

In addition, this section will provide that the liquidity needs generated by negative mark to market payments to be made to non-defaulting members is changed in line with what is done for the other LCH SA services [29] (RepoClear, €GCPlus, CDSClear) and will be calculated as the worst stress loss of the defaulter position according to the relevant EquityClear stress test scenario with the addition of additional margins.

The objective of the change is to incoporate a model validation recommendation by improving the liquidity needs estimation related to Market Risk in the LCR.

A footnote has been added to improve the accuracy of the document to specify that the full list of stress scenarios used is presented in a dedicated Appendix.

Finally, this section will explain that because equities are not eligible at the BdF they will not be considered as liquidity sources in the assets of the LCR. The change will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5.1.3.2, *Listed derivatives,* will be revised to clarify that futures on equity index contracts are included among the listed derivatives instruments considered in the calculation of the LCR and that derivatives expirations occur on a monthly basis rather than the previously stated quarterly basis. These changes will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA (*i.e.,* monthly expiry is already efficiently implemented in the computation of the LCR).

The calculation of the liquidity needs generated by negative mark to market payments to be done to non-defaulting members is changed in line with what is done for the other LCH SA services [30] (RepoClear, €GCPlus, CDSClear) and will be calculated as the worst stress loss of the defaulter position according to the relevant EquityClear stress test scenario with the addition of Additional margins. The change will address a model validation recommendation by improving the liquidity needs estimation related to Market Risk in the LCR. Finally, please note scenario is now stated in plural to reflect that several scenarios (disclosed in appendix 6.7) are used to model stressed VM.

Section 4.2.5.1.4, *Credit Default Swaps,* will be revised to clarify that the calculation of the liquidity needs generated by negative mark to market payments to be done to non-defaulting members is changed in line with what is done for the other LCH SA services [31] (RepoClear, €GCPlus, EquityClear) and will be calculated as the worst stress loss of the defaulter position according to the relevant CDSClear stress test scenario with the addition of additional margins. The change adresses a model validation recommendation by improving the liquidity needs estimation related to Market Risk in the LCR. Finally, please note scenario is now stated in plural to reflect that several scenarios (disclosed in appendix 6.7) are used to model stressed VM.

A footnote have been added to improve the accuracy of the document to specify that the full list of stress scenarios is disclosed in a dedicated Appendix.

Section 4.2.5.2 will be revised to modify those provisions of the Framework relating to the other liquidity requirements to be taken into account in calculating the LCR.

Section 4.2.5.2.1 will be revised to provide that the Operational Target to be included in the calculation of the LCR will be restated by removing margin outflows calculated in the Operational Target and related to Cover 2 for LCR. This is because LCH SA has the right to fully use the collateral of the

[28] Please refer to changes to section 4.2.5.1.1.3 described in the present document.

[29] Please refer to changes for Sections 4.2.5.1.1.3, 4.2.5.1.2.1 and 4.2.5.1.4 described in the present document.

[30] *Id.*

[31] Please refer to changes for Sections 4.2.5.1.1.3, 4.2.5.1.2.1, 4.2.5.1.3.1 and 4.2.5.1.3.2 described in the present document.

defaulters including excess. The changes enhance the accuracy and clarity of the document and do not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5.2.2, *Margin non-cash collateral,* will be revised to provide that LCH SA will compute the pure stress loss of such collateral rather than the stress loss over haircut (less conservative) as currently stated, by applying a set of stress scenarios used by RepoClear in the calibration of the Default Fund and choosing the one that generates the biggest liquidity exposure in terms of Cover 2. The choice of application of Repoclear scenarios is driven by the fact that only bonds deposited as collateral can be used to raise liquidity while equities are completely excluded from the calculation of liquid assets. The change aims to improve the liquidity monitoring by leveraging on the same coherent scenarios for all bonds position included in the LCR computation. A list of scenarios is disclosed in appendix of the LRMF.

Section 4.2.5.2.3, *CaLM investments,* will be revised to specify that when calculating the liquidation losses related to the collateral posted by the defaulting Member through the reverse repo activity and the potential outright purchases losses deriving from the CCP portfolio, LCH SA will apply the driving stress scenario chosen among the set of scenarios from RepoClear consistent with the determination of the Cover 2 described in section 4.2.5.4. ''Potential'' has been added because the loss on the outright portfolio will be only realized if the DCO is forced to sell the portfolio because of liquidity needs and does not wait until maturity. The changes will increase the accuracy and clarity of the document and do not represent a change in the methodology or procedure of LCH SA.

Section 4.2.5.2.4, *Collateral pledge modelling,* is added to describe in details how pledged collateral has to be modelled when calculating the asset of the LCR. In particular LCH SA assumes that Clearing Members will utilize their ability to pledge collateral near the maximum allowed on each LCH SA service and, therefore, this amount will be subtracted from the amount of non-cash collateral included in the LCR assets.

The expected additional pledge will be calculated as the difference between the Maximum pledge capacity scaled by a parameter that can capture Clearing Members behaviour and the actual pledge capacity used currently by the Clearing Members.

The Maximum pledge capacity amount will take into consideration eventual concentration limits in places for specific LCH SA services (*i.e.,* Repoclear, €GCPlus and EquityClear).

In contrast, for the Members not having a pledge account active, CDSClear non-cash collateral deposited under Full Title Transfer with the exclusion of securities in DKK, NOK, SEK, JPY, CHF, CAD and AUD is considered to be eligible to raise liquidity and, therefore, is included among liquidity resources. This section has been added to address a model validation recommendation by disclosing more details in the modelling of the collateral pledge.

Section 4.2.5.3, *Stress scenario selection,* will be revised to clarify that the stress tests scenarios selected for each LCH SA service will be consistent with a market state resulting from the default of the Cover 2 as assumed by the LCR. The scenarios selected are taken from the set of scenarios used to calibrate the Default Fund amount on the different services and in particular include scenarios that simulate an increase in interest rates and credit spreads and a decrease of equity indexes. The change has the purpose of increasing the accuracy and clarity of the document and ensure that the stress scenarios chosen are coherent with the LCR assumption of Cover 2 default and the consequent increased volatility on the market. In other terms, additions of wording aim to highlight the consistency of stressed scenarios applied on different market to define the Cover 2 (*i.e.,* rate up (iii), index and equities down (ii) and CDSClear widening (i)).

A full list of the selected stress test scenarios for each service is set out in an Appendix to the Framework. The driving scenario is then selected as the one that produces the largest stress loss on a Cover 2 basis as described in Section 4.2.5.4.

The list of scenarios has been updated to select, among the available scenarios used by the LCH SA services, only the most relevant ones given the LCR assumptions. The purpose is to improve the liquidity monitoring of LCH SA.

In addition, when describing the additional stress scenario where a downgrade of sovereign ratings results in an increase of ECB haircuts applied when the securities are pledged at the BdF to raise liquidity, the table reporting the values of the ECB haircuts applicable will be updated. The new values are the official values applied by the ECB [32] on each eligible collateral posted to raise liquidity as a function of the collateral category and maturity.

Section 4.2.5.4, *Cover 2 selection,* provide the description of the methodology used by the DCO to identify the two Member Groups most exposed in term of liquidity (Cover 2) which are assumed to be simultaneously in default in the LCR. Liquidity needs deriving from Settlement risk, Market risk and Investment risk are aggregated to rank the Member Group and identify the most exposed ones. The section will be revised to specify that the Cover 2 will be identified by calculating the following liquidity requirements at the Clearing Member Member level, aggregating the total requirement at the Clearing Member Group level and then choosing the two most exposed Clearing Member Groups:

- Stress Variation Margin: for all the services the variation margins are modelled by applying the most punitive scenario among the chosen sets and consistent with the LCR assumptions;
- Settlement liquidity requirements due to RepoClear and Cash equity settlement obligations. In case of securities pledged at the BdF their value would be stressed according to the scenario that would generate the highest loss;
- Non-cash Collateral stress losses are estimated by stressing the non-cash collateral eligible for BdF liquidity with the set of scenarios consistent with the LCR assumptions;
- Investment stress losses over haircut are estimated by applying the stress scenarios to the collateral received from the reverse repo activity with each specific counterpart; and
- ECB Haircut impact is quantified by applying the relevant haircut to all the securities received from a specific member that are eligible for Central Bank liquidity.

Between the set of scenarios used from the RepoClear Stress Test framework, the set of scenarios used from the CDSClear Stress Test framework and the set of scenarios used from the EquityClear stress test framework, only the one jointly generating the maximum loss of the sum of all the above elements for the two most exposed Clearing Member Groups will be used to determine the Cover 2 and calculate the final LCR.

The changes have the objective to coherently include in the computation of the Cover 2 the changes related to the update of the stress test scenarios considered in the LCR (described in

[32] Please refer to *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023O0832.*

Section 4.2.5.3), the changes related to the impact of market risk on the securities pledged at Central Bank (described in Section 4.2.5.1.1.2) and the changes related to the estimation of the Variation Margin Outflows (described in Sections 4.2.5.1.1.3, 4.2.5.1.2.1, 4.2.5.1.3.1, 4.2.5.1.3.2 and 4.2.5.1.4).

—Section 4.3: All the changes reflect the new branding of CC&G (Euronext Clearing). No change in the methodology or procedure applied by LCH.

Section 5, *Model Performance Testing and Ongoing Monitoring,* will be revised to provide throughout that the length of time for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements for each service will be extended from five (5) days to seven (7) days.[33] In addition, Section 5.1, *Ongoing Monitoring,* will be revised to provide that cash or non-cash collateral available for pledge to the BdF should represent at least 25 percent (25%) of LCH SA's available liquid resources after the default of its most significant Clearing Member. This section currently provides that cash alone should represent at least 25 percent (25%) of LCH SA's available liquid resources after the default of its most significant Clearing Member. This change will align the text of the Framework to the updated text of the Liquidity Policy approved in 2022.

Section 5.3 on Reverse Stress Tests will be modified to include a paragraph providing the regulatory requirements pursuant to SEC Rule 17Ad–22(e)(7)(vi)(B) [34] and SEC Rule 17Ad–22(e)(7)(vi)(C).[35]

Consistent with this change, Section 5.3.1, *Independent stress of various risk factors,* which describes the single factor reverse stress test (or 'core' reverse stress test), which examines the stress on liquidity outflows caused by different risk factors that are independently stressed (one signle factor at time) to assess extreme market conditions necessary to observe a breach of the LCR limit will be revised as follow:

• Risk Factor 1: Liquid Assets Reduction

It will be stated that non-cash collateral deposited by Clearing Members and eligible for pledge at the BdF represents another primary source of liquidity for LCH SA.

The sentence 'A primary source of liquidity for a CCP is from investments maturing management by the CaLM team at the opening of the day' will be revised to 'A primary source of liquidity for a CCP is from investments maturing management *performed* by the CaLM team at the opening of the day'.

The sentence 'The overall liquid *asset is* reduced to obtain the stress required to reduce the LCR below 100%' will be revised to 'The overall liquid *assets are* reduced to obtain the stress required to reduce the LCR below 100%'.

The changes described will improve the accuracy and clarity of the document and do not represent a change in the methodology or procedure of LCH SA.

Moreover it will be stated that the reduction in assets necessary to breach the LCR will be compared against the 7 days historical data in order to assess the plausibility of the scenario rather than the 5 days historical data currently reported. The change has the purpose of aligning the time horizon of the reverse stress with the time horizon of the LCR (described in Section 4.2.1).

• Risk Factor 2: Switches to Non ECB Eligible Assets

It will provide that when calculating the single factor reverse stress test that simulates a switch of collateral from ECB eligible assets to non-ECB eligible assets such that a liquidity breach occurs, the non-ECB eligible assets includes GILT or US bonds, Central Bank guarantee, equities, non-Euro non cash collateral, and pledge collateral. The addition of pledge collateral to the list will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

The required amount of switches necessary to produce a liquidity breach will be compared against the 7 days historical data rather than the 5 days historical data currently reported in the Framework. The change has the purpose of aligning the time horizon of the reverse stress to the tme horizon of the LCR.

• Risk Factor 3: Rating Downgrade of the Euro Zone Peripheral and Core Countries

The sentence 'This reverse stress test aims at modelling the downgrade of the relevant countries and estimate the theoretical ECB haircuts *generating* a liquidity shortfall' will be revised to 'This reverse stress test aims at modelling the downgrade of the relevant countries and estimate the theoretical ECB haircuts *needed to generate* a liquidity shortfall'.

The change described will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

• Risk Factor 6: CC&G VM

The subparagraph will be renamed Risk Factor 6: CC&GEuronext Clearing VM to reflect the updated name of the interoperable CCP.

The sentence 'The direction of the position' will be revised to 'The direction of the positions'.

The change described will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Moreover it will be stated that this specific reverse stress test aims to asses the amount of VM fails by the interoperable CCP during 7 days that could generate a liquidity shortfall rather than 5 days as currently reported in the Framework. The change has the purpose of aligning the time horizon of the reverse stress to the tme horizon of the LCR.

• Risk Factor 7: Multiple Defaults

The sentence 'Given that liquidity requirements are sized to a cover 2 standard, is it plausible that more than 2 *members* defaults who could lead to a liquidity deficit' will be revised to 'Given that liquidity requirements are sized to a cover 2 standard, is it plausible that more than 2 *member Groups* defaults who could lead to a liquidity deficit'.

In addition, the sentence: ''In order to answer this question, LCH SA ranks order Members Groups based on their ICS and starting from the ones with the worst ICS (and hence highest probabilities of default)'' will be revised to read: ''In order to answer this question, LCH SA ranks Members Groups based on their ICS and *starts considering* the ones with the worst ICS (and hence highest probabilities of default)''.

Finally it will be added that all Clearing Member Groups with a credit score of 6 or higher will be considered in the reverse stress test. The changes described will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 5.3.2.1, *Context & Objective,* will be revised to provide that the combined reverse stress test scenarios [36] that include multiple risk factors will be

[33] See, Section 5.1, *Ongoing Monitoring,* Section 5.3, *Reverse Stress Test,* and Section 5.3.1, *Independent stress of various risk factors.*

[34] 17 CFR 240.17Ad–22(e)(7)(vi)(B).

[35] 17 CFR 240.17Ad–22(e)(7)(vi)(C).

[36] Combined reverse stress test scenario are known as ''non core''. Please refer to change to Section 1.4 described previously herein.

performed at least quarterly. The purpose of the change is to align the frequency of combined reverse stress stress described in the framework to the one state in the Liquidity Risk Policy.

Section 5.3.2.2, *Behavioural scenario,* will be revised to provide a more updated example of report layout. The change will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 5.3.2.3, *Macro-economic scenario,* describes the reverse stress test, which examines the stress on liquidity outflows caused by a set of macro-economic scenarios that combine market, credit and concentration risk to determine the number of defaults that LCH SA can sustain in a shocked macro-economic environment until it suffers a liquidity shortfall. This section will be revised, in part, to clarify that the market risk driving scenarios will be selected from the scenarios used to calculate LCR in accordance with the logic described in Section 4.2.5.4. The current Framework considers only 2 macroeconomic scenarios that will be replaced by the new set of scenarios dscribed in Appendix 6.7. Additional external rating downgrade will be considered on top of the selected market risk scenario as it is the case of the current Framework.

Moreover, the Operational outflow considered in the scenario will be aligned to the calculation of the Operational Target and therefore assuming a margin reduction of 24.7% over 7 days.

The changes will improve the liquidity monitoring of LCH SA by aligning the reverse stress test calculation to the changes proposed for the LCR and described in Sections 4.1.5g, 4.2.5.3, 4.2.5.4, and Appendix 6.7.

This Section will also be revised to provide that LCH SA will consider Clearing Member Groups, rather than individual Clearing Members, when simulating the multiple defaults driven by credit quality criteria, concentration criteria or total liquidity exposure criteria as this Section currently provides. The changes will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

• Multiple Defaults Based on the Credit Quality of the Member Groups

The sentence 'By expanding the analysis presented on the individual risk factor *8* this case highlights the evolution of the LCR *for each* macro-economic scenario' will be revised to 'By expanding the analysis presented on the individual risk factor *7* this case highlights the evolution of the LCR *under the driving* macro-economic *shock* scenario'. The change has the purpose of correcting a typo and alignin the description to the new computation of the driving macroeconomic scenario described above.

Moreover, the example table that reports a sample of member Groups and their respective liquidity needs will be updated to anonymize the name of each Group.

• Multiple Defaults of the Most Concentrated Countries (FR & US Member Groups)

The sentence 'More specifically, we assume that the *Macro-Eco 2* scenario *(Peripheral shock accompanied with a contagion on core countries)* affects French and the European entities of the US members (two different simulations)' will be revised to 'More specifically, we assume that the *Driving macro economic* scenario affects French and the European entities of the US members (two different simulations)'. The change will align the description to the new computation of the driving macroeconomic scenario described above.

Moreover, the various report examples reported in this section displaying the multiple defaults of member Groups from most concentrated countries will be updated [37] to provide a more recent example of report layout. The change will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

• Default of the Biggest Member Groups in Terms of Liquidity (Cover N)

The report example reported in this section displaying the default of the biggest Member Groups in terms of liquidity will be updated [38] to provide a more recent example of report layout. The change will increase the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Section 5.3.3 is being added to the Framework in order to include provisions governing frequency and reporting. This section specifies that LCH SA performs core reverse stress tests at least on a monthly basis and that the results of the analysis are shared with the CRO on a monthly basis and quarterly to LCH SA Risk Committee.

LCH SA also performs an ad-hoc analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources through the core reverse stress tests exercise (i) when the products cleared or markets served display high volatility or become less liquid, (ii) when the size or concentration of positions held by the clearing agency's participants increases significantly, or (iii) in any other appropriate circumstances that would lead to a liquidity coverage ratio falling below the alert threshold of 107%. The ad-hoc analysis triggered by a liquidity coverage ratio falling below 107% are reported to LCH SA CRO, the Head of LCH SA Collateral and Liquidity Management division and to the LCH SA Risk Committee.

Section 5.5, *Testing Summary and Model Limitation,* will be revised to add a footnote to provide that single factor reverse stress tests are performed monthly. Single and combined reverse stress tests are performed quarterly. These requirements come from the LCH Liquidity Risk Policy.

Appendix 6.2, *Members behavior analysis,* that analyses the assumptions used in calculation the Operational Target and the LCR will be revised to provide that the volume of the non-ECB eligible non cash collateral (mainly Gilts, U.S. Treasury securities, securities denominated in Danish Krone, Norwegian Krone, Swedish Krona, Japanese Yen, Swiss Francs, Canadian Dollars and Australian Dollars and Central Bank Guarantee) will remain at a level that does not downgrade LCH SA liquidity profile (*i.e.,* quarterly reverse stress test) and that LCH SA imposes concentration limits on non-Euro non cash collateral. The change will enhance the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH SA.

Moreover, this Appendix will be revised to specify that the margin reduction is estimated at 24.7% over 7 days assuming that the daily margin reductions are independent (sum of the daily margin reduction vs. 7 days margin reduction). This level is bigger than the historical margin reduction over 7 days observed over a 10-year lookback period. This change has the purpose of updating the Appendix to be coherent with the changes described is Section 4.1.5 and driven by the necessity to address a model validation recommendation. Finally the graph reporting the LCH SA total margin is updated to provide a more recent orverview of the data.

Appendix 6.3, *Reminder of SA's sources of liquidity and related risk drivers,* will be revised to update the table to include as a risk driver the

[37] Figures as of October 2022.

[38] *Id.*

pledge collateral. In particular it will provide that because of higher concern toward LCH SA, the Clearing Members may increase their use of the pledge collateral capacity. This behavior is modelled in the LCR. Moreover, LCH SA may adjust the maximum limit allowed in pledge.

The change will align the Appendix with what presented in Section 4.2.5.2.4 and highlighted above.

In addition, when reporting the cash settlement option in case of Euronext Clearing default, the following footnote will be updated to read: ''There is a residual risk (uncertainty—delay/amount—with regards SA's margins return by Euronext Clearing administrator)''. The footnote is amended following the completion by LCH SA of its review of risk drivers and related mitigation measures for cash received from Euronext Clearing.

Appendix 6.4, *Liquidity risk drivers synthesis by reports,* will be revised to update the table summarizing the components of each liquidity indicator (Operational Target, LCR Cover 2 and LCR Euronext Clearing) to reflect the fact that the liquidity monitoring period will be extended from 5 days to 7 days and that the overall margin reduction considered is 24.7%. Moreover, for LCR Cover 2, the Appendix will provide that when calculating the settlement obligation and the resulting BdF liquidity, the securities pledge will take into account ECB haircut and market stress, and when estimating excess reduction LCH SA will consider only non-defaulting Clearing Members as LCH SA has the right to use for liquidity purposes any amounts left in excess from a defaulting Clearing Member.

Appendix 6.5, *Liquidity risk monitoring report,* will be updated by including the more recent layout versions of liquidity reports used by the DCO to monitor liquidity. The change will improve the accuracy and clarity of the document and does not represent a change in the methodology or procedure of LCH sA.

Appendix 6.7, *Stress scenarios list,* will be added to report the specific list of stress scenarios used for each service.

Appendix 6.8, *Pseudo-code of settlement and market risk calculation,* will be added to provide the details on the algorithm used to calculate the settlement obligation driven liquidity requirements in the monitoring of the LCR and the resulting BdF liquidity raised by pledging the securities withdrawn from the settlement systems. This appendix translate into a pseudo code the algorithm described in detail in sections 4.2.5.1.1.1 (liabilities contractual obligations on physical delivery) and 4.2.5.1.1.2 (settlement securities pledged at Central Bank). Different steps of computation are described covering both liabilities and assets and the resulting aggegations to get the finale outputs. The Appendix has the purpose of providing a technical overview of the implementation of the algorithm described in the referred sections and duly commented in the present 19b4. Please refer to such sections for a theorical decription of the methodology.

Finally in the whole Framework the name of the interoperable CCP have been updated from ''Cassa di Compensazione e Garanzia (CC&G)'' into ''Euronext Clearing''.

2. Statutory Basis

LCH SA has determined that the Proposed Rule Change is consistent with the requirements of Section 17A of the Act [39] and regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of a clearing agency should be designed to ''promote the prompt and accurate clearance and settlement of securities transactions . . . and, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible[.]'' [40] In addition, Regulation 17Ad–22(e)(7)(ii) [41] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to assure that it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.

As discussed above, the Framework is being amended primarily to enhance the manner in which the LCR is calculated, thereby increasing the robustness of LCH SA's liquidity profile. In particular, the amendments will: (a) revise the manner in which the settlement obligation is calculated by aligning it to the actual process used by the Operations Team during a default management and ensuring that no netting is allowed between Members of the same Group; (b) revise the manner in which securities pledged to the Banque de France are valued by providing that such securities be valued at the stressed mark-to-market price rather than the contract price; (c) extend from five (5) days to seven (7) days the length of time for which LCH SA must maintain liquidity resources sufficient to meet its liquidity requirements; (d) include the liquidity needs generated by the expiration of physically settled stock futures in the liquidity monitoring; and (e) require LCH SA, in calculating its required liquidity resources, to take into account that Clearing Members may switch from depositing non-cash collateral in a Full Title Transfer Account, which may be pledged at the BdF to obtain a liquidity line of credit, to depositing non-cash collateral instead in a Pledge Account.

By enhancing the manner in which the LCR is calculated, thereby increasing the robustness of LCH SA's liquidity profile, the policies and procedures set out in the amended Framework are designed to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds that are in LCH SA's custody or control or for which it is responsible to be consistent with the requirements of Section 17A(b)(3)(F) of the Act.[42] Specifically, the Proposed Rule will revise the manner in which the settlement obligation liquidity requirements are calculated, revise the manner in which securities pledged at the BdF are valued, extend the length of time LCH SA must maintain its liquidity resources, include the liquidity needs from the expiration of physically settled stock futures and account for in the way LCH SA calculates its liquidity resources, the process by which Clearing Members pledge non-cash collateral. Further, the amended Framework continues to assure that LCH SA holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to Clearing Members, as required by Regulation 17Ad–22(e)(7)(ii).[43]

LCH SA also believes that the Proposed Rule Change is consistent with Exchange Act Rule 17Ad–22(e)(1) [44] that requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As described above, the Proposed Rule Change will ensure that the Framework complies with the provisions of SEC Rule 17Ad–

[39] 15 U.S.C. 78q–1.

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 17 CFR 240.17Ad–22(e)(7)(ii).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] 17 CFR 240.17Ad–22(e)(7)(ii).

[44] 17 CFR 240.17Ad–22(e)(1).

22(e)(7)[45] with respect to liquidity risk, including with respect to its requirement to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement.[46]

Finally, LCH SA believes that the Proposed Rule Change is consistent with Exchange Act Rule 17Ad–22(e)(7)(vi)(B)[47] and Rule17Ad–22(e)(7)(vi)(C).[48] Rule 17Ad–22(e)(7)(vi)(B) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . [d]etermining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement [as required by SEC Rule 17Ad–22(e)(7)(i)] by establishing requirements for conducting monthly comprehensive analyses of stress testing scenarios, models, parameters and assumptiosn with respect to liquidity needs.[49] Rule 17Ad–22(e)(7)(vi)(C) further provides that LCH SA conduct such analyses more frequently than monthly, ''the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by [LCH SA's] participants increases significantly.''[50]

LCH SA is proposing to amend the Framework to reflect its current practice of conducting monthly analysis of its existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources for purposes of ensuring they are appropriate for determining the LCH SA's identified liquidity needs and resources in light of current and evolving market conditions. LCH SA is also proposing to amend the Framework to include the additional requirement that it conduct more frequent analysis when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by LCH SA's participants increases significantly, or in other appropriate circumstances. By revising the Framework to reflect its current practice of conducting monthly analysis and including the requirement to conduct more frequent analysis, subject to certain conditions, LCH SA believes that the Proposed Rule Change is therefore consistent with Exchange Act Rule 17Ad–22(e)(7)(vi)(B)[51] and Rule 17Ad–22(e)(7)(vi)(C).[52]

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[53] LCH SA does not believe the Proposed Rule Change would have any impact, or impose any burden, on competition. The Proposed Rule Change does not address any competitive issue or have any impact on the competition among central counterparties. LCH SA operates an open access model, and the Proposed Rule Change will have no effect on this model.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the Proposed Rule Change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments May Be Submitted by Any of the Following Methods

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LCH SA–2023–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–LCH SA–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *https://www.lch.com/resources/rulebooks/proposed-rule-changes.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–LCH SA–2023–007 and should be submitted on or before February 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2024–00383 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 240.17Ad–22(e)(7).
[46] 17 CFR 240.17Ad–22(e)(7)(vi).
[47] 17 CFR 240.17Ad–22(e)(7)(vi)(B).
[48] 17 CFR 240.17Ad–22(e)(7)(vi)(C).
[49] 17 CFR 240.17Ad–22(e)(7)(vi)(B).
[50] 17 CFR 240.17Ad–22(e)(7)(vi)(C).
[51] 17 CFR 240.17Ad–22(e)(7)(vi)(B).
[52] 17 CFR 240.17Ad–22(e)(7)(vi)(C).
[53] 15 U.S.C. 78q–1(b)(3)(I).
[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–35086; 812–15522]

Octagon XAI CLO Income Fund and XA Investments LLC

January 8, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Octagon XAI CLO Income Fund and XA Investments LLC

FILING DATE: The application was filed on November 17, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 2, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Kevin T. Hardy, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, Illinois 60606; with a copy to Benjamin McCulloch, Esq., XA Investments LLC, *bmcculloch@xainvestments.com*.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated November 17, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html*. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00472 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–399, OMB Control No. 3235–0456]

Proposed Collection; Comment Request; Extension: Form 24F–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires any open-end investment companies, unit investment trusts (''UITs''), registered closed-end investment companies that make periodic repurchase offers under rule 23c–3 under the Investment Company Act [17 CFR 270.23c–3] (''interval funds''), and face-amount certificate companies (collectively, ''funds'') deemed to have registered an indefinite amount of securities to file, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 5,116 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be four hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 20,464 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (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 estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by March 11, 2024.

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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: January 8, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00402 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99281; File No. SR–NYSE–2023–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

January 5, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b 4 thereunder,[3] notice is hereby given that on December 29, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List (the ''Price List'') with respect to the system processing fee for use of the Central Registration Depository (''CRD'' or ''CRD system'') collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee change on January 2, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b 4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List with respect to the system processing fee for use of CRD collected by FINRA.[4] The Exchange proposes to implement the fee change effective January 2, 2024.

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange member organizations that are not FINRA members (''Non-FINRA Member Organizations'').[5] CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Member Organization.

In 2020, FINRA amended certain fees assessed for use of the CRD system for implementation between 2022 and 2024.[6] The Exchange accordingly proposes to amend the Price List to mirror the system processing fee assessed by FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2024.[7] Specifically, the Exchange proposes to amend the Price List to modify the system processing fee charged to Non-FINRA Member Organizations for each registered representative and principal from $45 to $70.[8]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) [10] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2024 for use of the CRD system for each of the member's registered representatives and principals for system processing. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA Member Organization uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA Member Organizations. All similarly situated member organizations are subject to the same fee structure, and every member organization must use the

[4] CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

[5] The Exchange originally adopted fees for use of the CRD system in 2001 and amended those fees in 2013, 2022 and 2023. *See* Securities Exchange Act Release Nos. 45112 (November 28, 2001), 66 FR 63086 (December 4, 2001) (SR–NYSE–2001–47); 68587 (January 4, 2013), 78 FR 2467 (January 11, 2013) (SR–NYSE–2012–77); 93904 (January 5, 2022), 87 FR 1463 (January 11, 2022) (SR–NYSE–2021–77); and 96636 (January 11, 2023), 88 FR 2985 (January 18, 2023) (NYSE–2023–02). While the Exchange lists these fees in its Price List, it does not collect or retain these fees.

[6] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Member Organizations when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE-only member organizations. Non-FINRA Member Organizations have been charged CRD system fees since 2001. *See* note 5, *supra.* Member organizations that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

[8] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as proposed by the Exchange.

The Exchange further believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information the CRD system, and the proposed change will result in the same regulatory fees being charged to all member organizations required to report information to CRD and for services performed by FINRA regardless of whether such member organizations are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2024, as proposed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect a fee that will be assessed by FINRA as of January 2024 and will thus result in the same regulatory fee being charged to all member organizations required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such member organizations are FINRA members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–51 and should be submitted on or before February 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2024–00386 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99280; File No. SR–CboeEDGX–2024–002]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

January 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2024, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') as follows: (1) by modifying the standard rate associated with certain fee codes; (2) by discontinuing Remove Volume Tier 1; and (3) by modifying Remove Volume Tier 3. The Exchange proposes to implement these changes effective January 2, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 13% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[4] For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Standard Rates

Currently, the Exchange offers standard rates to add liquidity for orders appended with fee codes 3,[6] 4,[7] B,[8] V,[9] and Y.[10] The Exchange now proposes to revise the standard rebate associated with securities priced below $1.00 from $0.00009 per share to $0.00003 per share for orders appended with fee codes 3, 4, B, V, or Y. The purpose of reducing the standard rebate associated with securities priced below $1.00 is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the decrease in the standard rebate associated with securities priced below $1.00, the standard rebate remains competitive and continues to be more favorable for Members than the standard rate provided by competing exchanges.[11]

Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Remove Volume Tiers that each assess a reduced fee for Members' qualifying orders yielding fee codes BB,[12] N,[13] and W[14] where a Member reaches certain add volume-based criteria. The Exchange now proposes to discontinue Remove Volume Tier 1 as the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow. In conjunction with discontinuing Remove Volume Tier 1, the Exchange proposes to renumber Remove Volume Tiers 2 and 3 as Remove Volume Tiers 1 and 2, respectively, following the deletion of current Remove Volume Tier 1.

In addition to the proposed deletion of Remove Tier 1, the Exchange proposes to amend the criteria of proposed Remove Volume Tier 2 (current Remove Volume Tier 3). Currently, the criteria for proposed Remove Volume Tier 2 is as follows:

• Proposed Remove Volume Tier 2 (current Remove Volume Tier 3) provides a reduced fee of $0.00275 per share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below $1.00 where: (1) Member has an ADAV[15] ≥0.30% of the TCV;[16] and (2) Member has a total remove ADV[17] ≥0.40% of the TCV; or Member has a total remove ADV ≥40,000,000; and (3) Member adds Retail Pre Market Order ADV (*i.e.,* yielding fee code ZO) ≥3,000,000.

Now, the Exchange proposes to amend the second prong of criteria in proposed Remove Volume Tier 2 by removing the total remove ADV share requirement. The proposed criteria is as follows:

• Proposed Remove Volume Tier 2 provides a reduced fee of $0.00275 per

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 20, 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

[4] *See* EDGX Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] Fee code 3 is appended to orders adding liquidity to EDGX in the pre and post market in Tapes A or C securities.

[7] Fee code 4 is appended to orders adding liquidity to EDGX in the pre and post market in Tape B securities.

[8] Fee code B is appended to orders adding liquidity to EDGX in Tape B securities.

[9] Fee code V is appended to orders adding liquidity to EDGX in Tape A securities.

[10] Fee code Y is appended to orders adding liquidity to EDGX in Tape C securities.

[11] *See, e.g.,* NYSE Arca Fee Equities Fees and Charges; Standard Rates, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf; see also* Nasdaq Price List; Add and Remove Rates; Rebates and Fees, Shares Executed Below $1.00, available at *https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.* NYSE Arca provides a rebate to add liquidity equal to 0.0% of Dollar Value for securities priced below $1.00 and Nasdaq provides rebates of $0.00 to add liquidity in securities priced below $1.00.

[12] Fee code BB is appended to orders that remove liquidity from EDGX in Tape B securities.

[13] Fee code N is appended to orders that remove liquidity from EDGX in Tape C securities.

[14] Fee code W is appended to orders that remove liquidity from EDGX in Tape A securities.

[15] ADAV means average daily added volume calculated as the number of shares added per day, calculated on a monthly basis.

[16] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[17] ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes BB, N, or W) and a reduced fee of 0.28% of total dollar value for securities priced below $1.00 where: (1) Member has an ADAV ≥0.30% of the TCV; and (2) Member has a total remove ADV ≥040% of the TCV; and (3) Member adds Retail Pre Market Order ADV (*i.e.,* yielding fee code ZO) ≥3,000,000.

The proposed amendment to proposed Remove Volume Tier 2 is intended to slightly increase the difficulty of achieving an existing opportunity to earn an enhanced rebate by providing a single alternative for Members to increase their order flow to the Exchange. Submitting increased order flow to the Exchange will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding volume, through enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[21] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to: (1) modify the standard rebates associated with securities priced below $1.00 and (2) modify proposed Retail Volume Tier 2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

Specifically, the Exchange's proposed criteria for proposed Remove Volume Tier 2 is not a significant departure from existing criteria, continues to be reasonably correlated to the enhanced rebate offered by the Exchange and other competing exchanges,[22] and will continue to incentivize Members to submit order flow to the Exchange. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[23] including the Exchange,[24] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify proposed Retail Volume Tier 2 is reasonable because the revised tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes the proposed modification to proposed Remove Volume Tier 2 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. While the proposed criteria in proposed Remove Volume Tier 2 is slightly more difficult than the current criteria found in that tier, the proposed criteria is not a significant departure from existing criteria, is reasonably correlated to the enhanced rebate offered by the Exchange, and will continue to incentivize Members to submit order flow to the Exchange. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

Further, the Exchange believes that its proposal to modify the standard rebate associated with securities priced below $1.00 is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed decreased standard rebate of $0.00003 per share is reasonable and appropriate because it remains competitive with the standard rebate offered by other exchanges.[25] The Exchange further believes that the proposed decrease to the standard rebate associated with securities priced below $1.00 is not unfairly discriminatory because it applies to all Members equally, in that all Members will received the lower standard rebate upon submitting orders appended with fee codes B, V, Y, 3, or 4.

The Exchange believes that its proposal to eliminate current Remove

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] 15 U.S.C. 78f(b)(4).

[22] *See, e.g.,* MIAX Pearl Equities Exchange Fee Schedule, Remove Volume Tier, available at *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Equities_Fee_Schedule_12012023.pdf;* and MEMX Equities Fee Schedule, Liquidity Removal Tier, available at *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/.*

[23] *See, e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[24] *See, e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[25] *Supra* note 11.

Volume Tier 1 is reasonable because the Exchange is not required to maintain this tier nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members (*i.e.,* the tier will not be available for any Member). The Exchange also notes that the proposed rule change to remove this tier merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate current Remove Volume Tier 1 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes that the proposed changes to its standard rebate associated with securities priced below $1.00 and Remove Volume Tiers are reasonable as they do not represent a significant departure from the criteria or rebates currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed standard rebate and revised tier and have the opportunity to meet the revised tier's criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Remove Volume Tier 2. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Exchange's standard rebate associated with securities priced below $1.00 and the proposed changes to proposed Remove Volume Tier 2 will apply to all Members equally in that all Members are eligible for the standard rebate and the proposed revised tier, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive and adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange believes the proposed elimination of Remove Volume Tier 1 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to eliminate the Remove Volume Tier 1 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tier will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 13% of the market share.[26] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[28] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[26] *Supra* note 3.

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[28] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2024–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–002 and should be submitted on or before February 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2024–00385 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–11263; 34–99276; IA–6521; IC–35085]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of annual inflation adjustment of civil monetary penalties.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing this notice (''Notice'') pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''2015 Act''). This Act requires all agencies to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the agency and publish the adjusted amounts in the **Federal Register**. This Notice sets forth the annual inflation adjustment of the maximum amount of civil monetary penalties (''CMPs'') administered by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934 (''Exchange Act''), the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. These amounts are effective beginning on January 15, 2024, and will apply to all penalties imposed after that date for violations of the aforementioned statutes that occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ng, Senior Special Counsel, Office of the General Counsel, at (202) 551–7957, or Hannah W. Riedel, Senior Counsel, Office of the General Counsel, at (202) 551–7918.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice is being published pursuant to the 2015 Act,[1] which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''Inflation Adjustment Act'').[2] The Inflation Adjustment Act previously had been amended by the Debt Collection Improvement Act of 1996 (''DCIA'') [3] to require that each Federal agency adopt regulations at least once every four years that adjust for inflation the CMPs that can be imposed under the statutes administered by the agency. Pursuant to this requirement, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.[4]

The 2015 Act replaces the inflation adjustment formula prescribed in the DCIA with a new formula for calculating the inflation-adjusted amount of CMPs. The 2015 Act requires that agencies use this new formula to re-calculate the inflation-adjusted amounts of the penalties they administer on an annual basis and publish these new amounts in

[1] Public Law 114–74 Sec. 701, 129 Stat. 599–601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890–892 (1990), codified at 28 U.S.C. 2461 note.

[3] Public Law. 104–134, title III, section 31001(s)(1), 110 Stat. 1321–373 (1996), codified at 28 U.S.C. 2461 note.

[4] *See* Release Nos. 33–7361, 34–37912, IA–1596, IC–22310, dated Nov. 1, 1996 (effective Dec. 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201; Release Nos. 33–7946, 34–43897, IA–1921, IC–24846, dated Jan. 31, 2001 (effective Feb. 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201; Release Nos. 33–8530, 34–51136, IA–2348, IC–26748, dated Feb. 9, 2005 (effective Feb. 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201; Release Nos. 33–9009, 34–59449, IA–2845, IC–28635, dated Feb. 25, 2009 (effective Mar. 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201; and Release Nos. 33–9387, 34–68994, IA–3557, IC–30408, dated Feb. 27, 2013 (effective Mar. 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201. The penalty amounts contained in these releases have now been consolidated into Table I to 17 CFR 201.1001.

the **Federal Register** by January 15 of each year.[5] The Commission previously published the first annual adjustment required by the 2015 Act on January 6, 2017 (''2017 Adjustment'').[6] As part of the 2017 Adjustment, the Commission promulgated 17 CFR 201.1001(a) and Table I to § 201.1001, which lists the penalty amounts for all violations that occurred on or before November 2, 2015. For violations occurring after November 2, 2015, § 201.1001(b) provides that the applicable penalty amounts will be adjusted annually based on the formula set forth in the 2015 Act. Section 201.1001(b) further provides that these adjusted amounts will be published in the **Federal Register** and on the Commission's website. The Commission published the two most recent annual adjustments on January 6, 2022 (''2022 Adjustment''),[7] and January 6, 2023 (''2023 Adjustment'').[8]

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by Federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a Federal court pursuant to Federal law.[9] This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. In addition, the Sarbanes-Oxley Act provides the Public Company Accounting Oversight Board (''PCAOB'') authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[10] The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.[11]

II. Adjusting the Commission's Penalty Amounts for Inflation

This Notice sets forth the annual inflation adjustment required by the 2015 Act for all CMPs under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain civil monetary penalties under the Sarbanes-Oxley Act.

Pursuant to the 2015 Act, the penalty amounts in the 2024 Adjustment are adjusted for inflation by increasing them by the percentage change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for October 2022 and the October 2023 CPI–U.[12] OMB has provided its calculation of this multiplier (''CPI–U Multiplier'') to agencies.[13] The new penalty amounts are determined by multiplying the amounts in the 2024 Adjustment by the CPI–U Multiplier and then rounding to the nearest dollar.

For example, the CMP for certain insider trading violations by controlling persons under Exchange Act section 21A(a)(3) [14] was readjusted for inflation as part of the 2023 Adjustment to $2,479,282. To determine the new CMP under this provision, the Commission multiplies this amount by the CPI–U Multiplier of 1.03241, and rounds to the nearest dollar. Thus, the new CMP for Exchange Act section 21A(a)(3) is $2,559,636.

Below is the Commission's calculation of the new penalty amounts for the penalties it administers:

U.S. Code citation	Civil monetary penalty description	2023 Adjustment penalty amounts	CPI–U Multiplier	2024 Adjusted penalty amounts
15 U.S.C. 77h–1(g) (Securities Act Sec. 8A(g))	For natural person	$10,219	1.03241	$10,550
	For any other person	102,193	1.03241	105,505
	For natural person/fraud	102,193	1.03241	105,505
	For any other person/fraud	510,962	1.03241	527,522
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	204,385	1.03241	211,009
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	987,860	1.03241	1,019,877
15 U.S.C. 77t(d) (Securities Act Sec. 20(d))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others.	1,116,140	1.03241	1,152,314
15 U.S.C. 78u(d)(3) (Exchange Act Sec. 21(d)(3))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,116,140	1.03241	1,152,314
15 U.S.C. 78u–1(a)(3) (Exchange Act Sec. 21A(a)(3))	Insider Trading—controlling person	2,479,282	1.03241	2,559,636
15 U.S.C. 78u–2 (Exchange Act Sec. 21B)	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158

[5] 28 U.S.C. 2461 note Sec. 4.

[6] Release Nos. 33–10276; 34–79749; IA–4599; IC–32414 (effective Jan. 18, 2017).

[7] Release Nos. 33–11021; 34–93925; IA–5938; IC–34466 (effective Jan. 15, 2022).

[8] Release Nos. 33–11143; 34–96605; IA–6212; IC–34797) (effective Jan. 15, 2023).

[9] 28 U.S.C. 2461 note Sec. 3(2).

[10] 15 U.S.C. 7215(c)(4)(D).

[11] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in Federal district court pursuant to section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties ''enforced'' by the Commission for purposes of the Inflation Adjustment Act. *See Adjustments to Civil Monetary Penalty Amounts,* Release No. 33–8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

[12] 28 U.S.C. 2461 note Sec. 5.

[13] Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 19, 2023), available at *https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.* This multiplier represents the percentage increase between the Oct. 2022 CPI–U and the Oct. 2023 CPI–U, plus 1.

[14] 15 U.S.C. 78u–1(a)(3).

U.S. Code citation	Civil monetary penalty description	2023 Adjustment penalty amounts	CPI–U Multiplier	2024 Adjusted penalty amounts
	For natural person/fraud/substantial losses or risk of losses to others.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others.	1,116,140	1.03241	1,152,314
15 U.S.C. 78ff(b) (Exchange Act Sec. 32(b))	Exchange Act/failure to file information documents, reports	659	1.03241	680
15 U.S.C. 78ff(c)(1)(B) (Exchange Act Sec. 32(c)(1)(B))	Foreign Corrupt Practices—any issuer	24,793	1.03241	25,597
15 U.S.C. 78ff(c)(2)(B) (Exchange Act Sec. 32(c)(2)(B))	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	24,793	1.03241	25,597
15 U.S.C. 80a–9(d) (Investment Company Act Sec. 9(d))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,116,140	1.03241	1,152,314
15 U.S.C. 80a–41(e) (Investment Company Act Sec. 42(e))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others.	1,116,140	1.03241	1,152,314
15 U.S.C. 80b–3(i) (Investment Advisers Act Sec. 203(i))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others or gains to self.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others or gain to self.	1,116,140	1.03241	1,152,314
15 U.S.C. 80b–9(e) (Investment Advisers Act Sec. 209(e))	For natural person	11,162	1.03241	11,524
	For any other person	111,614	1.03241	115,231
	For natural person/fraud	111,614	1.03241	115,231
	For any other person/fraud	558,071	1.03241	576,158
	For natural person/fraud/substantial losses or risk of losses to others.	223,229	1.03241	230,464
	For any other person/fraud/substantial losses or risk of losses to others.	1,116,140	1.03241	1,152,314
15 U.S.C. 7215(c)(4)(D)(i) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(i)).	For natural person	164,373	1.03241	169,700
	For any other person	3,287,477	1.03241	3,394,024
15 U.S.C. 7215(c)(4)(D)(ii) (Sarbanes-Oxley Act Sec. 105(c)(4)(D)(ii)).	For natural person	1,232,803	1.03241	1,272,758
	For any other person	24,656,067	1.03241	25,455,170

Pursuant to the 2015 Act and 17 CFR 201.1001, the adjusted penalty amounts in this Notice (and all penalty adjustments performed pursuant to the 2015 Act) apply to penalties imposed after the date the adjustment is effective for violations that occurred after November 2, 2015, the 2015 Act's enactment date. These penalty amounts supersede the amounts in the 2023 Adjustment.[15] For violations that occurred on or before November 2, 2015, the penalty amounts in Table I to 17 CFR 201.1001 continue to apply.[16]

[15] The penalty amounts in this Notice are being published in the **Federal Register** and will not be added to the Code of Federal Regulations in accordance with the 2015 Act and 17 CFR 201.1001(b). *See* 28 U.S.C. 2461 note Sec. 4(a)(2); 17 CFR 201.1001(b). In addition to being published in the **Federal Register**, the penalty amounts in this Notice will be made available on the Commission's website at *https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm,* as detailed in 17 CFR 201.1001(b). This website also lists the penalty amounts for violations that occurred on or before Nov. 2, 2015.

[16] 17 CFR 201.1001(a).

III. Small Business Regulatory Enforcement Fairness Act Status

The Office of Management and Budget (''OMB'') has concurred in our recommendation that this Notice is not a ''major rule'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act (''SBREFA''), 5 U.S.C. 804(2), because (1) it will not have an annual effect of $100 million dollars or more on the economy, (2) it does not present a major increase in prices for consumers or individual industries, and (3) it does not have significant adverse effects on competition, investment, or innovation.[17]

By the Commission.

Dated: January 5, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–00378 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

[17] *See generally* SBREFA, Public Law 104–121 (1996).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99279; File No. SR–NYSEARCA–2023–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Shares of the COtwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201–E

January 5, 2024.

On May 23, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the COtwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201–E (Commodity-Based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Trust Shares). The proposed rule change was published for comment in the **Federal Register** on June 12, 2023.[3]

On July 25, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 6, 2023, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On September 29, 2023, the Exchange submitted Amendment No. 1 to the proposed rule change, and on October 20, 2023, the Exchange withdrew Amendment No. 1. On November 27, the Commission designated a longer period for Commission action on the proposed rule change.[8] The Commission has not received any comment letters on the proposal. On December 26, 2023, the Exchange withdrew the proposed rule change (SR–NYSEARCA–2023–37).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2024–00384 Filed 1–10–24; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0044]

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: Social Security Administration.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2024.

SUMMARY: The Social Security Administration is giving notice of its updated maximum civil monetary penalties. These amounts are effective from January 15, 2024 through January 14, 2025. These figures represent an annual adjustment for inflation. The updated figures and notification are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Jessica Stubbs Platt, Deputy Counsel to the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 816–4054. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit the Social Security Administration's internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On June 27, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),[1] we published an interim final rule to adjust the level of civil monetary penalties (CMPs) under Sections 1129 and 1140 of the Social Security Act, 42 U.S.C. 1320a–8 and 1320b–10, respectively, with an initial ''catch-up'' adjustment effective August 1, 2016.[2] We announced in the interim final rule that for any future adjustments, we would publish a notice in the **Federal Register** to announce the new amounts. The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October Consumer Price Index for All Urban Consumers (CPI–U) (not seasonally adjusted) each year.[3] Inflation adjustment increases must be rounded to the nearest multiple of $1.[4] We last updated the maximum penalty amounts effective January 15, 2023.[5] Based on Office of Management and Budget (OMB) guidance,[6] the information below serves as public notice of the new maximum penalty amounts for 2024. The adjustment results in the following new maximum penalties, which will be effective as of January 15, 2024.

Section 1129 CMPs (42 U.S.C. 1320a–8):

$9,399.00 (current maximum per violation for fraud facilitators in a position of trust) × 1.03241 (OMB-issued inflationary adjustment multiplier) = $9,703.62. When rounded to the nearest dollar, the new maximum penalty is $9,704.

$9,966.00 (current maximum per violation for all other violators) × 1.03241 (OMB-issued inflationary adjustment multiplier) = $10,289.00. When rounded to the nearest dollar, the new maximum penalty is $10,289.

Section 1140 CMPs (42 U.S.C. 1320b–10):

$12,397.00 (current maximum per violation for all violations other than broadcast or telecasts) × 1.03241 (OMB-issued inflationary adjustment multiplier) = $12,798.79. When rounded to the nearest dollar, the new maximum penalty is $12,799.

$61,982.00 (current maximum per violative broadcast or telecast) × 1.03241 (OMB-issued inflationary adjustment multiplier) = $63,990.84. When rounded to the nearest dollar, the new maximum penalty is $63,991.

Michelle Murray,

Chief Counsel, Office of the Inspector General, Social Security Administration.

[FR Doc. 2024–00408 Filed 1–10–24; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0005]

Finding Regarding Foreign Social Insurance or Pension System of Cambodia

AGENCY: Social Security Administration.

ACTION: Notice of finding regarding foreign social insurance or pension system of Cambodia.

SUMMARY: We find that, under the Alien Nonpayment Provision of the Social Security Act (Act), citizens of Cambodia may continue to receive Social Security benefits under title II, after 6 consecutive months of absence from the United States, without regard to length of absence, if they meet certain conditions. This finding is based on our analysis of information and data we

[3] *See* Securities Exchange Act Release No. 97653 (June 6, 2023), 88 FR 38110.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97972, 88 FR 49508 (July 31, 2023).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98302, 88 FR 62608 (September 12, 2023).

[8] *See* Securities Exchange Act Release No. 99019, 88 FR 84007 (December 1, 2023).

[9] 17 CFR 200.30–3(a)(12).

[1] *See https://www.congress.gov/bill/114th-congress/house-bill/1314/text. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[2] *See* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[3] *See* OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06, p. 1 (February 24, 2016), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[4] OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06, p. 3 (February 24, 2016), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[5] *See* 87 FR 80245, *https://www.federalregister.gov/documents/2022/12/29/2022-28284/notice-on-penalty-inflation-adjustments-for-civil-monetary-penalties.*

[6] *See* OMB Memorandum, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–24–07, p. 1 (December 19, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

received about the social insurance system of Cambodia and its laws. The Commissioner of Social Security delegated the authority to make this finding to the Deputy Commissioner for Retirement and Disability Policy.

DATES: We will implement this finding on January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Icie K. Allen, Office of Income Security Programs, 2500 Robert Ball Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–8945. For more information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: We are prohibited, by law, from paying benefits under title II of the Act to non-U.S. citizens who remain outside the United States for more than 6 consecutive calendar months, unless they meet an exception provided in the law. We refer to this portion of the law as the Alien Nonpayment Provision (ANP).[1]

We recently reviewed the Cambodian social insurance system to determine if it meets the criteria for an ANP exception. This is a new finding about the social insurance system of Cambodia under the ANP. As a result of this finding, citizens of Cambodia may continue receiving benefits under title II of the Act after 6 consecutive calendar months outside the United States if they meet one of the following conditions:

1. Their benefits are based on the earnings of an individual who earned at least 40 quarters of coverage, or

2. Their benefits are based on the earnings of an individual who had periods of U.S. residency that add up to at least 10 years.

Background

The ANP, section 202(t) of the Act, prohibits payment of title II benefits to individuals who are not U.S. citizens or nationals for any month after they have been outside the United States for more than 6 consecutive calendar months. Beneficiaries who meet one of the exceptions described in the ANP may continue to receive benefits under title II without regard to absence from the United States. Some of these exceptions require that dependents and survivors meet a 5-year U.S. residency requirement for benefits to continue after 6 consecutive calendar months of absence from the United States.[2]

To determine whether the social insurance or pension system meets the criteria for an exception under section 202(t)(2) of the Act, we review the foreign country's laws. In addition, we review information and data that we receive from the administrators of the social insurance or pension system of that country. The Commissioner of the Social Security Administration publishes these findings in the **Federal Register**.

On July 26, 1958, we published a list of countries that did not meet the requirements of section 202(t)(2), which included Cambodia.[3] Cambodia did not meet 202(t)(2) because it did not operate a social insurance or pension system of general application. However, the exceptions provided under section 202(t)(4)(A) and (B) did apply to qualified citizens of Cambodia.

The exceptions under section 202(t)(4)(A) and (B) no longer applied to citizens of Cambodia from April 1975 through November 2001, because the U.S. Department of the Treasury imposed payment restrictions for Cambodia.[4] The U.S. Department of the Treasury lifted those payment restrictions effective December 10, 2001[5] and we updated our regulation in September 2009[6] accordingly.

We requested information from Cambodia to make an updated finding of Cambodia's status under section 202(t)(2) of the Act. In June 2014, we received a completed Form SSA–142, *Report of Social Insurance or Pension System,* from Cambodia. We initiated an analysis to reach the finding we describe here.

On September 25, 2002, Cambodia enacted the Law on Social Security Schemes for Persons Defined by the Provisions of the Labour Law. This law contains provisions for the earned right to benefits based on contributions from employment covered under Cambodia's social security scheme. However, our review indicates that Cambodia's social insurance system is not in effect because Cambodia does not currently collect contributions or pay pension benefits as of the date of this Finding.

Finding

Section 202(t)(2) Exception

Section 202(t)(2) of the Act provides that the prohibition against payment shall not apply to individuals who are citizens of a foreign country that the Commissioner of Social Security finds has a social insurance or pension system that is in effect and of general application in such country, and that:

(A) pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(B) permits individuals who are U.S. citizens but not citizens of that country and who qualify for benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

We find that Cambodia does not meet the conditions in section 202(t)(2) of the Act because the social insurance system of Cambodia is not in effect. This finding is effective January 1, 2002, the first month after the U.S. Treasury restriction was lifted. This finding under section 202(t)(2) does not preclude consideration of section 202(t)(4)(A) and (B).

Section 202(t)(4) Exception

We find that the ANP exceptions in 202(t)(4)(A) and (B) below apply to citizens of Cambodia in specific instances, as discussed in the next two paragraphs.

Section 202(t)(4)(A) of the Act provides that the prohibition against payment shall not apply to the benefits payable on the earnings record of an individual who has at least 40 quarters of coverage under Social Security.

Section 202(t)(4)(B) of the Act provides that the prohibition against payment shall not apply to the benefits payable on the earnings record of an individual who has resided in the United States for a period or periods aggregating 10 years or more.

Both exceptions are subject to residency requirements: Section 202(t)(11) requires that dependent and survivor beneficiaries must have resided in the United States for 5 years or more while in a qualifying relationship with the individual on whose earnings the benefits are based.

Moreover, the exceptions in section 202(t)(4)(A) and (B) will not apply if:

- The individual is a citizen of a foreign country that has in effect a social insurance or pension system that is of general application and that pays periodic benefits (or the actuarial equivalent) on account of old age, retirement, or death; but the social insurance or pension system does not pay benefits to qualifying U.S. citizens without regard to the duration of the absence from the foreign country; or,
- The individual is a citizen of a foreign country that has no social insurance or pension system of general application and at any time within 5 years before January 1968 (or the first month after December 1967 in which

[1] Section 202(t) of the Act, 42 U.S.C. 402(t).

[2] Section 202(t)(2), (4), (11) of the Act, 42 U.S.C. 402(t)(2), (4), (11).

[3] 23 FR 5673 (July 26, 1958).

[4] 40 FR 19202 (May 2, 1975).

[5] 66 FR 63623 (Dec. 10, 2001).

[6] 74 FR 48855 (Sept. 25, 2009).

benefits are subject to ANP suspension), the individual was residing in a country to which payments were withheld by Treasury under 31 U.S.C. 3329(a) and 3330(a).

We apply this finding from January 1, 2002, the first month after the U.S. Department of Treasury lifted the statutory restriction on foreign payments.

Our finding that section 202(t)(4)(A) and (B) apply to citizens of Cambodia is subject to section 202(t)(11). Section 202(t)(11) requires that dependent and survivor title II beneficiaries must also have resided in the United States for a total period of 5 years or more while in a qualifying relationship with the individual on whose earnings the benefits are based.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

The Commissioner of the Social Security Administration, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary **Federal Register** Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2024–00404 Filed 1–10–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12303]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Hidden Faces: Covered Portraits of the Renaissance'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Hidden Faces: Covered Portraits of the Renaissance'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–00388 Filed 1–10–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0001]

Coastwise-Qualified Launch Barges: 46 CFR 389.3(a) Notification

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: To maximize the use of coastwise-qualified vessels, in January of each calendar year, MARAD requests owners and operators of coastwise-qualified launch barges or other interested parties to notify the Agency of their interest in, and provide certain information relating to, the transportation, installation, or launching of platform jackets. MARAD publishes the notifications as a resource to companies contemplating these operations on the outer continental shelf. The notifications should include information set forth in the Supplementary Information section below.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0001 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search ''MARAD–2024–0001'' and follow the instructions for submitting comments on the electronic docket site.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: All submissions must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* and search using ''MARAD–2024–0001.''

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 55108, the Secretary of Transportation has the authority to adopt procedures that timely provide information that would maximize the use of coastwise-qualified vessels for the transportation of platform jackets between U.S. coastwise points and the U.S. Outer Continental Shelf. This authority has been delegated to MARAD. The regulation promulgated under the authority of 46 U.S.C. 55108, 46 CFR 389.3(a), requires that MARAD publish a notice in the **Federal Register** requesting notification from owners, operators, or potential operators of coastwise-qualified launch barges, or other interested parties, of: (1) their interest in participating in the transportation and, if needed, the launching or installation of offshore platform jackets; (2) the contact information for their company; and, (3) the specifications of any currently owned or operated coastwise-qualified launch barges or plans to construct such a vessel. The notification should indicate that the vessel's certificate of documentation has a coastwise endorsement. The information provided in the notifications will be published at *http://MARAD.regulations.gov.* 46 CFR 389.3(e).

Privacy Act

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from owners and operators of coastwise-qualified launch barges to compile a list of vessels that could potentially be available to transport, and if necessary, launch or install platform jackets. All timely comments will be considered; however, to facilitate comment tracking, commenters should provide their name or the name of their organization. If comments contain proprietary or confidential information, commenters may contact the Agency for alternate submission instructions. The electronic form of all comments received into MARAD dockets may be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 46 U.S.C. 55108, 49 CFR 1.93(a), 46 CFR 389.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–00443 Filed 1–10–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0099; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Ford Motor Company (Ford), has determined that certain model year (MY) 2018–2020 Ford F–150 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Ford filed a noncompliance report dated July 22, 2022, and subsequently petitioned NHTSA on August 12, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Ford's petition.

DATES: Send comments on or before February 12, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–5304.

SUPPLEMENTARY INFORMATION:

I. Overview

Ford determined that certain MY 2018–2020 Ford F–150 motor vehicles equipped with combination lamps do not fully comply with paragraph S7.6.13 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108).

Ford filed an original noncompliance report dated July 22, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Ford petitioned NHTSA on August 12, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Ford's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Approximately 1,271,854 MY 2018–2020 Ford F–150 motor vehicles, manufactured between January 10, 2017, and October 22, 2020, are potentially involved.

III. Noncompliance

Ford explains that the rear combination lamps installed on the subject vehicles may exceed the maximum backup lamp photometry requirements as required by paragraph S7.6.13 and Table XII of FMVSS No. 108. Specifically, when the subject rear combination lamps were tested in accordance with S7.6.13, 7 of the 8 samples exceeded the maximum candela (cd) rating of 300 at the H–V test point, and 1 of the 8 samples also exceeded the maximum at the H–10L test point.

IV. Rule Requirements

Paragraph S7.6.13 and Table XII of FMVSS No. 108 include the requirements relevant to this petition. S7.6.13 provides that each backup lamp

must be designed to conform to the photometry requirements of Table XII, when tested according to the procedure of S14.2.1, as specified by this section. Table XII provides the minimum and maximum candela values for photometric intensity. Specifically at the H–10L test point, any single lamp in a multiple lamp system must have a minimum photometric intensity of 15 cd and a maximum photometric intensity of 300 cd; at the H–V test point, any single lamp in a multiple lamp system must have a minimum photometric intensity of 15 cd and a maximum photometric intensity of 300 cd.

V. Background Information

Ford received an information request from NHTSA on May 13, 2022, Ford says NHTSA reported a preliminary test failure was observed in the backup lamp function in the rear combination lamps of a 2018 F–150 base series motor vehicle.

Ford says that NHTSA provided a FMVSS No. 108 test report dated May 9, 2022, in which Calcoast tested lighting functions of the rear combination lamps on behalf of NHTSA. Ford states that according to the test report, Calcoast tested 8 samples at each of the 15 test points, all of which exceeded the maximum candela rating of 300 that is required at the H–V test point, and one of the samples also exceeded the maximum candela rating at the H–10L test point. Based on the test results of the 7 backup lamps that only exceeded the requirement at the H–V test point, Ford believes that the sample that also exceeded the maximum requirement at the H–10L test point was influenced by the H–V test point ''and is not indicative of an additional root cause.''

Ford states that it reviewed the supplier's lamp certification data as well as their historical and ongoing product audit testing records and found that the lamps tested at values that were ''consistently below the 300-cd maximum requirement for backup lamps.'' Upon further review, Ford discovered that ''the initial certification test data provided to Ford by the supplier pertained to a test that was conducted with a bulb socket that did not represent the final design.'' According to Ford, they were informed by the supplier that they retested the lamp with the correct focal length socket and certified the measurement for the backup lamp at H–V as 253.4 cd, which was below the required 300 cd limit. Ford later discovered that the supplier's ongoing audit testing was being conducted using a ''production'' bulb, rather than the ''rated'' bulb that is required for certification. The supplier conducted additional testing using 30 sample assemblies each for the left-hand and right-designs. The additional testing showed values exceeding 300 cd at test point H–V. Ford states that on July 15, 2022, its Field Review Committee reviewed the concern and determined that the subject rear combination lamps were not compliant with the backup lamp illumination requirements provided in FMVSS No. 108. Based on its analysis of existing and new test data, Ford believes that the subject noncompliance is inconsequential to motor vehicle safety.

Design of the Lamp

Ford details the design of the subject backup lamps and states that the subject vehicles are equipped with the ''low series'' variation of the rear combination lamp. MY 2018 Ford-F–150 vehicles were available in two variations of taillamps: (1) the ''BLIS series'' lamp that incorporates Blind Spot Information System (BLIS) sensors, and (2) the ''low series'' lamp that does not incorporate BLIS sensors.

Regulatory Framework

Ford states the purpose of FMVSS No. 108, and the definition of backup lamps provided in paragraphs S2 and S4 of the standard. According to Ford, in order to determine whether the subject noncompliance impacts motor vehicle safety, it should be evaluated from the perspective of a pedestrian or other drivers. Ford says it has used this perspective in its analysis.

Ford explains that the backup lamps at issue are required to have a luminosity greater than 15 and less than 300 cd, according to Table XII of FMVSS No. 108. Ford says that the following requirements are important when considering the subject noncompliance: (1) testing is conducted at a series of 22 points 100 feet away from the test apparatus, and (2) bulb certification testing is to be conducted with a ''rated'' bulb.

VI. Summary of Ford's Petition

The following views and arguments presented in this section, ''VI. Summary of Ford's Petition,'' are the views and arguments provided by Ford. They have not been evaluated by the Agency and do not reflect the views of the Agency. Ford describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Ford believes that the subject noncompliance is inconsequential to motor vehicle safety because the backup lamp only illuminates while the vehicle is backing up or is beginning to back up, therefore, normal operation on roads and highways would be unaffected and the noncompliance does not impact the conspicuity of motor vehicles on public roads, so that their presence is perceived, and their signals are understood during the day and at night or in low visibility conditions.

Ford claims that the applicable testing procedures do not correlate ''to what another driver or pedestrian would experience if they were viewing one of the subject vehicles.'' Ford states that (1) vehicles in the field would be equipped with production bulbs, not rated bulbs, and (2) ''the voltage used on the NHTSA test report is higher than what could be on the vehicle.''

Ford states that ''[f]or the subject vehicles, the theoretical maximum voltage that could be applied to the backup lamps is 13.3 v,'' and Ford designed the lamp to operate at 12.8v. Based on Ford's design, the supplier predicted that the left-hand backup lamps would test at 236 Cd at the H–V test point, and the right-hand back up lamp would test at 234 Cd at the same test point which is about 22 percent less than the 300 Cd limit that is required. However, Ford says it decided to verify the design assumptions because ''[t]he voltage for the compliance test sometimes does not match the voltage supplied by the vehicles, and a change in voltage results in a change in brightness.'' [1] Ford found that of 14 vehicles, the maximum output was 12.85 volts, which it says is more aligned with the design. Ford found that with the 12.85 volts, ''a statistical worst case of 327 candelas at the HV point (9% exceedance) is predicted.''

Upon review of NHTSA's test report that showed the subject noncompliance, Ford says it tested 30 lamps, comparing the use of production bulbs at 12.9 volts and the theoretical maximum at 13.3 volts. Ford found that at 12.9 volts, the H–V test point values ''ranged from 197.8 cd to 306 cd (the latter representing 2 [percent] exceedance).'' At 13.3 volts, Ford recorded values for the H–V test point that ''ranged from 221.32 cd to 337.41 cd (the latter representing 12.5 [percent] exceedance).'' Ford adds that, in order to ''achieve a value of 460 Lm for the rated bulb, those tests were run at a voltage of 14.25 volts and amperage of 1.961 amps.''

[1] *See, e.g., Grant of Petition for Determination of Inconsequential Noncompliance; Hella, Inc.;* 55 FR 37601. September 12, 1990.

Ford notes that it is not aware of any reports, complaints, accidents, or injuries related the subject noncompliance. Ford says it ''recognizes that this fact is not dispositive'' but believes that it is ''illustrative of the field performance.'' [2]

In its petition, Ford relies on studies done by the University of Michigan Transportation Research Institute (UMTRI), its own additional testing, including a ''jury evaluation,'' and NHTSA precedent to support its claims.

UMTRI Reports

Ford states that past NHTSA decisions for inconsequential noncompliance referred to UMTRI's, 1994 report titled, ''*Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities*'' [3] and its 1997 report that extended the study to low beam automotive headlamps.[4] Ford argues that NHTSA has granted past petitions in cases where luminosity exceeds the requirement based on the reports finding that ''the human eye is unable to detect a 25 [percent] change in illumination.'' Ford says the 1994 study indicated that the results were relevant for evaluating inconsequential noncompliance petitions pertaining to vehicle lamp intensities that exceed the performance requirements given in FMVSS No. 108.

For vehicles in the field, Ford's prediction is that the maximum candela value will be 327 cd, or a 9 percent exceedance, at point H–V due to the maximum voltage in the subject vehicle. Ford believes that the extent of the subject noncompliance ''is such that the human eye is unable to distinguish the worst- case rear backup lamp from a compliant rear backup lamp.''

Ford says it then conducted a jury evaluation to confirm the results of the UMTRI studies in relation to the subject noncompliance and its impact on drivers of trailing vehicles and pedestrians.

Jury Evaluation

Ford's jury evaluation [5] involved six participants observing ''the lamps with voltage modulated to represent the candela values measured in the Agency's testing, under a variety of conditions (light, dark, tail lamps illuminated, brake lamps illuminated).''

The observers were unable to consistently distinguish the differences between the light outputs when given seven seconds. When given approximately 5 minutes to evaluate the light outputs, all of the observers could identify which lamps were at 240 cd which were at 350 cd. However, after 5 minutes, none of the observers could distinguish between lamps that were set at 300 cd and lamps set at 350 cd. Additionally, the observers did not identify any conditions that caused ''unusual brightness or glare that could potentially affect operators of a trailing vehicle or a pedestrian.'' Ford first asked the observers to evaluate the light output with just the backup lamps illuminated in the taillamp, then asked the observers to evaluate the light output with the backup lamps at 350 cd, and the taillamp brake lamps illuminated. Ford says the observers found that the ''illumination of the stop lamps took the focus away from the backup lamps,'' because of the color difference and the similarities in brightness between the lighting functions. Ford says that the backup lamps being illuminated with the brake lamps also being illuminated is very unlikely because a driver would typically depress the brake pedal when shifting to reverse the vehicle and while backing up. Ford contends that these results validated the UMTRI reports.

NHTSA Precedent

Ford states that, historically, NHTSA has granted petitions involving noncompliances similar to the subject noncompliance. Ford cites the following NHTSA decisions:

1. Chrysler Corp.; Grant of Petition for Decision of Inconsequential Noncompliance; 52 FR 17499 (May 8, 1987). This petition concerned backup lamps installed on vehicles that were 68 candela below the required minimum at test point H–V, and therefore, did not meet the photometric requirements of FMVSS No. 108. Ford says, ''NHTSA concluded that the 20 [percent] reduction on 800 vehicles would be statistically unlikely to produce even one injury.''

2. Grant of Petition for Decision of Inconsequential Noncompliance; Hella Inc., 55 FR 37601 (September 12, 1990). Ford says Hella's petition for inconsequential noncompliance involved taillamps that exceeded the requirement by 20 percent in the worst case. Ford states that Hella's petition included the argument that the human eye cannot identify a change in luminescence unless increases or decreases by more than a 25 percent. Hella added that the lamps were designed to conform to FMVSS No. 108, and the voltage of production lamps would be less than the voltage tested in the laboratory. In granting Hella's petition, Ford says, ''NHTSA agreed with Hella's statements and referenced other instances where NHTSA granted petitions for inconsequentiality regarding the light output requirements of FMVSS No. 108.''

3. Subaru of America; Grant of Petition for Determination of Inconsequential Noncompliance, 56 FR 59971, November 26, 1991. In this case, Ford says the noncompliance at issue concerned ''failures of luminous intensity on the side reflex reflector'' where the lamps tested at 20 percent less than what is required by FMVSS No. 108. Additionally, Ford says Subaru's petition included details of a ''study where observers could not differentiate between the reflected light of complying and noncomplying reflectors at distances of 30 m, 60 m, and 100 m.'' Ford states that NHTSA granted Subaru's petition based on the same reasoning used in Hella's petition.

4. Toyota Motor North America, Inc, Grant of Petition for Decision of Inconsequential Noncompliance; 85 FR 39679 (July 1, 2020). Ford describes a petition submitted by Toyota in which the noncompliance involved vehicles that were equipped with reflex reflectors that had a luminous intensity that were 18 percent less than the required minimum. Ford says NHTSA agreed with Toyota ''that a change of luminous intensity of 18 percent is imperceptible to the human eye'' and based its decision in this case on an evaluation provided by NHTSA and the prior Hella and Subaru decisions.

5. North America Subaru, Inc., Denial of Petition for Decision of Inconsequential Noncompliance; 87 FR 48764, August 10, 2022. The noncompliance in this petition involved front combination lamp side reflex reflectors with a luminous intensity that measured below the minimum requirement by more than 25 percent. While NHTSA denied Subaru's petition for inconsequential noncompliance in that case, Ford believes that its current petition differs from Subaru's because Ford conducted a jury evaluation and

[2] *See North American Subaru, Inc., Denial of Petition for Decision of Inconsequential Noncompliance;* 87 FR 46764 (August 10, 2022).

[3] *See* DOT report, *Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities,* DOT HS 808 209, September 1994. *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB95206306.xhtml.*

[4] *See Just Noticeable Differences for Low-Beam Headlamp Intensities* (Sayer, Flannagan, Sivak, Kojima, and Flannagan), Report No. UMTRI–97–4, February 1997. *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB97147300.xhtml.*

[5] More details of Ford's jury evaluation can be found in their petition available on the docket.

relied on camera measurements to support its petition. Second, Ford quotes NHTSA's decision as stating, ''the performance requirements for reflex reflectors are measured in (cd/incident ft-c) or (mcd/lux), whereas the performance requirements for signal lighting assessed in the [UMTRI] study are measured in candela (cd).''

Ford concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Ford no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Ford notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

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Part II

Department of Education

34 CFR Parts 75, 76, 77, et al.
Education Department General Administrative Regulations and Related Regulatory Provisions; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 79, and 299

RIN 1875–AA14

[Docket ID ED–2023–OPEPD–0110]

Education Department General Administrative Regulations and Related Regulatory Provisions

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to amend the Education Department General Administrative Regulations (EDGAR) and associated regulatory provisions to update the regulations and better align them with other U.S. Department of Education (Department) regulations and procedures. A brief summary of the proposed rule is available on *Regulations.gov* in the docket for the rulemaking.

DATES: We must receive your comments on or before February 26, 2024.

ADDRESSES: Comments must be submitted electronically via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *http://www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted after the comment period closes. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. The Department will not make comments that contain personally identifiable information about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kelly Terpak, U.S. Department of Education, 400 Maryland Avenue SW, Room 4C212, Washington, DC 20202. Telephone: (202) 245–6776. Email: *EDGAR@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of this Regulatory Action: The last major update to EDGAR was in 2013. Given that EDGAR serves as the foundational set of regulations for the Department, we have reviewed EDGAR, evaluated it for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations, and identified ways in which EDGAR could be updated, streamlined, and otherwise improved. Specifically, we propose to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations. These changes are detailed in the Summary of Major Provisions of this Regulatory Action and the Significant Proposed Regulations section of this document.

Summary of Major Provisions of this Regulatory Action: As discussed in greater detail in the *Significant Proposed Regulations* section of this document, the proposed regulations would:

- Make technical updates to refer to up-to-date statutory authorities, remove outdated terminology, use consistent references, and eliminate obsolete cross-references.
- Align EDGAR with updates in the most recent reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). For example, updates to EDGAR would revise the tiers of evidence to incorporate and parallel those in the ESEA and would specify the procedures used to give special consideration to an application supported by evidence in § 75.226.
- Clarify, streamline, and expand the selection criteria the Secretary may use to make discretionary awards under § 75.210.
- Clarify procedural approaches, such as those related to making continuation awards under § 75.253, and exceptions to the typical process for new awards under § 75.219, such as if a grant application had been mishandled.
- Improve public access to research and evaluation related to Department-funded projects by requiring, under §§ 75.590 and 75.623, that each grantee that prepares an evaluation or a peer-reviewed scholarly publication as part of the grant award or on the basis of grant-funded research make the final evaluation report or peer-reviewed scholarly publication available through the Education Resource Information Center (ERIC), which is current practice of the Department's Institute of Education Sciences (IES).
- Expand and clarify flexibility for the Department in administering its grants programs, including by—
  - Providing the Department the option to require applicants under grant programs to include a logic model supporting their proposed project under § 75.112;
  - Replacing the definition in § 75.225 of ''novice applicant'' with a broader definition of ''new potential grantee,'' to allow additional flexibility to give special consideration to such grantees and increase equity in the applicant pool and recipients of Department funds;
  - Allowing the Department to require a grantee to conduct an independent evaluation of their project and make the results of such an evaluation public under § 75.590;
  - Defining ''independent evaluation'' under § 77.1(c);
  - Clarifying under § 76.50 that, where not prohibited by law, regulation, or the terms and conditions of the grant award, States have subgranting authority;
  - Allowing States flexibility under § 76.140 to adopt a process for amending a State plan that is distinct from the process used for initial approval; and
  - Clarifying the hearing and appeal process under § 76.401 for subgrants of State-administered formula grant programs, including by clarifying that aggrieved applicants must allege that a specific Federal or State statute or regulation has been violated.
- Consolidating and clarifying regulations about participation of private school children, teachers, and other educational personnel in part 299.

Costs and Benefits: The Department believes that the benefits of this regulatory action would outweigh any associated costs to States, local educational agencies (LEAs), and other Department applicants and grantees. The proposed regulations would, in part, update terminology to align with applicable statutes and regulations. Many of the adjustments would support the Department, its grantees, or both, in selecting high-quality grantees and to support those grantees in ensuring the effectiveness and continuous

improvement of their projects. These changes include, for example, adding potential selection criteria that apply only to programs that elect to use them, as announced in a notice inviting applications (NIA), and clarifying the language in selection criteria for applicants and peer reviewers. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits. Consistent with Executive Order 12866, as amended most recently by Executive Order 14094, the Secretary has determined that this action is significant and, thus, is subject to review by the Office of Management and Budget.

Incorporation by Reference: Proposed § 75.616 incorporates by reference the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Standard 90.1. ASHRAE is included in the construction section focused on energy conservation and has been included in EDGAR for over 30 years. The ASHRAE standards are the industry leading standards and are relevant to the construction regulations in this section of EDGAR because grantees need to know the current standard with which they must comply. Standard 90.1 has been a benchmark for commercial building energy codes in the United States, and a key basis for codes and standards around the world, for almost half a century. This standard provides the minimum requirements for energy-efficient design of most sites and buildings, except low-rise residential buildings. It offers, in detail, the minimum energy efficiency requirements for design and construction of new sites and buildings and their systems, new portions of buildings and their systems, and new systems and equipment in existing buildings, as well as criteria for determining compliance with these requirements. It is an indispensable reference for engineers and other professionals involved in design of buildings, sites, and building systems. This standard is available to the public at *www.ashrae.org/technical-resources/bookstore/standard-90-1.*

Proposed § 77.1 incorporates by reference the What Works Clearinghouse (WWC) Procedures and Standards Handbook, Version 5.0. The purpose of the What Works Clearinghouse is to review and summarize the quality of existing research in educational programs, products, practices, and policies. We incorporate the Handbook, which provides a detailed description of the standards and procedures of the WWC, by reference. The Handbook is available to interested parties at *https://ies.ed.gov/ncee/wwc/Handbooks.* The Version 5.0 Handbook includes a new Chapter I, Overview of the What Works Clearinghouse and Its Procedures and Standards and aligns the flow of content with the study review process. Additionally, it no longer allows for topic-specific customization of the standards, aligns its effectiveness ratings with the evidence definitions in § 77.1(c), and describes other protocols for specific study designs. More details are available at *https://ies.ed.gov/ncee/WWC/Docs/referenceresources/Final_HandbookSummary-v5-0-508.pdf.*

The WWC is an initiative of the Department's National Center for Education Evaluation and Regional Assistance, within IES, which was established under the Education Sciences Reform Act of 2002 (Title I of Pub. L. 107–279). The WWC is an important part of the Department's strategy to use rigorous and relevant research, evaluation, and statistics to inform decisions in the field of education. The WWC provides critical assessments of scientific evidence on the effectiveness of education programs, policies, products, and practices (referred to as ''interventions'') and a range of publications and tools summarizing this evidence. The WWC meets the need for credible, succinct information by reviewing research studies, assessing the quality of the research, summarizing the evidence of the effectiveness of interventions on student outcomes and other outcomes related to education, and disseminating its findings broadly.

This handbook is available to the public at *https://ies.ed.gov/ncee/wwc/handbooks#procedures.*

Invitation to Comment: We invite you to submit comments regarding these proposed regulations.

The following standards appear in the amendatory text of the document and have already been approved for the locations in which they appear: What Works Clearinghouse Standards Handbook, Versions 4.0 and 4.1; What Works Clearinghouse Procedures Handbook, Versions 4.0 and 4.1; and the What Works Clearinghouse Procedures and Standards Handbook, Versions 2.1 and 3.0.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses, and to provide relevant information and data whenever possible, even if there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall goal of reducing the regulatory burden that might result from the proposed regulations. Please let us know of any further ways that we may reduce potential costs or increase potential benefits, while preserving the effective and efficient administration of the Department's programs and activities. We also welcome comments on any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Directed Questions: One of the Department's goals in these proposed regulations, in addition to helping strengthen and streamline implementation and monitoring of Department grants, is to better support continuous improvement—encouraging grantees to use research, data, community and other engagement, and other feedback to periodically review and improve their project plans to best advance their programmatic objectives. We particularly welcome comments on how these proposed regulations could best advance this goal of continuous improvement.

We also specifically seek input on the proposed changes to § 75.210, which outlines the Department's general selection criteria. We carefully examined usage of these selection criteria over the years to inform the proposed changes. We also looked at how the selection criteria align with the components of a logic model, to allow peer reviewers to assess the logic model more directly, including how the pieces of the proposed project align with the intended outcomes. We seek public input on whether the proposed changes to § 75.210 would add clarity for applicants and peer reviewers and help ensure that the Department funds the highest-quality grant applications that are most likely to lead to successful projects.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation

or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

In this notice of proposed rulemaking (NPRM), we propose various updates to EDGAR and related regulatory provisions. The proposed changes range from technical updates (such as removing references to the Trust Territory of the Pacific Islands, which no longer exists) to streamlining regulations (such as consolidating those concerning State plans under State-administered formula grant programs) to adding new options for grant competition requirements (such as providing the Department the option to require a logic model in any competitive grant program or to require a grantee to conduct an independent evaluation). Except for minor or technical revisions, such as updates to citations, cross-references, references to outdated programs, links, or general terminology, the proposed changes and reasons for them are explained in detail in the *Significant Proposed Regulations* section of this NPRM. The applicable authority for this regulatory package is section 410 of the General Education Provisions Act (GEPA) and section 414 of the Department of Education Organization Act (20 U.S.C. 1221e–3 and 3474, respectively), unless otherwise noted.

Significant Proposed Regulations

34 CFR Part 75—Direct Grant Programs

Sections 75.1 and 75.200 Programs to Which Part 75 Applies and How Applications for New Grants and Cooperative Agreements Are Selected for Funding; Standards for Use of Cooperative Agreements

Current Regulation: Section 75.1 establishes that part 75 applies to direct grant programs of the Department. Section 75.200 further defines ''direct grant programs'' as either discretionary grant or formula grant programs.

Proposed Regulation: Proposed § 75.1 would combine § 75.1, and the note that follows that section, with § 75.200(a), (b)(1), and (c). Proposed § 75.1(c)(3) would specify what regulations in part 75 apply to direct grant programs, which the proposed regulation clarifies are either a discretionary grant program or a formula grant program other than a State-administered formula grant program covered by part 76. We also propose in § 75.1 to change ''authorizing statute'' to ''applicable statutes and regulations.'' We also propose deleting current § 75.200(b)(3)(ii).

Reasons: We propose these changes to consolidate all information relevant to which programs are covered by part 75 into one regulatory provision. The changes are not substantive. We propose to change ''authorizing statute'' because we think the term is too narrow, as it does not include other applicable statutes, such as annual appropriations laws, that may override, modify, or supplement the ''authorizing statute'' without amending them. Although not reiterated throughout this preamble, we propose to make this conforming change in each applicable instance throughout the proposed regulations. Likewise, we propose to make this change in relevant instances where the term ''program statute'' is used. We propose deleting current § 75.200(b)(3)(ii) to remove redundancy with § 75.200(b)(3)(i).

Section 75.4 Department Contracts

Current Regulation: Section 75.4 describes what regulations apply to Federal contracts and in what circumstances part 75 applies to a contract of the Department.

Proposed Regulation: We propose to remove and reserve § 75.4.

Reasons: Section 75.4 discusses contractual arrangements of the Department and when part 75 may apply to a Department contract. However, part 75 concerns the administration of the Department's direct grant programs, not contracts entered into by the Department. Additionally, § 75.4 describes requirements found in Chapters 1 and 34 of title 48 of the Code of Federal Regulations. These requirements apply to Department procurements, not Department grant programs or procurements undertaken by Department grantees. Therefore, to promote clarity and accessibility of the Department's regulations, we propose to remove § 75.4 as unnecessary and redundant given the focus on direct grants in part 75. This provision concerns the regulations that govern Federal agency contracting, not grantee contracting. We do not propose to remove any provision relevant to a grantee's contracting, and removing § 75.4 would not modify any provision related to contractual arrangements of the Department.

Section 75.60 Individuals Ineligible To Receive Assistance

Current Regulation: Section 75.60 prohibits certain individuals from receiving a fellowship, scholarship, or loan from the Department if they are in default, as that term is used in 34 CFR part 668. The current section lists specific Department programs that are fellowship, scholarship, or loan programs.

Proposed Regulation: The proposed revisions to § 75.60 would delete the outdated list of programs and instead define Department programs that provide a fellowship, scholarship, or loan as being a program that offers a fellowship, scholarship, or loan ''administered by the Department.''

Reasons: Current § 75.60 lists numerous programs that no longer exist. Rather than update the list with specific references to programs that may become outdated later, we believe that reliance on a description of those programs ensures that, over the long term, the text does not become outdated. The change is not intended to be substantive.

Section 75.101 Information in the Application Notice That Helps an Applicant Apply

Current Regulation: Section 75.101 describes what information the Secretary may include in an application notice, including information about the program and the application forms. Current § 75.101(a)(1) includes a description of what information an application package contains.

Proposed Regulation: We propose to revise § 75.101(a)(1) to refer more generally to the application package.

Reasons: The information described in current § 75.101(a)(1)(i) and (ii) is now included in the application notice itself and not in the application package. Therefore, we believe that removing § 75.101(a)(1)(i) and (ii) would improve the clarity of the regulations.

Sections 75.102 and 75.104 Deadline Date for Applications and Applicants Must Meet Procedural Rules

Current Regulation: Section 75.102(b) provides that, if an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

Proposed Regulation: We propose to move paragraph (b) of § 75.102 to § 75.104, where it would be added as a new paragraph (c). We also propose to revise the heading of § 75.104 to better reflect the topics covered by the regulation.

Reasons: Moving this paragraph, which concerns the requirements in application notices, from § 75.102 to § 75.104, would improve the clarity of the regulations because § 75.102 pertains to deadlines for submitting applications and § 75.104 concerns

applicants' compliance with additional application provisions.

Section 75.105 Annual Priorities

Current Regulation: Section 75.105 describes the process by which the Secretary may use annual absolute and competitive preference priorities. Current § 75.105(b)(2) describes the exceptions to publishing the annual priorities for public comment. Paragraph (b)(2)(i) describes the Department's use of invitational priorities and paragraph (b)(2)(iii) refers to the exceptions to the requirement for notice-and-comment rulemaking in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

Proposed Regulation: The proposed revisions would update the term ''annual priorities'' in the section title to ''annual absolute, competitive preference, and invitational priorities,'' and add existing exceptions to the public comment requirement in a new paragraph (b)(2)(vi). These include the exception authorized by section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)) for the first grant competition under a new or substantially revised program authority, as well as rulemaking exceptions under specific statutes.

We also propose updates to paragraphs (b)(2)(i), (iii), and (b)(2)(iv) to properly describe the exceptions to the Department's normal practice of publishing proposed priorities for notice and comment.

Reasons: The Department has statutory authority to use and has used the GEPA exception for many years, and adding this exception would clarify that the regulation supplements the statutory exemption in GEPA section 437(d)(1). The exception to notice and comment rulemaking for the first grant competition under a new or substantially revised program authority is established by GEPA section 437(d)(1); therefore, this change is not substantive. In addition, we propose to add references to section 681(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1481(d)), and section 191 of the Education Sciences Reform Act (20 U.S.C. 9581), both of which provide longstanding exemptions to the generally applicable requirement for the Department to conduct notice and comment rulemaking with respect to its discretionary grants.

Section 75.109 Changes to Application; Number of Copies

Current Regulation: Section 75.109(a) requires each applicant that submits a paper copy of an application to submit an original and two copies to the Department.

Proposed Regulation: We propose to remove paragraph (a) of this section and revise the section heading accordingly.

Reasons: We propose to remove this paragraph because it is no longer needed. The majority of applications are now submitted electronically.

Section 75.110 Information Regarding Performance Measurement

Current Regulation: Section 75.110 sets out information regarding the Secretary's authority to establish performance measurement requirements in an application notice.

Proposed Regulation: The proposed revisions would clearly differentiate between program performance measures and project-specific performance measures as well as establish requirements, to which grantees must agree, related to the quality of data and use of performance measures for continuous improvement.

Reasons: As a general matter, the Department's programs have program-level performance measures against which all grantees must report. Further, some programs also encourage or require grantees to establish project-specific performance measures. Both sets of measures are important sources of information about program and grantee performance. The current regulations do not clearly differentiate between these two types of performance measures, and these proposed revisions would make that differentiation. Additionally, it is important to ensure that applicants propose to collect and report quality data and that grantees use their performance measures to inform continuous improvement of their projects. Therefore, we propose to require assurances for quality data as part of the applications, and that the data will be used to inform the continuous improvement plan for the project.

Section 75.112 Include a Proposed Project Period and a Timeline

Current Regulation: Section 75.112 requires that applications include project periods and timelines of how the applicants plan to meet each project objective.

Proposed Regulation: We propose to revise § 75.112 to allow the Secretary to include a requirement for a logic model in a particular competition, in addition to requiring a project period and a timeline.

Reasons: This change would support the development of high-quality applications, given that logic models describe the need for a project, its inputs and outputs, and the intended outcomes. Logic models are helpful tools for applicants to use when establishing timelines and resource needs. They also are helpful to the Department and reviewers in understanding the applicant's rationale for how its proposed project will achieve the project outcomes. Accordingly, adding the flexibility for programs to establish a requirement for logic models would support project planning as well as project implementation if the project is selected for funding.

Section 75.127 Eligible Parties May Apply as a Group

Current Regulation: Section 75.127(b) lists some of the terms used to identify a group of eligible parties that may apply as a group for a grant. The list includes: (1) a combination of institutions of higher education; (2) a consortium; (3) joint applicants; and (4) cooperative arrangements.

Proposed Regulation: We propose revising § 75.127(b) to include the term ''partnerships.'' We also propose adding a paragraph (c) stating that, in the case of a group application submitted in accordance with §§ 75.127–75.129, all parties in the group must be eligible applicants under the competition. This change would not alter the ability of applicants to form partnerships with entities that are not eligible to be recipients under a program.

Reasons: We propose this change solely for clarity. In the case of an application submitted by a group of eligible applicants, a partnership is similar to a consortium, but in some programs the former term is used instead of the latter. Also, in the context of these regulations, the term ''eligible applicant'' is synonymous with ''eligible party,'' although § 75.127(a) and (b) refer to both as ''eligible parties.''

Sections 75.190–192 Development of Curricula or Instructional Materials

Current Regulation: Sections 75.190, 75.191, and 75.192 describe assurances and define reasonable consultation costs when grantees develop curricula or instructional materials.

Proposed Regulation: We propose to remove §§ 75.190–75.192.

Reasons: These regulations duplicate other assurances and regulations, including the cost principles in 2 CFR part 200, subpart E, that allow consultation costs that are reasonable and necessary. In addition, we think the open licensing requirements in 2 CFR 3474.20 for Department competitive grants awarded in competitions announced after February 21, 2017, promote dissemination of materials developed with Department grant funds.

We propose removing them to avoid unnecessary duplication, which we believe may be confusing to grantees if we duplicate certain assurances and regulations but not others.

Section 75.201 How the Selection Criteria Will Be Used

Current Regulation: Section 75.201(b) provides that, if points are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the **Federal Register**. Paragraph (c) provides that, if no points or weights are assigned to the selection criteria and selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

Proposed Regulation: In § 75.201(b), we propose adding the words ''or factors'' after the words ''selection criteria.'' In paragraph (c), we propose replacing the word ''and'' between the words ''selection criteria'' and ''selected factors'' with the word ''or.''

Reasons: The proposed revision to paragraph (b) would clarify that the Secretary may assign specific points, either to selection criteria or to the individual factors that make up an individual selection criterion, where appropriate to guide applicants and reviewers in more effectively preparing and reviewing applications. The revision to paragraph (c) would clarify the meaning of the provision and more accurately inform applicants and reviewers of how points are allocated among selection criteria and the individual factors making up each selection criterion when points are not assigned to the criteria or the selection factors.

Section 75.210 General Selection Criteria

Current Regulation: Section 75.210 lists the selection criteria and factors that the Department uses in the peer review process to score applications for discretionary grants.

Proposed Regulation: We propose changes to paragraphs (a) through (i) of § 75.210. Throughout this section, we also propose to remove parenthetical cross-references to definitions in § 77.1(c), to improve the consistency of how we refer to those definitions throughout our regulations. This global technical change would not affect the applicability of those definitions.

Specifically, the proposed regulations would make the following updates:

In paragraph (a), Need for project, as further described below, we propose clarifying in the criterion heading that it is need for ''the'' project. Regarding paragraph (a), Need for project, and paragraph (b), Significance, we propose a number of changes to provide greater clarity to applicants regarding the information they should provide in their applications to demonstrate the need or significance of the proposed project, including how the proposed project focuses on underserved populations, with the intent that the clarity for applicants will also provide better guidance for peer reviewers as they assess the extent to which applicants address these revised selection criteria factors. We also propose consolidation of factors where factors were similar in focus to streamline the menu of factors under the criterion.

In paragraph (c), Quality of the project design, we propose revisions to the factors that more explicitly reference and connect to a logic model, emphasizing the importance of considering the components of a logic model in relation to the design of the proposed project. We are also proposing to add three new factors regarding how the proposed project is informed by similar projects implemented by the applicant, the extent to which an applicant will allocate a significant portion of requested funding to the evidence-based components, and the commitment of key decision-makers at implementation sites for the proposed project.

In paragraph (d), Quality of project services, we propose clarifying in the criterion heading that it is the quality of ''the'' project services. We also propose to explicitly tie this factor to section 427 of GEPA (20 U.S.C. 1228(a)), and the related form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005), to connect an applicant's response to this form with the peer review of the application. Like Quality of the project design, proposed changes to Quality of project services reflect input from entities involved in the project, more direct connection to and engagement with the populations served by the proposed project, and the impacts of the services on those populations. We also propose a new factor related to early childhood and family outcomes, given the importance of serving young children and families effectively.

In paragraph (e), Quality of project personnel, we propose clarifying in the criterion heading that it is quality of ''the'' project personnel. We also propose revisions that would address how the personnel of the proposed project are representative of the population to be served by the project, including a new factor that would speak to the project team reflecting the demographics of the community to be served. Revisions also would address the relevance of experience of the project personnel with similar projects. Lastly, we propose a new factor that seeks to ensure that the project team is familiar with the assets, needs, and other contextual considerations of the proposed implementation sites.

In paragraph (f), Adequacy of resources, we propose revisions that would combine the adequacy of the resources and how those resources will support the proposed project. We also propose revisions that clarify commitments from partners, long-term sustainability and institutionalization of the project, and a new proposed factor on the reasonableness of the costs related to potential future adoption of the project.

In paragraph (g), Quality of the management plan, we propose revisions that focus on the feasibility of the project, how data will be used to inform continuous improvement, and how the management plan includes the perspectives of underserved populations for the proposed project.

In paragraph (h), Quality of the project evaluation, we propose revising the criterion heading to ''Quality of the project evaluation and evidence-building.'' In addition to the changes regarding the term ''evidence-building,'' which we propose to define in § 77.1(c), we propose revisions that would focus on the relevance of the evaluation, a focus of the evaluation on underserved populations, continuous improvement efforts and data to inform continuous improvement, revising the current factor on ''promising evidence'' so that it refers to the types of studies instead, differentiation of impacts for project components, and the experiences and independence of the evaluator. Lastly, we propose new factors focused on fidelity of implementation and dissemination of evidence-building learnings from the project.

In paragraph (i), Strategy to scale, we propose revisions that would clarify how the scaling work is informed by, and builds on, the project, seeks to serve underserved populations, and addresses previous barriers to impact. The revisions would allow for scaling at either the regional level or the national level and could include dissemination as well as adaptation and replication. We also propose new factors that look at how scaling efforts will target new populations or settings, the efficiencies in the project that will be incorporated into the scaling efforts, and the revenue stream to support scaling.

Reasons: The proposed revisions would provide clarity, ensure technical

and grammatical consistency, and make certain substantive changes, further described below. The menu of selection criteria and factors has expanded over the years through the various updates to EDGAR, and we closely reviewed it to determine what changes are needed. We also looked at how the existing factors were used in the various Department discretionary grant competitions to inform which factors are used frequently and which factors have rarely or never been used. For those rarely or never used, we examined whether there were other similar factors that might be used in their place, or if the language of the factor might be confusing. In some instances, we propose consolidating factors for these reasons, and, in some instances, we propose deleting the factors because they have rarely or never been used. We also sought to examine how the selection criteria can advance the Department's objectives of increasing diversity of applicants, ensuring equity in project services, and advancing usage of evidence. Clarity in the selection factors aids grant applicants' understanding and the Department's peer review and selection of grantees. The proposed changes to the selection criteria and factors under each criterion are based on lessons we have learned from using the existing selection criteria, ways to streamline the factors, and improvements to clarity. The proposed revisions seek to broaden the applicability of the factors, focus on data to inform project design and continuous improvement, demonstrate how the project and its personnel reflect the population to be served, and indicate how lessons learned from the project are incorporated into the project and plans for continued implementation and improvement after the grant period.

In paragraph (a), Need for project, we propose to revise the factors to further distinguish need, including allowing the Department to request comparison data that help an applicant demonstrate their need for the project and having applicants identify gaps that the proposed project will fill. Furthermore, we propose to focus these factors to further target grant funds to individuals and populations that are underserved and lack access to services.

Like the factors under Need for project, the proposed revisions under paragraph (b), Significance, are meant to allow applicants to quantify the significance of the project, including significance beyond the individual grant project and relevance to broader educational challenges. The proposed changes are meant to provide information on contributions to the field, capacity for the project to be adopted by others in the field, and a new proposed factor (xvii) that would focus on innovative approaches to existing evidence-based project components that support efforts under some Department programs to invest and then scale innovative projects. Additional revised factors would require using knowledge from project implementation to identify effective strategies to address educational challenges, as we think it is important for applicants to plan for not just implementing a project but developing ways to share knowledge from the implementation beyond the grant project. Recognizing that the Department is not the only agency or organization that funds and supports educational efforts, we think it is important for applicants to prepare for sharing their contributions to the field, and that the field is broader than just the Department. In addition, proposed factor (iv) would more explicitly reference rehabilitative services, which would be important for grant programs under the Rehabilitation Services Administration of the Department's Office of Special Education and Rehabilitative Services.

In paragraph (c), Quality of the project design, we intend to emphasize the importance of ensuring that the project design reflects engagement of the community to be served and other relevant entities, includes a focus on continuous improvement, and relies on relevant high-quality research that informs the proposed project. These revisions are intended to strengthen a proposed project design. We also propose to add new factors: how the proposed project is informed by similar projects implemented by the applicant, the extent to which an applicant will allocate a significant portion of requested funding to the evidence-based project components, the commitment of key decision makers at implementation sites for the proposed project, and the engagement of community members and partners in the design of the proposed project. The intent of these additions is to focus on project designs that consider previous implementations, the evidence base, and the needs of the community by engaging them. Additional revisions propose the development and use of a logic model because we think that logic models establish project designs that connect the intended outcomes with the inputs and activities to support those outcomes. Current factors reference only a conceptual framework or the ''demonstrates a rationale'' or ''promising evidence'' evidence levels but do not specifically discuss a logic model, which is defined in part 77. Lastly, we propose a factor about commitments at implementation sites to address issues we have seen in grant projects for which implementation sites were named in an application, but their support was unclear and affected implementation during the project period.

In paragraph (d), Quality of project services, we propose to explicitly tie this factor to section 427 of GEPA (20 U.S.C. 1228(a)), and the related form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005), for equitable access to, and participation in, the proposed project. The intent of this alignment is to connect an applicant's responses related to equity considerations on that form to the project services proposed under the project and aligns with the form's instructions, which include a broad list of potential barriers that may impede equitable access and participation. We propose these revisions under Quality of the project service and not under Quality of project personnel, as we think the responses on the form are more relevant to the project services and the activities being carried out under the grant. Other proposed revisions to factors under Quality of project services would align with proposed changes to other selection criteria, focusing on community engagement in project services, ensuring that project services are focused on underserved populations, and the relevance of the services and the data being collected and used to inform the project services. We propose a new factor focused on the outcomes of early childhood and families to align with Department programs that focus on these populations, because these populations are currently not included in this criterion.

In paragraph (e), Quality of project personnel, we propose revisions to parallel those under Quality of project services that would align the listed examples of groups that have experienced barriers between the two criteria. We also propose factors that align the qualifications of the personnel with similar projects, factors that focus project personnel on being representative of the target population for project services, and a factor to have personnel who are familiar with the needs of the implementation sites for the proposed project. The proposed revisions and new factors are intended to help ensure that personnel are positioned to meet the needs of the underserved populations to be served and more closely reflect those

populations, including a focus on the training and experiences of the personnel that align with the work to be carried out under the proposed project.

Regarding paragraph (f) Adequacy of resources, the proposed changes are intended to clarify the connection between the budget for the proposed project and how those costs are reasonable and significant, including a new factor that looks at the reasonableness of others being able to adopt and implement the project, because we are interested in the anticipated costs of broader implementation. We also propose revisions to the factor that requires applicants to address matching funds and partner commitments, which is significant given the number of program statutes that have matching requirements.

In paragraph (g), Quality of the management plan, we propose revisions to the existing factors to focus on the applicant's plan to meet goals and objectives, timelines, and budgets. Separately, we propose a revised factor to involve the use of community and partner input in the management plan, to inform continuous improvement efforts related to project implementation. Lastly, the proposed revisions to criterion (v) are meant to ensure meaningful engagement from the underserved populations to be served by the project to ensure the management plan reflects their needs.

In paragraph (h), Quality of the project evaluation, the proposed changes are intended to recognize that rigorous evaluation is not feasible for all projects; however, there are efforts relating to project goals, objectives, and performance measurement that can be used to improve the project, reach intended outcomes, and focus on evidence-building, which would be supported by the proposed definition in § 77.1(c). We also propose revising the current factor on ''promising evidence'' so that it refers to the types of studies instead, which we think provides greater clarity on what evaluation designs are necessary to meet the requirements of the factor.

In paragraph (i), Strategy to scale, the proposed changes focus on underserved populations. We propose two factors that would establish the level of the efforts to scale, having a separate factor for scaling to the regional level because not all projects can scale to the national level. A proposed new factor focuses scaling on new populations or settings, which is meant to get at the broader potential scaling of the proposed project. Multiple factors are meant to focus on how an applicant will address issues to scaling, including identifying and proposing strategies to address barriers to scaling, adaptions and replications to allow for scaling, and the addition of two new factors focused on the financial aspects of scaling, including efficiencies in scaling and revenue sources. All these revisions are meant to encourage applicants to more thoughtfully consider all of the aspects related to successful scaling of a project, to ensure ongoing support and growth for a project after Federal funding ends.

Section 75.216 Applications Not Evaluated for Funding

Current Regulation: Section 75.216 provides that the Secretary does not evaluate an application if: (a) The applicant is not eligible; (b) the applicant does not comply with all procedural rules that govern the submission of the application; (c) the application does not contain the information required under the program; or (d) the proposed project cannot be funded under the applicable statute and regulation or implementing regulations for the program.

Proposed Regulation: We propose to revise § 75.216 by removing paragraphs (a) and (d) and revising the section heading to read: Applications that the Secretary may choose not to evaluate for funding.

Reasons: We propose to revise this provision because the Department is bound by law to follow applicable statutes and regulations, and this change to § 75.216 would not change the rules that govern the eligible entities and types of projects that can be funded under a particular grant competition. To meet the deadlines for timely review of applications, the Department will often forward applications for evaluation to peer reviewers before making final determinations on compliance with all the requirements in § 75.216, which are often complex and time consuming. The proposed changes to § 75.216 align with current Department practice, allow the peer review process to proceed in a timely fashion, and allow final eligibility determinations to be made prior to an award being made to an applicant. For this reason, paragraphs (a) and (d) are unnecessary. In addition, the revisions to the title would clarify the Department's determinations not to evaluate an application for the reasons set forth in this regulation and codifies Department practice.

Section 75.217 How the Secretary Selects Applications for New Grants

Current Regulation: Paragraph (c) of § 75.217 provides that the Secretary prepares a rank order of the applications based solely on the evaluation of their quality according to the selection criteria.

Proposed Regulation: We propose to revise paragraph (c) of § 75.217 to clarify that we may prepare multiple rank orders where we have a menu of absolute priorities that applicants must meet, as well as clarify that the rank order will also reflect any competitive preference points.

Reasons: The proposed change would provide a full description of the information relied on by the Secretary in preparing a rank order of applications under § 75.217 and codifies our current practice in § 75.217.

Section 75.219 Exceptions to the Procedures Under § 75.217

Current Regulation: Section 75.219(b) excepts an application from the procedures described under § 75.217 if the application was rated highly enough to be funded but was not funded because it was mishandled.

Proposed Regulation: We propose to revise § 75.219(b)(2) and (3) to provide for situations in which an application was not selected for funding because the application was mishandled or improperly processed by the Department and an application has been rated highly enough to qualify for selection under § 75.217.

Reasons: We propose this change to improve the clarity of this provision. There have been instances in which the mishandling or improper processing of applications by the Department resulted in either an applicant not being rated or having its rating not properly recorded due to a clerical or other error. As a result, we propose changes to clarify that § 75.219(b) applies if, in the absence of the mishandling or improper processing, an application either had been rated highly enough to be funded or would have been rated highly enough to be funded had it been reviewed. When the Department discovers an application that was not reviewed due to mishandling or improper processing, it has the application reviewed and, if the score is high enough, makes an award using funds that are available when the review is conducted. This proposed change clarifies the scope of this provision and the procedures the Department follows in practice.

Section 75.220 Procedures the Department Uses Under § 75.219(a)

Current Regulation: Section 75.220(b)(2) references an employee of the Office of the Chief Financial Officer (OCFO) with responsibility for grants policy to serve on a board to review an application under the special

circumstances of § 75.219(a) (The objectives of the project cannot be achieved unless the Secretary makes the grant before the date grants can be made under the procedures in § 75.217.)

Proposed Regulation: We propose revising paragraph (b)(2) to refer instead to the Office of Finance and Operations (OFO).

Reasons: In the reorganization at the Department that went into effect in January 2019, the OCFO functions were incorporated into the new OFO, and this section would be updated to reference the correct office.

Section 75.221 Procedures the Department Uses Under § 75.219(b)

Current Regulation: Section 75.221 provides that, if the special circumstances of § 75.219(b) appear to exist for an application, the Secretary may select the application for funding if: the Secretary has documentary evidence that the special circumstances of § 75.219(b) exist; and (b) the Secretary has a statement that explains the circumstances of the mishandling.

Proposed Regulation: We propose to revise § 75.221 to improve its clarity and eliminate the requirement that the Secretary have a statement that explains the circumstances.

Reasons: We propose to revise the provision to improve its clarity and eliminate unnecessary language. The proposed changes would remove the requirement for an explanation of the mishandling separate from documentation of the circumstances of the mishandling. The Department does not believe that further explanation of the reasons the application was mishandled is necessary if the Secretary has documentation of the circumstances, already required under § 75.219(b).

Section 75.522 Procedures the Department Uses Under § 75.219(c)

Current Regulation: Section 75.222 describes the procedures for considering an unsolicited application, including the note accompanying § 75.222 references the Application Control Center, which no longer exists.

Proposed Regulation: Proposed § 75.222 would update the mailing procedures for unsolicited applications to align with the mailing procedures discussed in the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045).

Section 75.225 What procedures does the secretary use if the secretary decides to give special consideration to novice applications?

Current Regulation: Section 75.225 describes the circumstances in which the Secretary may give an absolute or competitive preference to an applicant that meets the definition of ''novice applicant.'' To be a ''novice applicant'' under current § 75.225, an applicant must have, in part: (1) never received a grant or subgrant under the program from which it seeks funds; (2) never been a member of a group application; and (3) not had an active discretionary grant from the Federal government in the last five years.

Proposed Regulation: Proposed § 75.225 would replace the term ''novice applicant'' with the term ''new potential grantee'' and provide a definition of that new term. The proposed definition includes five options from which the Department could choose to apply one or more of the conditions to a specific competition. The options of conditions for defining a new potential grantee would include: (1) an applicant that has never received a grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127–75.129 that received a grant, under the program from which it seeks funds; (2) an applicant that does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127–75.129 that received a grant, under the program from which it seeks funds; (3) an applicant that has not had an active discretionary grant or cooperative agreement, including membership in a group application submitted in accordance with §§ 75.127–75.129 that received a grant, under the program from which it seeks funds in a specified number of years before the deadline date for submission of applications under the program; (4) an applicant that has not had an active discretionary grant or cooperative agreement from the Department, including membership in a group application submitted in accordance with §§ 75.127–75.129 that received a grant, in a specified number of years before the deadline date for submission of applications under the program; or (5) an applicant that has not had an active contract from the Department in a specified number of years before the deadline date for submission of applications under the program from which it seeks funds. Based on program needs, a discretionary grant program could choose to define ''new potential grantee'' using one or any combination of the five options described in proposed § 75.225(a). If used, the Secretary would specify the number of years for definitions (3), (4), and (5) in the NIA by selecting from among the identified options, as described in proposed § 75.225(b). In addition, the proposed regulations would create a corresponding inverse priority for applicants that are not ''new potential grantees'' to be used when the Secretary creates an absolute priority for ''new potential grantees'' and plans to create multiple funding slates for applicants that are ''new potential grantees'' and those that are not. The intent is for this inverse option to be used when the ''new potential grantee'' priority is used as an absolute priority, and there is a need to be able to create another funding slate for those applicants that do not meet the ''new potential grantee'' priority.

Reasons: Since the enactment of this regulation in 2002, we have discovered that the definition of ''novice applicant'' is often complex and overly restrictive in practice. For instance, many of the Department's grant programs have very few, if any, eligible entities (such as institutions of higher education) that have not had other discretionary grants from the Federal government in the last five years. Despite § 75.225 being applicable to all the Department's discretionary grant programs, many programs have needed to create program-specific definitions of ''novice applicant'' that are tailored to their individual contexts because the vast majority of prospective applicants for our programs would not meet the current definition of ''novice applicant'' in § 75.225. These proposed revisions would provide the Department's programs with increased options to define ''new potential grantee.'' We think that these proposed revisions would allow this priority to be usable in more discretionary grant programs and more effectively promote the Department's interest in awarding grants to a more diverse and inclusive variety of applicants. Furthermore, these revisions align with the successful implementation of the ''Applications from New Potential Grantees'' and ''Applications from Grantees that are Not New Potential Grantees'' priorities from the Administrative Priorities for Discretionary Grant Programs published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities), which have worked well in allowing the Department to prioritize

new potential grantees. We propose to add those priorities to the regulations for clarity and consistency.

In the Administrative Priorities and proposed here, option (1) would apply in programs where the Department would intend to focus on applicants that have never received a grant under the program; option (2) would apply in grant competitions for which the Department would intend to prioritize ''new potential grantees'' without an active grant under the program; option (3) would apply in the event that a program may have multiple cohorts of grantees, and the Department would intend to define ''new potential grantees'' as those that have not had a grant under the program for the specified number of years; option (4) would apply when the Department would intend to be inclusive of other Department grant programs when determining ''new potential grantees;'' and option (5) would apply in cases when there are grant programs where an applicant may not have a Department grant but may have Department contracts and is familiar with the work of the Department already. The intent of these options is to take into consideration program specific contexts, such as the different characteristics of programs, including different types of applicants and different frequencies in which grant competitions are run.

Section 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to applications supported by strong, moderate, or promising evidence?

Current Regulation: Section 75.226 describes the Secretary's authority to give special consideration to applications supported by strong, moderate, or promising evidence.

Proposed Regulation: The proposed revision would also permit the Secretary to give special consideration to an application that ''demonstrates a rationale'' as defined in § 77.1(c) without disallowing evidence that may meet more than one of the four levels described in that section. We also propose removing cross-references to the definitions of ''strong evidence,'' ''moderate evidence,'' and ''promising evidence'' in § 77.1(c), because we do not include such cross-references elsewhere in part 75, and they are not necessary.

Reasons: While we continue to be very interested in grant projects that are supported by rigorous evidence, we recognize that the research base supporting many of our discretionary grant programs is still emerging. In addition, we think it is important to provide incentives for innovative approaches to systemic problems in education wherever possible. Adding the ''demonstrates a rationale'' level of evidence to § 75.226 would allow the Department to give priority to applications that meet this standard, thereby requiring or encouraging applicants to incorporate research into their project planning, where possible, while still supporting the identification of innovative solutions. This addition is also consistent with the ''Applications that Demonstrate a Rationale'' priority in the Administrative Priorities, which has been beneficial to achieving these objectives in discretionary grant competitions.

Section 75.227 [Reserved]

Current Regulation: Section 75.227 is currently reserved.

Proposed Regulation: We propose to add a new § 75.227 that would allow the Secretary to establish a separate competition for, or provide competitive preference to, applicants that propose to serve rural locations. Specifically, the Secretary could decide to give such special consideration to applicants that can demonstrate one or more of the following: (1) the area the applicant proposes to serve is a rural LEA, (2) the area the applicant proposes to serve is a rural community, (3) the area the applicant proposes to serve is a rural school, or (4) the applicant is a rural institution of higher education. We propose to utilize rural programs authorized under ESEA as well as the locale codes from the National Center for Education Statistics School District search tool, given that there are different Federal definitions for ''rural.'' The proposed regulation also specifies that, if using an absolute priority related to rural applicants, the Secretary may also include an absolute priority for applicants that do not meet that priority in order to offer separate competitions, resulting in separate rank orders, for each competition.

Reasons: Rural communities face unique challenges due to their being remote, and they also have unique opportunities. These factors are reflected in many program statutes' priorities accorded to applicants that serve rural communities in many Department programs, but we believe that it is necessary that every discretionary grant program have the option to give priority to applicants that will serve rural communities. This section would enable the Department to specifically encourage applications that will provide services in rural communities. This addition would also be consistent with ''Rural Applicants'' and ''Non-Rural Applicants'' priorities in the Administrative Priorities, which have worked well to achieve these goals in discretionary grant competitions.

Section 75.234 The Conditions of the Grant

Current Regulation: Section 75.234 refers to ''special conditions'' that the Secretary determines prior to making a grant.

Proposed Regulation: Proposed § 75.234 replaces the term ''special'' with the term ''specific.''

Reasons: ''Specific'' is the term the Department now uses, consistent with 2 CFR 200.208 to refer to conditions imposed on a grant award. The change is not substantive.

Section 75.250 Maximum Funding Period

Current Regulation: Section 75.250(a) provides that the Secretary may approve a project period of up to 60 months to perform the substantive work of the grant.

Proposed Regulation: We propose to revise the heading for § 75.250 to change ''funding'' to ''project'' and propose to revise § 75.250(a) to clarify that the Secretary may approve project periods of up to 60 months unless statutory authority provides otherwise. We also propose removing § 75.250(b) because we propose a new § 75.254 to separately address data collection periods.

Reasons: We propose the change to the heading to align with the use of the term ''project period'' in § 75.250(a). We propose the change to § 75.250(a) to clarify that EDGAR does not supersede the applicable statutes and regulations that apply to a given program. We also propose to delete § 75.250(b) as we propose a new § 75.254 to allow for data collection periods separate from the extension of a project period.

Section 75.253 Continuation of a Multiyear Project After the First Budget Period

Current Regulation: Section 75.253 describes the process and requirements for making continuation awards.

Proposed Regulation: The proposed revisions would clarify those procedures and requirements, including addition of verification of the quality data submitted, and explain that, if the Department decides not to make a continuation award, a grantee will be given an opportunity to object under 2 CFR 200.341 through a request for reconsideration. They also would explain existing Department practices that a determination by the Secretary to not make a continuation award, or to reduce the amount of a continuation

award, to a grantee does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

Reasons: These proposed changes would reflect existing Department practices and provide a clearer description of the relevant requirements and procedural rights of grantees in the continuation awards process. In addition, these revisions would explain that a determination by the Department not to make a continuation award, or to reduce the amount of a continuation award, to a grantee does not constitute a withholding under section 455 of GEPA. That provision of GEPA deals with circumstances in which funds have already been obligated, such as a discretionary grantee that has already received a continuation award or, as is the case with a formula grant program, a grantee that is entitled to receive funds or has already received funds if it meets certain eligibility requirements. Neither of these conditions is present if the Secretary decides to not make, or to reduce, a continuation award.

Section 75.254 [Reserved]

Current Regulation: Section 75.254 is currently reserved.

Proposed Regulation: We propose to add a new § 75.254 that would allow the Secretary to award a data collection period of up to 72 months after the end of the project period and provide funds for the data collection period. The proposed regulation would also set forth how the Secretary would inform applicants of this data collection period. It would further state that the Secretary may require applicants to include a budget and description for the data collection period in their applications if the data collection period is announced through the NIA.

Reasons: Currently, § 75.250 allows for a data collection period for a grant for a period of up to 72 months after the end of the project period. However, § 75.250 is not an option for those Department programs for which there is a maximum statutory performance period. Flexibility in how and for which programs the Department can allow data collection awards would give us opportunities to learn more about the impacts of our grants. Statutory limitations on project periods inhibit this longer-term data collection that could inform impacts beyond grant project periods. Furthermore, the Department operationalizes the data collection period under § 75.250 as a separate grant award and establishing a separate section in EDGAR gives the Department greater flexibility in how to use data collection awards. This section would also align with a similar priority from the Administrative Priorities, building on lessons learned from that priority, including notifying applicants in the NIA to propose a timeline that includes a data collection period.

Section 75.261 Extension of a Project Period

Current Regulation: Section 75.261 describes when grant project periods may be extended and under what conditions a grantee may receive a project period extension.

Proposed Regulation: Proposed § 75.261 would clarify that there are two types of project period extensions: (1) a one-time extension of up to 12 months without prior approval if the requirements in 2 CFR 200.308(e)(2) are met and there are no applicable statutes, regulations, or grant conditions prohibiting such an extension; and (2) an additional extension beyond the 12 months with prior approval of the Secretary, if certain other conditions are met. The proposed revision also would remove references to specific technical assistance centers in current paragraph (b) that no longer exist, correct citations, and align language to be consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (the Uniform Guidance) for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Reasons: The regulation, as currently written, includes numerous revisions made over the years and is now in need of streamlining, and contains outdated references and citation errors. These proposed changes would promote greater clarity and accessibility for the public regarding project period extensions. The proposed changes are not substantive.

Section 75.263 Pre-Award Costs; Waiver of Approval

Current Regulation: Section 75.263 describes when pre-award costs may be incurred.

Proposed Regulation: Proposed § 75.263 would remove the clause ''notwithstanding any requirement in 2 CFR part 200.''

Reasons: The language we propose to remove is not necessary to establish that the requirements of 2 CFR part 200 apply; removing it would add clarity to the regulation. The proposed change is not substantive.

Section 75.519 Dual Compensation of Staff

Current Regulation: Section 75.519 prohibits paying for project staff who are compensated from another source of funds.

Proposed Regulation: Proposed § 75.519 would add a reference to the cost principles described in 2 CFR part 200, subpart E—Cost Principles.

Reasons: The reference we propose to add provides the source for the prohibition discussed in § 75.519. The change is not substantive.

Sections 75.560–75.564 Indirect Cost Rates

Current Regulations: Sections 75.560–75.564 describe the application of indirect costs under discretionary grant programs, including who approves indirect costs rates and how they are applied.

Proposed Regulations: The proposed revisions would align these sections of EDGAR with the Uniform Guidance in 2 CFR part 200, include cost allocation plans along with indirect costs rates, and provide clarity on the application of indirect cost rates.

Reasons: The Uniform Guidance sets out requirements that apply to Federal grants and was adopted by the Department in 2 CFR part 3474. The Uniform Guidance, in conjunction with EDGAR, governs Department grants and therefore these provisions should be closely aligned with one another. These sections of EDGAR do not reflect recent updates to the Uniform Guidance, including the addition of the de minimis rate, referencing cost allocation plans as performing a role equivalent to indirect costs rate, and clarifications on restricted rates, and this alignment is necessary to ensure that there is no confusion. Moreover, the proposed changes are intended to add clarity regarding how indirect cost rates are applied, as well as the indirect cost rate options an entity has.

Section 75.590 Evaluation by the Grantee

Current Regulation: Section 75.590 describes what grantees must demonstrate or provide to the Department regarding performance reporting and the evaluation of their projects.

Proposed Regulation: The proposed revision would add a new paragraph (c) that would permit the Department to include a requirement for an independent evaluation in any grant competition, for the results of that evaluation to be made public, including the option to make the data available to third-party researchers, and for the results of that evaluation or a grantee final report to be submitted to ERIC, which is administered by IES.

Reasons: We want to have more tools available to build, use, and disseminate rigorous evidence more effectively. Requiring grantees to conduct independent evaluations, where appropriate, would help increase the credibility of their project evaluations because the entity conducting the evaluation would have no vested interest in the outcome of the evaluation. An independent evaluation to assess the implementation or impact of a project or project component has the potential to build the evidence base through the work of competitive program grantees, and the sharing of data with third-party researchers allows for additional data analysis. Submitting evaluations and the final performance reports under grants to ERIC can help identify emerging evidence and promote further research.

Section 75.591 Federal Evaluation—Cooperation by a Grantee

Current Regulation: Section 75.591 requires grantees to cooperate in the Department's efforts to evaluate the program supporting their project.

Proposed Regulation: We propose to clarify the types of activities that grantees could be expected to undertake as part of their participation in a Federal program evaluation.

Reasons: Although the current regulation makes it clear that grantees must cooperate with the Secretary's evaluation of the program, it does not provide potential applicants information about what that cooperation might entail. The proposed regulation would provide increased transparency about the types of activities in which a grantee may be required to participate. For example, a grantee may be required to participate in a randomized controlled trial conducted by the Department, and we think that it is important to provide clarity, where possible, on grantee expectations under the regulation.

Section 75.600–75.617 Construction

Current Regulations: Sections 75.600–75.617 cover various regulations related to construction projects and the acquisition of real property.

Propose Regulation: We propose to amend certain regulations related to construction projects and real property acquisition in parts 75, 76, and 77. The proposed changes to parts 76 and 77 are addressed in more detail in the applicable sections of this preamble.

Specifically, the proposed changes include the following:

- A reorganization of §§ 75.600–75.614 for a more logical progression of the statutory and regulatory requirements at each stage of the construction project. The proposed regulations are organized to progress through all the stages of a construction project, through Department approval (§ 75.601), planning the project (§ 75.602), beginning the project (§ 75.603), during the project (§ 75.604), and after the project (§ 75.605).
- Clarifying that the Secretary considers a grantee's compliance with specific statutes and regulations related to construction prior to approval of the construction project (proposed § 75.602(c)).
- Adding specific provisions regarding real property acquisition that, in part, incorporate requirements from existing governmentwide assurances, including nondiscrimination assurances (proposed § 75.606). These provisions mirror the construction provisions in proposed § 75.601 to clarify that real property projects must also receive Department approval.
- Incorporating, and updating, as appropriate, applicable cross references to the Uniform Guidance and other applicable law in the various stages of the construction project in various sections of the regulations.
- Moving and consolidating the requirements currently in §§ 75.607–75.608 into proposed § 75.602. We do not propose any substantive changes to the current requirements in § 75.607 or § 75.608.
- Decreasing the period for which the grantee must retain title to the site from 50 years to 25 years in proposed § 75.610.
- Clarifying the requirements of the National Environmental Policy Act of 1969 (NEPA) (proposed § 75.611). This section would not create a requirement, but rather provide additional guidance that the NEPA requirements apply to ''major Federal projects'' as defined by NEPA.
- Moving the requirements of § 75.611 (Avoidance of flood hazards) and § 75.617 (Compliance with the Coastal Barrier Resources Act) to proposed § 75.612 and § 75.613, respectively. We do not propose any substantive changes to the current requirements in § 75.611 or § 75.617.
- Clarifying the process and roles of the Secretary and State reviewing a construction project involving historic preservation (proposed §§ 75.614 and 76.600). We do not propose any substantive changes to the current requirements in § 75.602.
- Adding the applicability of the new Build America, Buy America Act to construction projects (proposed § 75.615). This section explains that a grantee must comply with the requirements of the Build America, Buy America Act, Public Law 117–58, § 70901–70927 and implementing regulations in 2 CFR part 184.
- Updating the requirements of § 75.616 (Energy conservation) to require compliance with the most current ASHRAE standards. The current regulation requires compliance with standards from 1975, 1977, and 1980, respectively.
- Moving the requirements of § 75.610 (Access by the handicapped) to proposed § 75.617 and updating the title to ''Access for individuals with disabilities.'' We do not propose any substantive changes to the current requirements in § 75.610.
- Moving and consolidating the requirements currently in § 75.609 (Comply with safety and health standards) into proposed § 75.618. We do not propose any substantive changes to the current requirements in § 75.609.

Reasons: The purpose of these proposed changes is to update the current construction regulations in response to statutory changes and related issues that have arisen over the last thirty years, as many of the regulations for this section have not been updated since 1992; to better align the regulations to the Uniform Guidance that was first promulgated in 2014 and updated in 2020; and to improve clarity and transparency regarding Federal program operations. The Department proposes to decrease the period in proposed § 75.610 because we found that grantees with site leases had difficulty establishing that they had an option to extend their lease for 50 years. Rather, we propose to reduce to 25 years or the useful life of the construction, which we think more closely aligns with the Federal investment. We also propose to update these regulations to include the requirements grantees must follow during construction projects under the Build America, Buy America Act, Pub. L. 117–58, § 70901–70927. The Build America, Buy America Act was enacted as part of the overall Infrastructure Investment and Jobs Act in November 2021. The purpose of the Build America, Buy America Act is to create demand for domestically produced goods, helping to sustain and grow domestic manufacturing.

Section 75.618 Charges for Use of Equipment or Supplies

Current Regulation: Section 75.618 states that a grantee may not charge for ordinary use of equipment or supplies.

Proposed Regulation: We propose to repurpose § 75.618 for use under the Construction subheading and move the current § 75.618 to currently unused

§ 75.619. We do not propose any changes to the text of this section.

Reasons: To create space for an additional section under the Construction heading regarding safety and health standards, we propose to move current § 75.618 to § 75.619.

Section 75.620 General Conditions on Publication

Current Regulation: Section 75.620(b) includes the text of a statement that grantees must include in any publication that contains project materials.

Proposed Regulation: The proposed revision would update the required statement with current and more comprehensive language, including current forms of publication, such as on a website or a web page.

Reasons: The statement was last updated in 1980. Since then, Federal Government endorsement disclaimers, including the one in § 75.620(b), have evolved to be more comprehensive. We propose updating the statement to mirror the standard disclaimer used by the Department in other contexts, such as what the Department may require on work products developed by Department contractors. In addition, methods of publication have changed since 1980, to include websites and web pages.

Section 75.623 Public Availability of Grant-Supported Research Articles

Current Regulation: None.

Proposed Regulation: We propose to add a new § 75.623 to require each grantee that prepares a peer-reviewed scholarly publication as part of its grant award or based on grant-funded research to make the publication available to the public by submitting the final peer-reviewed scholarly publication to ERIC. To support § 75.620, we also propose to add a definition of ''peer-reviewed scholarly publication'' under § 77.1(c).

Reasons: This section would align the practice of the entire Department with the current practice of IES, which requires all its grantees to make their peer-reviewed publications available to the public in this manner. Currently, these materials are exempt from the open licensing requirements in 2 CFR 3474.20. Applying the requirement in this section to peer-reviewed publications produced under grants made by other offices in the Department is in line with the Department's Plan and Policy Development Guidance for Public Access,[1] with the Office of Science and Technology Policy's memorandum, Increasing Access to the Results of Federally Funded Research,[2] and would ensure that the results of grant-funded research are available to a wider array of Department partners and other interested parties than is currently the case.

Section 75.700 Compliance With the U.S. Constitution, Statutes, Regulations, Stated Institutional Policies, and Applications

Current Regulation: Section 75.700 states that grantees shall comply with and uses Federal funds in accordance with applicable statutes, regulations, and approved applications.

Proposed Regulation: We propose to revise § 75.700 to include Executive orders in addition to statutes, regulations, and approved applications.

Reasons: We propose this revision to align § 75.700 to § 75.708, which includes the requirement for subgrantees to comply with Executive orders.

Section 75.708 Subgrants

Current Regulation: Section 75.708(b) states that the Secretary may, through an announcement in the **Federal Register**, authorize subgrants when necessary to meet the purposes of a program, and paragraph (e) states that grantees may contract for supplies, equipment, construction, and other services.

Proposed Regulation: We propose to revise paragraph (b) to state that this authorization may take place ''through an announcement in the **Federal Register** or other reasonable means of notice.'' We propose to revise paragraph (e) to clarify that, when subgrants are not allowed, grantees are still authorized to contract, as needed, for supplies, equipment, and other services.

Reasons: There may be circumstances in which **Federal Register** notification is not the most efficient or effective way for the Secretary to authorize subgrants. To account for these situations, we propose adding more flexibility to the current regulation. We also propose to clarify when and how contracts for supplies, equipment, and other services can be used when subgrants are not allowed.

Section 75.720 Financial and Performance Reports

Current Regulation: Section 75.720 sets out the financial and performance reporting requirements that grantees must meet.

Proposed Regulation: We propose to add a new paragraph (d) that would require grantees to publish, on a public-facing website, the reports they submit to the Secretary under § 75.720 upon request of the Secretary. Under this new paragraph, the Secretary could choose which grant competitions would be subject to this requirement. The Department expects that any such publication on a public-facing website would be consistent with applicable accessibility requirements and in accordance with privacy laws.

Reasons: This requirement would increase transparency with respect to grantee performance and provide useful information on the effectiveness of projects supported by Department grant funds to grantee participants and beneficiaries as well as the general public.

Section 75.901 Suspension and Termination

Current Regulation: Section 75.901 indicates that the Secretary may use the Office of Administrative Law Judges (OALJ) to resolve disputes concerning a variety of matters that are not subject to other proceedings.

Proposed Regulation: We propose to revise the introductory language to this regulation by removing the following words: ''that are not subject to other procedures.''

Reasons: This proposed change would clarify the authority of the Secretary to use the OALJ to resolve disputes on the matters identified in § 75.901(a)–(f).

Part 76 State-Administered Programs

Section 76.1 Programs to Which Part 76 Applies

Current Regulation: Section 76.1 describes the programs to which part 76 applies. Paragraph (a) of § 76.1 references ''each State-administered program'' while paragraph (b) references ''a State formula grant program.''

Proposed Regulation: We propose to revise the language in both paragraphs to clarify that part 76 applies to ''State-administered formula grant programs.'' We also propose to make conforming changes, as necessary, throughout this part, including the title for this part.

Reasons: Inconsistent use of terms within part 76 could create confusion about its applicability. These updates would clarify that all provisions of part

[1] The Department's Plan and Policy Development Guidance for Public Access is available at *https://ies.ed.gov/funding/pdf/EDPlanPolicyDevelopmentGuidanceforPublicAccess.pdf.*

[2] The Office of Science and Technology Policy's memorandum is available at *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.*

76 apply only to ''State-administered formula grant programs.''

Section 76.50 Statutes Determine Eligibility and Whether Subgrants Are Made

Current Regulation: Section 76.50 describes the circumstances in which the Secretary makes a grant to a State agency, either as directed by the applicable statute and regulation or as designated by the State consistent with the applicable statute and regulation. The regulation states explicitly that the applicable statute determines the extent to which a State may use grant funds itself or make subgrants. Regarding subgrants, § 76.50(c) states that the regulations in part 76 on subgrants apply to a program only if subgrants are authorized under that program, and paragraph (d) states that the applicable statute determines an applicant's eligibility for a subgrant.

Proposed Regulation: We propose to modify § 76.50 in six general ways. First, we propose to change the heading to read ''Basic Requirements for Subgrants.'' Second, we propose to add references to a State-administered formula grant program's regulations throughout. Third, we propose to make clear in new paragraph (b) that States may make subgrants using funds from State-administered formula grant programs unless prohibited by their authorizing statutes, implementing regulations, or the terms and conditions of their awards. Fourth, we propose to delete paragraphs (c) on how other requirements in part 76 apply to subgrants and (d), which was a previous statement about entities eligible for subgrants, and to incorporate essential requirements into new paragraph (b). Fifth, we propose to add a new paragraph (c) to explicitly identify grantee responsibility for subgrantee monitoring consistent with 2 CFR 200.332. Finally, we propose to add a new paragraph (d) to clarify that subgranting prohibitions under which Department programs operate should not be construed as prohibiting grantees from entering into contracts for goods or services in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements (2 CFR 200.317–200.326).

Reasons: We propose to modify this section to ensure that State-administered formula grant programs have maximum flexibility to make subgrants. To that end, we propose to revise the heading to signal to States that subgrants are allowed, unless specifically prohibited by statute, regulation, or the terms and conditions of a grant award. Under the current regulations, some State-administered formula grant programs have interpreted statutory silence as meaning that subgranting is not permissible. We believe that the proposed regulations would address this unintended consequence through the changes proposed to the heading and to new paragraph (b). However, we may prohibit subgranting under the terms and conditions of a grant award, as appropriate, such as when subgranting would be counter to fundamental statutory or regulatory requirements for a program. We also propose to refer to both applicable statutes and regulations throughout the provision, rather than just statutes, in case the applicable regulations provide necessary clarification. We propose to remove current paragraph (b) because it does not provide any guidance that is not already provided in a program's authorizing statute. We propose to incorporate essential requirements from paragraphs (c) and (d) into new paragraph (b). As a result, we propose to delete current paragraphs (c) and (d) as no longer necessary. We propose to add new paragraph (c) to highlight grantee responsibilities for monitoring subgrantees to encourage fiscal responsibility, transparency, and appropriate control of taxpayer funds. We propose to add a new paragraph (d) to clarify that, regardless of the authority to subgrant, a grantee is authorized to contract for supplies, equipment, and other services in accordance with 2 CFR part 200, subpart D—Post Federal Award Requirements (2 CFR 200.317–200.326.

Section 76.101 The General State Application

Current Regulation: Section 76.101 requires a State that makes subgrants to LEAs under a program subject to this part to have on file with the Secretary a State plan that meets the requirements of section 441 of GEPA (20 U.S.C. 1232d).

Proposed Regulation: We propose to revise § 76.101 to make clear that the requirements of section 441 of GEPA do not apply to a State plan submitted for a program under the ESEA.

Reasons: Section 8304(b) of the ESEA (20 U.S.C. 7844(b)) states that the requirements of section 441 of GEPA do not apply to State plans under the ESEA. The purpose of this change is to align the regulations with that statutory provision.

Section 76.102 Definition of State Plan for Part 76

Current Regulation: Section 76.102 includes a table specifying applications or other documents required under various State-administered formula grant programs that, for the purpose of part 76, are considered ''State plans.''

Proposed Regulation: We propose to remove the table from § 76.102 and to describe a State plan, as that term is used in part 76, as ''any document that the applicable statutes and regulations for a State-administered formula grant program require a State to submit in order to receive funds for the program.'' To the extent that any provision of part 76 conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

Reasons: Current § 76.102 includes a table intended to list all programs that are covered by the State plan regulations in part 76. However, some of the listed programs no longer exist. Other programs have been renamed under a reauthorized statute. Rather than update the table of programs, given that programs may become outdated in the future, we believe that a definition aligned with governing statutes and regulations would be the best way to convey the intended scope of the provision. In addition, the proposed regulations would make clear that, if any provision of part 76 conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

Section 76.103 Multi-Year State Plans

Current Regulation: Section 76.103 makes clear that a State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations. It authorizes the Secretary to stagger submission of State plans and identifies numerous programs to which the section does not apply.

Proposed Regulation: We propose to simplify § 76.103 by deleting the list of programs to which the provision does not apply. Instead, we would make clear that a State plan may be effective for more than one year unless otherwise specified by statute, regulation, or the Secretary. In addition, we remove the note at the end of this section.

Reasons: All the programs listed in § 76.103(c) have been reauthorized or repealed since the provision was promulgated in 1980. Rather than listing other programs that could become outdated, we would add language that affords flexibility for a multiyear State plan unless a statute, regulation, or the Secretary specifies otherwise. We also propose to remove the note at the end of this section because it is outdated and no longer needed.

Sections 76.125–76.137 Consolidated Grant Applications for Insular Areas

Current Regulation: The Department's consolidated grant authority regulations in part 76, as well as in the definitions of ''State'' in §§ 77.1(c) and 79.2, refer to the Trust Territory of the Pacific Islands. In addition, § 76.125(c) states that the Secretary may make annual consolidated grants to assist an Insular Area in carrying out a Department State-administered formula grant program. The following sections then refer to programs listed in § 76.125 as being eligible for consolidation.

Proposed Regulations: We propose to update the regulations to remove all references to the Trust Territory of the Pacific Islands. In addition, the proposed regulations would revise § 76.125(c) to clarify that grantees may consolidate grants only if not otherwise prohibited from doing so by applicable law. Also, we propose to change all references in the following sections from ''programs listed in § 76.125(c)'' to ''State-administered formula grant programs.'' We also propose to revise the examples in §§ 76.128 and 76.129 to update the statutory references, and to make conforming changes to remove the term ''Trust Territory of the Pacific Islands,'' from the definitions of ''State'' in §§ 77.1(c) and 79.2.

Reasons: The Trust Territory of the Pacific Islands was a United Nations trust territory administered by the United States from 1947 to 1986. During the latter part of that time, it was eligible for Department program funding and services much like the Outlying Areas of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. For that reason, it was included, in EDGAR, in the Department's consolidated grant authority regulations as well as in the EDGAR definitions of ''State'' in §§ 77.1(c) and 79.2.

The trusteeship ended in 1986 and from it emerged the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (collectively, the Freely Associated States). While the Freely Associated States still have a special relationship with the United States and each of them receives certain funds through the Department, as provided in their Compacts of Free Association with the United States, they do not receive funds as part of the Trust Territory of the Pacific Islands, which no longer exists. On this point, as a purely technical matter, we propose to delete the outdated reference to the Trust Territory of the Pacific Islands.

The change to § 76.125(c) would clarify that consolidation may take place only in a manner that is consistent with applicable law. For clarity, we propose to update references elsewhere to § 76.125(c) to refer directly to ''State-administered formula grant programs.''

Sections 76.140–76.142 State Plan Amendments

Current Regulation: Section 76.140 requires a State to amend its State plan if the Secretary determines that an amendment is essential or if there is a significant and relevant change regarding the plan. Section 76.141 requires a State to use the same procedures when amending its State plan as it did when submitting the plan to the Secretary. Section 76.142 requires the Secretary to use the same procedures to approve an amendment as the Secretary used when reviewing and approving the initial State plan.

Proposed Regulation: We propose to remove duplicate language in § 76.140(b) regarding when an amendment is needed. New proposed paragraph (c) would incorporate current § 76.141 with revisions that would allow the Secretary to prescribe different procedures for a State to amend its State plan based on the characteristics of a particular State-administered formula grant program. We propose to remove §§ 76.141–76.142.

Reasons: The current regulations, in § 76.140(b), go into greater detail than necessary about the kinds of changes that result in an amendment; the proposed regulations would simplify and clarify the regulations by stating that a State must submit an amendment whenever there is a significant and relevant change in information or assurances in the State plan. The language in current § 76.140(b)(2) and (b)(3) could be included in the general ''information'' in the State plan and thus we propose combining the provisions in proposed § 76.140(b)(1). Current §§ 76.141–76.142 are overly prescriptive in requiring States and the Secretary to use the same process for submitting and approving amendments as they used when submitting and approving an initial State plan. Those processes may be burdensome and may not always be appropriate for an amendment to a State plan. We propose to remove current § 76.141 and add a new paragraph (c) to § 76.140, which seeks to provide flexibility so that the Secretary may prescribe different procedures for States to use based on the specific State-administered formula grant program. The proposed regulations would also remove the requirement in current § 76.142 that the Secretary follow the same procedures when approving an amendment as the Secretary used to approve the initial State plan in order to allow the Secretary discretion to streamline the approval of amendments.

Section 76.301 Local Educational Agency Application in General

Current Regulation: Section 76.301 requires an LEA that applies for a subgrant under a program subject to part 76 to have on file with the State an application that meets the requirements of section 442 of GEPA (20 U.S.C. 1232e).

Proposed Regulation: We propose to make clear that the requirements of section 442 of GEPA do not apply to an LEA application for a program under the ESEA.

Reasons: Section 8306(b) of the ESEA (20 U.S.C. 7846(b)) states that the requirements of section 442 of GEPA do not apply to LEA plans under the ESEA. We propose this change to align the regulation with the statute.

Section 76.401 Disapproval of an Application—Opportunity for a Hearing

Current Regulation: Section 76.401 sets forth the requirements that a state educational agency (SEA) must meet when disapproving an application for a subgrant in one of the Department's covered State-administered formula grant programs, which are identified in a table in the regulations. The regulation restates the requirements in section 432 of GEPA (20 U.S.C. 1231b–2), including the due process an SEA must provide to an applicant for a subgrant before (or after, in some cases) the SEA either: (1) disapproves or fails to approve a subgrant application in whole or in part; or (2) fails to provide funds in amounts in accordance with the requirements of laws and regulations. Section 76.401 also reiterates the statutory requirements for the relevant timelines, the right of an applicant to appeal an SEA's final decision disapproving an application or failing to provide funds in the required amount to the Secretary, and the standard of review that the Secretary must apply in considering such an appeal. Section 76.401 is silent regarding the information that must be included in a notice of appeal submitted to the Secretary. Under § 76.401(b), the requirements for providing an opportunity for a hearing before disapproving a subgrant application do not apply to a State agency other than an SEA.

Proposed Regulation: We propose to revise the regulation in current § 76.401 in several respects by:

(1) Removing the table of programs and clarifying that the requirements apply to State-administered formula grant programs administered by an SEA in which the SEA makes subgrants.

(2) Clarifying that an applicant must include a citation to the alleged violation of a Federal or State statute, rule, regulation, or guideline governing the applicable program and a brief description of the alleged violation when it requests that the SEA hold a hearing on the application disapproval.

(3) Requiring a notice of appeal to the Secretary submitted pursuant to section 432(b) of GEPA to include, at a minimum, a citation to the specific Federal statute, rule, regulation, or guideline that an SEA allegedly violated and a brief description of the alleged violation.

(4) Deleting an opportunity for a hearing if an SEA fails to provide funds in amounts required by statutes and regulations because § 76.401 applies only to disapproval of an application for a subgrant. Rather, the requirement that an SEA hold a hearing, upon request of a subgrantee, when the SEA fails to provide funds in accordance with applicable statutes and regulations would be added to § 76.783(a)(3), which describes other circumstances in which a subgrantee may request that an SEA hold a hearing that meets the procedural requirements in § 76.401.

(5) Making numerous other changes to eliminate duplicate provisions.

Reasons: For several reasons, described below, we propose to clarify that a notice of appeal to the Secretary must cite the specific Federal statute, rule, regulation, or guideline the appellant believes the SEA's final decision violates and provide a brief description of the alleged violation. For the same reasons, we are also proposing to clarify that an applicant's request to an SEA for a hearing must provide a brief description of the alleged violation of Federal or State statute, rule, regulation, or guideline governing the applicable program.

Section 432 of GEPA affords a subgrantee that is aggrieved by the final action of an SEA in disapproving or failing to approve its application for funds the right to request that the SEA conduct a hearing and, upon receiving an adverse final decision, to appeal the SEA's decision to the Secretary. This section applies only to SEAs. In some programs, the authorizing statute may require that a particular State agency be the sole State agency to administer the approved State plan, such as the Independent Living Services for Older Individuals Who are Blind program in section 752(a)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 796k(a)(2)). This program requires that the sole State agency to administer the approved State plan be the State Vocational Rehabilitation Services agency that provides services to individuals who are blind in the State. Even if that State agency is located within an SEA, if it is the other State agency designated by statute that is the only agency authorized to take the final action in disapproving or failing to approve a subgrantee's application for funds, then it is not the SEA that is taking the final action within the meaning of § 76.401, and this section does not apply to that program.

These due process protections contemplate that an SEA has violated a Federal or State statute, rule, regulation, or guideline governing the applicable program. Clarifying that a notice of appeal to the Secretary must cite the specific Federal statute, rule, regulation, or guideline that the SEA allegedly violated will help to ensure that an appeal subject to GEPA and the procedures described in § 76.401 is about a violation of Federal law, consistent with GEPA, and not solely a disagreement with the SEA's substantive decision. The GEPA appeal rights apply only when an SEA allegedly violates Federal law and, so, it follows that a GEPA appeal must, at a minimum, allege such a violation.

In the past few years, the Department received numerous GEPA appeals that were without merit; these appeals often came from applicants whose applications were not selected for funding pursuant to a discretionary subgrant competition. In a large portion of these appeals, the primary argument that the appellant made was that it disagreed with the SEA's assessment of its application. This argument is insufficient as a matter of law in a GEPA appeal because it does not allege that the SEA's final decision was contrary to Federal laws, rules, regulations, or guidelines. Even so, currently, when such an appeal is filed, the appeal is fully briefed, reviewed, and adjudicated before the Secretary issues a final decision denying the appeal, thereby tying up SEA and Department resources for an extended period.

Under our proposed revisions to § 76.401(d)(3), the Secretary would be able to dismiss an appeal immediately upon receipt of a notice of appeal if it is apparent on the face of the notice that it fails to allege a violation of Federal statutes, rules, regulations, or guidelines governing the applicable program. The Secretary would, as a matter of practice, prior to dismissing a GEPA appeal, first request that the appellant show cause for why the appeal should not be dismissed and permit the appellant to revise its notice of appeal to include the specific Federal statute, rule, regulation, or guideline the appellant alleges the SEA violated. By asking that the appellant show cause prior to dismissing the appeal, the Secretary would not cause undue harm to appellants unrepresented by legal counsel who submit their appeals on their own behalf and might have omitted the specific Federal statute, rule, regulation, or guideline the appellant alleges the SEA violated from the initial version of the appeal. Absent the appellant's ability to show cause, however, the appeal would be dismissed, thereby limiting GEPA appeals to those that fall under the Secretary's authority under section 432 of GEPA: those that allege a violation of Federal law, rule, regulation, or guideline governing the applicable program.

The proposed regulations would also make changes to clarify, streamline, and delete duplicative information. For example, current § 76.401 includes a table of programs to which the section applies. Some programs listed no longer exist. Other programs have been renamed under a reauthorized statute. Rather than update the table of programs, which may become outdated, we believe that clarifying that the procedures described in the section apply only to an applicant that is aggrieved by the final action of an SEA with respect to disapproving or failing to approve its application for funds under a State-administered formula grant program ensures that, over the long term, the text does not become outdated. Additionally, we propose to move the requirements with respect to a subgrantee's allegation that an SEA failed to provide funds in amounts in accordance with the requirements of applicable statutes and regulations to § 76.783(a)(3). Section 76.401 is about disapproval of an application, and it is, therefore, more logical to include the ''failing to provide funds'' provision in § 76.783, which describes other circumstances in section 432 of GEPA in which a subgrantee may request a hearing and, ultimately, appeal to the Secretary. This does not change the procedural requirements that apply when a subgrantee alleges that an SEA failed to provide funds in amounts prescribed by law.

The other changes in proposed § 76.401 are for consistency and clarity.

Section 76.560–76.569 Indirect Cost Rates

Current Regulation: Sections 76.560–76.569 describe the application of indirect costs under State-administered formula grant programs, including who approves indirect costs rates and how they are applied.

Proposed Regulation: The Uniform Guidance, in conjunction with EDGAR, governs Department grants and, therefore, these provisions should be closely aligned with one another. The proposed revisions would align these sections of EDGAR with the Uniform Guidance, include cost allocation plans along with indirect costs rates, and provide clarity on the application of indirect cost rates, as well as the addition of § 76.562, specific to reimbursement of indirect costs.

Reasons: These sections of EDGAR currently do not reflect updates to the Uniform Guidance, including the addition of the de minimis rate, referencing cost allocation plans as performing a role equivalent to indirect costs rate, and clarifications on restricted rates and this alignment is necessary to ensure that there is no confusion about these requirements. Moreover, the proposed changes are intended to add clarity to how indirect cost rates are applied, the indirect cost rate options an entity has, and reimbursement of indirect costs.

Section 76.600 Where To Find Construction Regulations

Current Regulations: Section 76.600 provides section references to the EDGAR regulations on construction.

Propose Regulation: We propose to amend certain regulations related to construction projects and real property acquisition in parts 75, 76, and 77. Specifically for § 76.600, the proposed regulations would update citations to align with the proposed revision in part 75.

Reasons: The purpose of these proposed changes is to update the current regulations in response to statutory changes and related issues that have arisen, as many of the regulations for this section have not been updated since 1992; to better align the regulations to the Uniform Guidance; and to improve clarity and transparency regarding Federal program operations. The proposed changes would also update the citations to the regulations on construction in part 75 and set out the State's responsibilities when approving construction projects.

Section 76.650–76.662 Participation of Students Enrolled in Private Schools

Current Regulation: Sections 76.650–76.662 include general requirements applicable to State-administered formula grant programs that require a grantee or subgrantee to provide for participation by students enrolled in private schools.

Proposed Regulation: We propose to amend section 76.650 and remove §§ 76.651–76.662. As a result, we also propose updates to § 75.119, which cross-references § 76.656, and § 75.650, which cross-references §§ 76.650–76.662. In addition, we propose to delete § 299.6(c), which provides that §§ 76.650–76.662 do not apply to the programs covered under § 299.6(b).

Reasons: Sections 76.650–76.662 are currently unchanged since they were issued in 1980. Since then, applicable statutory requirements have changed, and the Department has issued program-specific regulations regarding the provision of services to private school children, teachers and other educational personnel, and families. These include the following regulations: (1) 34 CFR 200.62–200.68, applicable to the provision of equitable services under part A of Title I of the ESEA; (2) §§ 299.6–299.10, applicable to equitable services for programs subject to the requirements in section 8501 of the ESEA; and (3) 34 CFR 300.130–300.144, applicable to equitable services under part B of the Individuals with Disabilities Education Act (IDEA). Therefore, we propose to remove §§ 76.651–76.662 because they are unnecessary, redundant, and, in some instances, inconsistent with current law. We propose to amend § 76.650 to reference §§ 299.7–299.11 to cover any State-administered formula grant program that requires the provision of services to private school children, teachers and other educational personnel, and families and that is not otherwise governed by applicable regulations. We believe that this approach would ensure greater alignment across programs and reduce the potential for confusion. These proposed changes are for clarity and would not substantively affect the services and assistance available to private school students, educators, or families.

Section 76.665 Providing Equitable Services to Students and Teachers in Non-Public Schools

Current Regulation: Section 76.665 applies to providing equitable services to children and teachers in non-public schools under the CARES Act. It was necessary because equitable services under the CARES Act were not governed by the provisions in part 299.

Proposed Regulation: We propose to delete § 76.665.

Reasons: Section 76.665 is no longer needed because funds under the CARES Act are no longer available for obligation. Moreover, the regulations on determining the proportional share under § 76.665(b) have been invalidated by several United States district courts (see, *e.g., Michigan* v. *DeVos,* 481 F.Supp.3d 984 (N.D. Cal. 2020) and *Washington* v. *DeVos,* 481 F.Supp.3d 1184 (W.D. Wash. 2020)).

Sections 76.670–76.677 Procedures for Bypass

Current Regulation: Sections 76.670–76.677 establish procedural requirements applicable to programs under which the Secretary is authorized to waive requirements for providing services to private school children and implement a bypass under which the Department assumes responsibility for providing those services.

Proposed Regulation: We propose to remove §§ 76.670–76.677 and add §§ 299.18–299.28 in a new subpart G of part 299 and amend the requirements to reflect statutory changes.

Reasons: Currently, the Secretary is authorized to implement a bypass only under ESEA State-administered formula grant programs and part B of the IDEA. With respect to part B of the IDEA, the Department has established program-specific regulations applicable to a bypass. Because the current bypass regulations in §§ 76.670–76.677 apply only to applicable ESEA State-administered formula grant programs, it is appropriate to remove these requirements from part 76, which applies to more than the ESEA, and add similar provisions as §§ 299.18–299.28 of part 299, which establishes uniform administrative rules for ESEA programs. We describe §§ 299.18–299.28 elsewhere in this document.

Section 76.783 State Educational Agency Action—Subgrantee's Opportunity for a Hearing

Current Regulation: Section 76.783 requires an SEA to provide a subgrantee an opportunity for a hearing under certain circumstances. With respect to an SEA, the regulation cross-references § 76.401, which restates the requirements from section 432 of GEPA, including the due process an SEA must provide to subgrantees if the SEA either: (1) orders the repayment of misspent or misapplied Federal funds; or (2) terminates further assistance for an approved project.

Proposed Regulation: The proposed regulation would add to § 76.783 the requirement currently in § 76.401 that an SEA hold a hearing, upon request of a subgrantee, when the SEA fails to provide funds in amounts in accordance with the requirements of statutes, rules, regulations, or guidelines.

Reasons: The proposed regulation would move the requirements with respect to a subgrantee's allegation that an SEA failed to provide funds in amounts in accordance with the requirements of statutes, rules, regulations, and guidelines from § 76.401 to § 76.783. Section 76.401 is about disapproval of an application, and it is, therefore, more logical to include the ''failing to provide funds'' provision in § 76.783, which describes other circumstances under section 432 of GEPA in which a subgrantee of an SEA may request a hearing and, ultimately, appeal to the Secretary. This provision does not change the procedural requirements that apply when an SEA is alleged to have failed to provide funds in amounts prescribed by law; rather, it moves the requirement to a more relevant section of this part.

Part 77 Definitions That Apply to Department Regulations

Section 77.1 Definitions That Apply to All Department Programs

Current Regulation: Section 77.1 includes a number of definitions, including a definition of ''direct grant program,'' which is referred to in § 75.1. The regulation also includes definitions of ''Director of the Institute of Museum Services,'' ''Director of the National Institute of Education,'' and ''State,'' definitions related to evidence, and definitions about the scope of a project. The current definition of ''evidence-based'' applies to both direct grant programs administered under part 75 and State-administered formula grant programs administered under part 76. These definitions support the various sections in EDGAR and are used by the Department in NIAs where relevant to the specific grant competition.

Proposed Regulation: We propose to remove the definitions of ''direct grant program'' and ''Director of the Institute of Museum Services.'' In addition, we propose technical updates to the following definitions: ''demonstrates a rationale,'' ''Director of the National Institute of Education,'' and ''evidence-based.'' Specifically, we propose limiting the definition of ''evidence-based'' to only direct grant programs administered under part 75, to align with the interpretation that underlying authorizing statutes are the source for the definition of ''evidence-based'' for formula grant programs. We propose technical updates to the cross-references in section 77.1(b) as a result of changes to the Uniform Guidance. We propose additional updates to the definitions of ''moderate evidence,'' ''national level,'' ''performance period,'' ''promising evidence,'' ''regional level'', ''strong evidence,'' and ''What Works Clearinghouse Handbooks.'' We propose to add definitions of ''construction,'' ''evaluation,'' ''evidence-building,'' ''independent evaluation,'' and ''minor remodeling,'' ''peer-reviewed scholarly publication,'' and ''quality data.''

Reasons:

Definitions of Direct Grant Program and Director of the National Institute of Education

We propose to remove the definition of ''direct grant program,'' because it applies only to part 75 and the proposed regulations would define it in § 75.1. Although a technical change, we propose to replace the definition of ''Director of the National Institute of Education'' with a definition of ''Director of the Institute of Education Sciences'' due to a statutory change in the name of that position, enacted in 2002.

Definitions of National Level and Regional Level

We propose revising the definitions of ''national level'' and ''regional level'' to replace the phrase ''process, product, strategy, or practice'' in these two definitions with the term ''project component'' because ''project component'' is already defined and would provide more clarity.

Definition of Project Period

We propose clarifying, in the definition of ''performance period,'' that the ''period during which funds can be obligated'' is specific to grantees and not the Department.

Evidence-Related Definitions

We propose expanding the definitions of ''moderate evidence,'' ''promising evidence,'' and ''strong evidence,'' and the references to evidence levels for practice guides, effectiveness ratings for intervention reports, studies and samples in intervention reports to correspond with the designations on the What Works Clearinghouse website and in Version 5.0 of the What Works Clearinghouse Handbooks. We also propose to update the definition of ''What Works Clearinghouse Handbooks'' to incorporate by reference these updated standards.

Additionally, we propose to modify the definition of ''moderate evidence'' to allow, for example, high-quality studies of low-incidence populations to meet the standard in the context of a systematic review. The new definition of ''construction'' would give meaning to a term used in multiple sections in parts 75 and 76, and is meant to add clarity, as well as the proposed definition of ''minor remodeling'' that is meant to help distinguish it from construction. The new definition of ''evaluation,'' a term used in various sections and especially in § 75.210, would clarify and provide a shared understanding of what is meant when this term is used. The new definition of ''evidence-building,'' a term used in § 75.210, would support the Department's efforts to ensure learning from funded grants where rigorous evaluation is not appropriate but feedback and continuous improvement efforts are better suited. The new definition of ''quality data,'' as referenced in section 515 of the Treasury and General Government Appropriations Act, 2001 (Appendix C of Public Law 106–554) (commonly known as the ''Information Quality Act'') and further defined in the Department's Information Quality Act Guidelines (*www2.ed.gov/policy/gen/guid/iq/iqg.html*), would support the Department's ongoing effort to improve the data that the Department receives from applicants and grantees by ensuring data encompass utility, objectivity, and integrity of the information. The new definition of ''independent evaluation,'' a term used in § 75.590, would support the Department's ongoing effort to increase the quality and credibility of the project evaluations supported by competitive grant programs through evaluations conducted independently from project developers and implementers. As discussed in greater detail in the section regarding §§ 76.125–76.137, the revised definition of ''State'' would remove the reference to the Trust Territory of the Pacific Islands. The revisions to the other definitions listed above would clarify the regulations and align with statutory language.

Definition of Evidence-Based

State-administered formula grant programs administered under part 76 have their own statutory definitions of ''evidence-based'' and limiting the scope of this definition to part 75 will help ensure that the regulatory and statutory definitions of ''evidence-based'' do not conflict.

Definitions of Construction and Minor Remodeling

We propose adding a definition of ''construction'' and revising the definition of ''minor remodeling'' under § 77.1(c). This proposed definition of ''construction'' is modeled after the definition of ''construction'' in the Impact Aid program regulations (34 CFR 222.176(a) ''Construction''). The Department has found that it is important to define ''construction'' to distinguish construction activity from ''minor remodeling'', a term already defined in § 77.1(c), as there has been confusion about what activities are considered construction, and which are considered minor remodeling. We propose to revise the term ''minor remodeling'' to more clearly indicate that minor remodeling is not considered ''construction'' under the proposed definition.

Definition of Peer-Reviewed Scholarly Publication

We propose adding a definition of ''peer-reviewed scholarly publication'' to support the use of this term in § 75.620. This definition is intended to clarify that research is made available in a variety of formats, and that research funded by the Department that is submitted for publication in scholarly publications should also be made available for free by submission to ERIC.

34 CFR Part 79—Intergovernmental Review of Department of Education Programs and Activities

Section 79.1–79.8 Intergovernmental Review

Current Regulation: Part 79 discusses the requirements related to intergovernmental review of Department programs and activities.

Proposed Regulation: We propose to remove from §§ 79.1, 79.3, 79.4, and 79.8 references to Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, which are outdated.

Reasons: Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 are outdated, and we therefore propose to remove them from these sections.

34 CFR Part 299—General Provisions

Section 299.7

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.7 to incorporate the requirements in ESEA section 8501 for consultation with private school officials for programs that require the provision of equitable services to private school children, teachers, and other educational personnel.

Reasons: This section would reflect the requirements for consultation with private school officials for programs that require the provision of equitable services to private school children, teachers, and other educational personnel. The addition of a section on consultation is consistent with the current regulations on Title I equitable services in § 200.63. This section would also clarify the requirements in section 8501(c)(1)(H) of the ESEA, which reference the number of children from low-income families in a participating public school attendance area who attend private schools. This language is the same as a similar provision in section 1117(b)(1)(J) of the ESEA, which applies to equitable services under Title I, part A, but is not applicable to equitable services under other covered programs because participation in equitable services under these other programs is not limited to children from low-income families who live in a Title I participating public school attendance area.

34 CFR Part 299—General Provisions

Section 299.8

Current Regulation: Section 76.660, which elsewhere in this document we propose to remove, contains information about the context in which a subgrantee may use program funds to pay for the services of an employee of a private school.

Proposed Regulation: We propose to add a new § 299.8 to incorporate the information articulated in § 76.660, which we propose elsewhere in this document to remove. Proposed § 299.8 would note that, in providing for the participation of students in private schools, a grantee or subgrantee may use program funds to pay a private school employee if the employee performs services outside of his or her regular hours of duty and under public supervision and control. While § 76.660 refers only to subgrantees, the proposed § 299.8 would also clarify that a grantee, in addition to a subgrantee, may pay for services of private school personnel if the relevant conditions are met.

Reasons: Incorporating this provision in part 299 would consolidate regulations related to the participation of private school students and teachers in part 299 and clarify that the same approach applies whether a grantee or subgrantee is providing services to students enrolled in private schools.

Section 299.16 What must an SEA include in its written resolution of a complaint?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.16 to require that an SEA's written resolution of a complaint from an organization or individual alleging violation of a Federal statute or regulation that applies to an applicable program include specific elements.

Reasons: This section would add clarity regarding the contents of an SEA's written resolution of a complaint to help ensure that the resolution includes relevant information and is clear, concise, and understandable to the parties involved. This would also help facilitate the Department's timely review and resolution of any appeal of an SEA's written resolution of a complaint, particularly within the context of equitable services appeals that require the Department to investigate and resolve an appeal within 90 days of receipt.

Section 299.17 What must a party seeking to appeal an SEA's written resolution of a complaint include in its appeal request?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.17 to require that certain elements be included in a party's appeal of an SEA's written resolution of a complaint.

Reasons: This section would clarify what must be included in an appeal in order to facilitate the Department's timely review and resolution of the appeal, particularly within the context of equitable services appeals that require the Department to investigate and resolve an appeal within 90 days of receipt.

Section 299.18 When are bypass provisions applicable?

Current Regulation: None.

Proposed Regulation: We propose to add a new § 299.18, which would incorporate part of current § 76.670(a), which elsewhere in this document we propose to remove. Section 299.18 would clarify those applicable ESEA programs under which the Secretary is authorized to waive the requirements for providing equitable services to private school children, teachers, and other educational personnel (hereafter, for ease of reference, ''private school children'') and implement a bypass.

Reasons: Because current § 76.670(a) applies only to ESEA programs under which the Secretary is authorized to waive the requirements for providing equitable services to private school

children and implement a bypass, we propose to move this section to a new subpart G of part 299, which would contain other requirements regarding the provision of equitable services to private school children. Proposed § 299.18 would delete the list of applicable programs contained in current § 76.670(a) because that list is out of date.

Section 299.19 Bypass—General

Current Regulation: None.

Proposed Regulation: Proposed § 299.19 would state the statutory standards that authorize the Secretary to implement a bypass.

Reasons: We propose to add § 299.19 to clarify the circumstances in which the Secretary is authorized to waive the requirements for providing equitable services to private school children and implement a bypass.

Section 299.20 How To Request a Bypass

Current Regulation: None.

Proposed Regulation: Proposed § 299.20 would clarify the circumstances in which a private school official or an agency, consortium, or entity, as applicable, may request a bypass.

Reasons: Sections 1117(b)(6)(C) and 8501(c)(6)(C) of the ESEA contain provisions added by the Every Student Succeeds Act that require an SEA to provide equitable services directly or through a contract with a public or private agency, organization, or institution if an appropriate private school official has requested that the SEA provide those services and demonstrated that an agency, consortium, or entity has not met the requirements of section 1117 or 8501, as applicable. If an SEA determines that it is appropriate to provide equitable services itself, a bypass request to the Secretary would be unnecessary. Accordingly, proposed § 299.20(a) would clarify that an appropriate private school official may request a bypass from the Secretary if an SEA declines to provide equitable services itself following a private school official's request or if the failure to provide equitable services is by an SEA. Proposed § 299.20(b) would clarify that such a request may also be made if an agency, consortium, or entity is prohibited by law from providing equitable services.

Section 299.21 Notice of Intent To Implement a Bypass

Current Regulation: Section 76.671 contains notice procedures that the Secretary uses prior to implementing a bypass, which elsewhere in this document we propose to remove.

Proposed Regulation: Proposed § 299.21 contains notice provisions essentially identical to those in current § 76.671, with a few edits to conform language to section 8504 of the ESEA.

Reasons: We propose to remove current § 76.671 and include its substance in proposed § 299.21 in new Subpart G of part 299, which contains other provisions regarding the provision of equitable services to private school children.

Section 299.22 Filing Requirements

Current Regulation: Section 76.670(b) contains filing requirements to request that the Secretary implement a bypass, which elsewhere in this document we propose to remove.

Proposed Regulation: Proposed § 299.22 contains filing requirements similar to those in current § 76.670(b).

Reasons: We propose to remove current § 76.670(b) and include its substance in proposed § 299.22 in new Subpart G of part 299, with changes to replace references to facsimile transmission with references to electronic mail.

Sections 299.23 Through 299.28 Bypass Determination Process

Current Regulation: Sections 76.672–76.677, which elsewhere in this document we propose to remove, contain procedures for implementing a bypass.

Proposed Regulation: Proposed §§ 299.23–299.28 are essentially identical to §§ 76.672–76.677, with a few edits to conform to section 8504 of the ESEA.

Reasons: We propose to remove current §§ 76.672–76.677 and include their substance, with minor edits, in proposed §§ 299.23–299.28 in new subpart G of part 299, which contains other regulations regarding the provision of equitable services to private school children.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (as of 2022 but adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) of OMB for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

We have reviewed the changes proposed in this NPRM in accordance with Executive Order 12866, as amended by Executive Order 14094, and do not believe that these changes would generate a considerable increase in burden. In total, we estimate that the proposed changes in this NPRM would result in a net decrease in burden of approximately $4,000 with transfers of between $109.7 and $113.8 million. Most of the changes proposed in this NPRM are technical in nature and are unlikely to affect the administration of programs or allocation of benefits in any substantial way. However, given the large number of edits proposed herein, we discuss each provision, other than those for which we are updating citations or cross-references and making other technical edits, and its likely costs and benefits in turn below.

Proposed changes to §§ 75.1 and 75.200 would simply combine currently existing text into a single section and clarify terms used. We do not expect that these changes will have any quantifiable cost, and it may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of § 75.4 as unnecessary and redundant is unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.60, which would delete an outdated table and clarify a definition, are unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.101 are unlikely to generate any meaningful cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.102 and 75.104, which would move paragraph (b) of § 75.102 to § 75.104, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.105, which add reference to an already existing exemption to the public comment period to the regulations, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.109, which would eliminate the requirement that an applicant submit two copies of any paper applications in addition to the original, may reduce costs for applicants that submit paper applications. However, those savings are likely to be minimal, given the small incremental cost of photocopies and the low number of paper applications the Department receives in any year. At most, we estimate that it would save applicants $7.50 per application, assuming a 75-page application photocopied at a rate of $0.05 per page. Assuming an average of 50 paper applications submitted per year, this change would result in an annual savings of approximately $375.

Proposed changes to § 75.110, which would more clearly specify how applicants must report against program measures and project-specific performance measures, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.112, which would allow the Secretary to require applicants to submit a logic model, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already include this requirement and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants, because we assume that applicants in those programs would likely already have conceptualized an implicit logic model for their applications and, therefore, would experience only minimal paperwork burden associated with memorializing it in their applications.

Proposed changes to § 75.127, which would add the term ''partnership'' and clarify that all members of a group application must be eligible entities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of §§ 75.190–75.192 as duplicative is unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.201, which refer to selection ''factors,'' as well as ''criteria'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.210, which would clarify word choice and make updates to language based on past experience in using the current selection criteria and factors, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.216, which would remove paragraphs (a) and (d) and revise the section heading, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations and providing the Department additional flexibility in considering applications.

Proposed changes to § 75.217, which would remove the word ''solely'' and add ''and any competitive preference points,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.219, which would reorganize the section to improve clarity, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.221, which would revise the section to improve clarity and remove unnecessary language, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.222, which would update the mailing address for unsolicited applications, are unlikely to generate any quantifiable costs and may benefit the Department and general

public by improving the clarity of the regulations.

The proposed change to § 75.225 would change the current term ''novice applicant'' to ''new potential grantee'' and revise the definition to provide greater flexibility to the Department in classifying applicants as ''new potential grantees.'' We believe that this proposed regulation may result in a number of changes in the behavior of both Department staff and applicants. First, we believe that the additional flexibility in the new definition will increase the number of competitions in which § 75.225 is used. Second, we believe that it may result in additional applicants submitting applications for competitions in which § 75.225 is used. Finally, we believe that the additional applicants, in conjunction with any absolute or competitive preference associated with the revised section, may shift at least some of the Department's grants among eligible entities. However, because this revised standard would neither expand nor restrict the universe of eligible entities for any Department grant program, and since application submission and participation in our discretionary grant programs is completely voluntary, we do not think that it would be appropriate to characterize any increased participation in our grant competitions as costs associated with this regulation.

Proposed changes to § 75.226, which would provide the Secretary with the authority to give special consideration to an application that demonstrates a rationale, are unlikely to generate any quantifiable costs or benefits. Many grant competitions already ask applicants to discuss the extent to which they can demonstrate a rationale for their proposed projects through a selection factor and, to the extent that it is included in additional competitions in the future, we do not believe that it would create a substantial burden for applicants, because we assume that applicants in those programs would likely already have conceptualized an implicit logic model for their applications and would, therefore, experience only minimal paperwork burden associated with memorializing it in their applications.

Proposed changes to § 75.227 would give the Secretary the authority to give special consideration to rural applicants. The proposed language in this section mirrors language adopted by the Department in the Administrative Priorities. As such, these proposed changes will not generate any quantifiable costs and may benefit the Department and general public by improving the clarity and transparency of the Department's authority to provide special consideration to particular applicants.

Proposed changes to § 75.234, which would replace the word ''special'' with the word ''specific,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.250, which would update the heading and would clarify that an extension of the project period is authorized by EDGAR only if the applicable statutes and regulations permit it, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.253, which would allow a grantee whose request for a non-competitive continuation award has been denied to request reconsideration, could generate costs to affected grantees and the Department. In general, we do not deny a large number of non-competing continuation awards and, if that does happen, grantees are often aware of the likelihood of the decision well in advance and often cite no concerns if they do not receive a continuation award. Therefore, we do not believe that many grantees would qualify for the redress, and we do not believe that the few who may qualify would exercise the right. However, for the purpose of this analysis, we assume that we would process 10 such requests annually—which we believe is an overestimate of the likely incidence. For each request, we assume a project director earning $106.76 per hour, on average, would spend 24 hours drafting and submitting the request. At the Department, a program officer at the GS–13/1 level ($61.96 per hour) would spend approximately 8 hours reviewing each request, along with 2 hours for their supervisor at the GS–14/1 level ($72.69 per hour) to review. We also assume that a Department attorney ($72.69 per hour) would spend approximately 4 hours reviewing each request. In sum, we estimate that this provision would generate an additional cost of approximately $25,622 for grantees and $9,320 for the Department per year.

The proposed addition of a new § 75.254 would give the Secretary the authority to approve data collection periods. The proposed language in this section is aligned with this previous authority under § 75.250(b) as well the Administrative Priorities. As such, these proposed changes will not generate any quantifiable costs and may benefit the Department and general public by allowing for data collection periods that give grantees additional time to collection data to measure project impact.

Proposed changes to § 75.261, which would remove references to obsolete programs and make other edits, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.263, which would remove the clause ''notwithstanding any requirement in 2 CFR part 200,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.560–75.564, which align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.590, which would allow the Department to require the use of an independent evaluation in a program, would likely generate transfers for affected grantees. Specifically, we assume that grantees that are required to use an independent evaluator will transfer grant funds from their currently designated purpose (such as to defray the costs of an internal evaluation) to pay for an independent evaluation. We note, however, that we do not believe that these transfers would substantially affect the level of support that beneficiaries of our competitive grant programs receive; the grantees would have spent a certain percentage of their awards on evaluation, whether such evaluation is conducted by an internal or external entity. We believe that the most likely programs in which the Department would require an independent evaluation are those that include an expectation of a rigorous evaluation using selection factors related to What Works Clearinghouse evidence standards in project evaluations. From 2014 through 2022, we included such selection factors in 18 competitions (excluding programs that have their own independent evaluation requirements, such as Education Innovation and Research and its predecessor, Investing in Innovation, because these programs are already included in the baseline), with a combined average of $194.8 million in awards per year. Assuming that evaluation costs in these programs average approximately 15 percent of total project costs, we estimate that the evaluations for these competitions would cost approximately $29,227,000

per year. Assuming equal-sized cohorts of new grants per year, we estimate that this total would increase through Year 5, when it would plateau at $146,135,000 per year. To the extent that grantees already use evaluators that would meet the requirements for an independent evaluation, this would represent an overestimate of the transfers associated with this provision.

Proposed changes to § 75.591, which clarify how grantees cooperate with Federal research activities, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 75.600–75.615 and §§ 75.618–75.619 would restructure the sections on construction to improve the flow of the information, as well as update citations, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.620, which would update language regarding Federal endorsement, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed addition of § 75.623 would require certain grantees to submit final versions of Department-funded research publications to ERIC so that they are publicly available. Given that submission of the files would be a required grant activity, we do not anticipate that the requirement generating any additional costs for grantees. To the extent that submission did generate additional burdens, they would likely be minimal and would be properly considered transfers from support of other grant-related activities. Such transfers would be de minimis. Further, the addition of this requirement would generate benefits for the general public by increasing the availability of publicly supported research.

Proposed changes to § 75.700, which would add Executive orders to the list of authorities with which grantees must comply, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 75.708, which would allow the Secretary to provide notice authorizing subgrants through the **Federal Register** or another reasonable means, may generate minimal efficiency returns to the Department by reducing burdens and costs associated with preparing a notice for publication in the **Federal Register**. However, we estimate that staff time to draft and compile these notices will likely remain unchanged and, therefore, do not estimate any changes in burden associated with this provision.

Proposed changes to § 75.720 would allow the Secretary to require grantees to publish their annual performance reports on a public-facing website. Given that this requirement would apply only to a subset of discretionary competitive grant programs and participation in such programs is voluntary, we do not estimate any costs associated with this proposed change. However, we believe that, to the extent that the requirement results in a shift in activities by grantees, it is possible that there would be minimal transfers. We estimate that it would take a web developer approximately 30 minutes to post a copy of the grantee's annual performance report on the website. Assuming that a loaded wage rate is $57.05 per hour for web developers, we estimate that this requirement could generate approximately $29 per year per affected grantee. In FY 2020, the Department made approximately 7,700 grants. Assuming this requirement would be used in 20 percent of those grants, we estimate total transfers of approximately $43,930 per year.

Proposed changes to § 76.1, which would ensure consistent reference to State-administered formula grant programs, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.50 would clarify that, in the absence of a statutory or regulatory prohibition against subgranting, or in the absence of a term and condition in the grant award that would prohibit subgranting, States, consistent with 2 CFR 200.332, determine whether to make subgrants. These proposed changes would likely generate cost savings for States associated with the reduced burden associated with making subgrants as opposed to contracts. However, we do not have sufficient information to quantify this impact and we invite public comment on the cost savings associated with such a shift at the State level.

Proposed changes to § 76.101, which would clarify the applicability of section 441 of GEPA, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.102, which would remove a table and provide a general definition of the term ''State plan,'' are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.103, which would remove extraneous text and simplify the section, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 76.125–76.137, which would remove references to the Trust Territory of the Pacific Islands and make other changes, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to §§ 76.140–76.142, which would, among other things, allow the Secretary to prescribe alternative amendment processes on a program-by-program basis, could generate benefits for both States and the Department. The proposed changes would provide the Secretary broad flexibility in prescribing alternative procedures, which makes it difficult to assess precisely the specific cost reductions that would occur. However, we assume that these alternative procedures would result in a net burden reduction of 2 hours for a management analyst at the State level and 0.5 hours for an administrator at the State level for each State plan revision under the ESEA. We further estimate that likely alternative procedures would result in a burden reduction of 5 hours for a management analyst and 0.5 hours for a chief executive at the State level for each State plan revision under the Workforce Innovation and Opportunity Act (WIOA). We further assume an average of 15 State plan amendments under the ESEA and 52 State plan amendments under WIOA each year. In total, we estimate that these alternative procedures would reduce costs for States by approximately $23,733 per year. We also assume that the alternative procedures would reduce burden on Federal staff by approximately 1 hour per State plan amendment for a total Federal savings of approximately $4,150 per year.

Proposed changes to § 76.301, which would clarify that section 442 of GEPA does not apply to LEA subgrantees, would not generate any quantifiable costs, and would benefit the Department and the general public by improving the clarity of the regulations.

Proposed changes to § 76.401, which would clarify that a notice of appeal must include an allegation of a specific violation of law by the SEA, are likely to generate benefits for the Department by reducing the number of appeals that fail to state a claim that we receive and

process each year. On average, we process approximately 10 appeals each year, with an attorney spending approximately 30 hours reviewing each appeal. We estimate that this provision would reduce the number of appeals the Department receives each year by approximately 20 percent, resulting in a net savings of 60 hours per year or approximately $5,530 per year. We also believe that this provision would generate cost savings at the State level, but do not have sufficient information on the case load at the State level to make a reliable estimate. We invite public comment on the potential savings at the State level associated with this proposed change.

Proposed changes to §§ 76.560–76.569, which would align these sections with the Uniform Guidance and provide additional information on the application of indirect cost rates, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.650 and related sections, which would revise regulatory references, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

The proposed deletion of § 76.655 as unnecessary is unlikely to generate any quantifiable cost and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to § 76.783 indicate that a subgrantee may request a hearing related to a State educational agency's failure to provide funds in amounts in accordance with the requirements of applicable statutes and regulations. These proposed changes would not generate any additional costs, as this circumstance was previously contemplated in § 76.401, which we are proposing to delete.

Proposed changes to § 77.1(c), which would update existing definitions, remove unnecessary definitions, and add new definitions, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to part 79, which would remove outdated statutory references, are unlikely to generate any quantifiable costs and may benefit the Department and general public by improving the clarity of the regulations.

Proposed changes to part 299, which would reflect statutory changes, are unlikely to generate any quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations. The proposed additions of §§ 299.16–299.17 would add specificity as to what an SEA's resolution of a complaint must include and what a party's appeal to the Secretary of an SEA decision must include. The specific elements named in these sections are all things that a legal decision or appeal should already include (such as a description of applicable statutory and regulatory requirements, legal analysis and conclusions, supporting documentation). When the Department receives records on appeal that do not include one or more of these elements, we go back to the parties to request the missing element(s). Specifying in these sections what we need to issue a decision would prevent this unnecessary delay; however, we do not think that the specific elements would generate quantifiable costs.

Proposed additions of §§ 299.18–299.28 regarding the procedures for a bypass in providing equitable services to eligible private school children, teachers or other educational personnel, and families, as applicable, are unlikely to generate any quantifiable costs and may benefit the Department and the general public by improving the clarity of the regulations. These sections reflect only minor updates to information previously contained in §§ 76.670–76.677, which elsewhere we propose to remove.

In total, we estimate that these regulations would result in a net decrease in costs of approximately $4,014 per year with transfers ranging from $109.7 million to $113.8 million per year. Of the net benefit, approximately $3,610 would accrue to grantees. The remaining approximately $400 in net additional benefits would accrue to the Department.

As noted above, we do not anticipate any meaningful, quantifiable impact from the majority of proposed regulatory changes. However, for those provisions for which we do estimate impacts, we summarize those impacts below using 3 and 7 percent discount rates, consistent with OMB Circular A–4:

Provision	3% discount rate	7% discount rate
	Benefits	
§ 75.109—Reduce the number of paper copies of an application to be submitted	$375	$375
§ 76.140–142—Amendments to State Plan	34,940	34,940
§ 76.401—Disapproval of an application	10,655	10,655
	Costs	
§ 75.253—Request for Reconsideration	($27,924)	($27,924)
	Transfers	
§ 75.590—Independent evaluation	$113,824,837	$109,706,758
§ 75.720—Financial and Performance Reports	$43,500	$43,500

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of

this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant competitions. Therefore, we do not believe that these regulations present any significant impact on small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

The proposed regulatory action does not contain any information collection requirements. However, we do anticipate that the proposed changes to §§ 76.140–76.142 would reduce State burden under existing information collection requirements by approximately 323.5 hours per year (see the Discussion of Costs, Benefits, and Transfers for more information on this estimate). The valid OMB control number for that information collection is 1810–0576.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 75

Accounting; Copyright; Education; Grant programs—education; Incorporation by reference; Indemnity payments; Inventions and patents; Private schools; Reporting and recordkeeping requirements; Youth organizations.

34 CFR Part 76

Accounting; Administrative practice and procedure; American Samoa; Education; Grant programs—education; Guam; Northern Mariana Islands; Pacific Islands Trust Territory; Prisons; Private schools; Reporting and recordkeeping requirements; Virgin Islands; Youth organizations.

34 CFR Part 77

Education; Grant programs—education; Incorporation by reference.

34 CFR Part 79

Intergovernmental relations.

34 CFR Part 299

Administrative practice and procedure; Elementary and secondary education; Grant programs—education; Private schools; Reporting and recordkeeping requirements.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 75, 76, 77, 79, and 299 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

Section 75.263; 2 CFR 200.308(d)(1).

Section 75.617, 31 U.S.C. 3504, 3505.

Section 75.740 also issued under 20 U.S.C. 1232g and 1232h.

■ 2. Revise § 75.1 to read as follows:

§ 75.1 Programs to which part 75 applies.

(a) *General.* (1) The regulations in this part apply to each direct grant program of the Department of Education, except as specified in these regulations for direct formula grant programs, as referenced in paragraph (c)(3) of this section.

(2) The Department administers two kinds of direct grant programs. A direct grant program is either a discretionary grant program or a formula grant program other than a State-administered formula grant program covered by 34 CFR part 76.

(3) If a direct grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and regulations and, to the extent consistent with the applicable statutes and regulations, under the General Education Provisions Act and the regulations in this part. With respect to the Impact Aid Program (Title VII of the Elementary and Secondary Education Act of 1965), see 34 CFR 222.19 for the limited applicable regulations in this part.

(b) *Discretionary grant programs.* A discretionary grant program is one that permits the Secretary to use discretionary judgment in selecting applications for funding.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The Secretary applies the applicable statutes and regulations to

fund projects under a formula grant program.

(3) For specific regulations in this part that apply to the selection procedures and grant-making processes for direct formula grant programs, see §§ 75.215 and 75.230.

Note 1 to § 75.1: See 34 CFR part 76 for the general regulations that apply to programs that allocate funds by formula among eligible States.

§ 75.4 [Removed and Reserved]

■ 3. Remove and reserve § 75.4.

§ 75.50 [Amended]

■ 4. Amend § 75.50 in paragraph (a) by removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations''.

§ 75.51 [Amended]

■ 5. Amend § 75.51 in paragraph (a) by removing the parenthetical sentence ''(See the definition of *nonprofit* in 34 CFR 77.1.)''.

■ 6. Revise § 75.60 to read as follows:

§ 75.60 Individuals ineligible to receive assistance.

An individual is ineligible to receive a fellowship, scholarship, or discretionary grant funded by the Department if the individual—

(a) Is not current in repaying a debt or is in default, as that term is used in 34 CFR part 668, on a debt—

(1) Under a program administered by the Department under which an individual received a fellowship, scholarship, or loan that they are obligated to repay; or

(2) To the Federal Government under a nonprocurement transaction; and

(b) Has not made satisfactory arrangements to repay the debt.

§ 75.61 [Amended]

■ 7. Amend section 75.61 by:

■ a. In paragraph (a)(2), removing the words ''section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)'' and adding in their place the words ''section 421 of the Controlled Substances Act (21 U.S.C. 862)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 75.62 [Amended]

■ 8. Amend § 75.62 by:

■ a. In paragraph (a)(2), removing the words ''section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a)'' and adding, in their place, the words ''section 421 of the Controlled Substances Act (21 U.S.C. 862)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 9. Amend § 75.101 by:

■ a. Revising paragraph (a)(1);

■ b. Adding the period after ''assistance?)'' in paragraph (a)(7);

■ c. Removing paragraphs (a)(1)(i) and (ii); and

■ d. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.101 Information in the application notice that helps an applicant apply.

(a) * * *

(1) How an applicant can obtain an application package.

* * * * *

§ 75.102 [Amended]

■ 10. Amend § 75.102 by removing and reserving paragraph (b) and removing the parenthetical authority citation at the end of the section.

§ 75.103 [Amended]

■ 11. Amend § 75.103 by:

■ a. Removing in paragraph (b) the citation ''§ 75.102(b) and (d)'' and adding in its place the citation ''§ 75.102(d)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 12. Amend § 75.104 by:

■ a. Revising the section heading;

■ b. Adding paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows.

§ 75.104 Additional application provisions.

* * * * *

(c) If an applicant wants a new grant, the applicant must submit an application in accordance with the requirements in the application notice.

■ 13. Amend § 75.105 by:

■ a. Revising the section heading;

■ b. In paragraph (b)(2)(i), removing the words ''by inviting applications that meet the priorities'' and adding in their place the words ''through invitational priorities'';

■ c. In paragraph (b)(2)(iii), removing the words ''seriously interfere with an orderly, responsible grant award process or would otherwise'';

■ d. In paragraph (b)(2)(iv), removing the word ''or'' after the semicolon;

■ e. In paragraph (b)(2)(v), removing the period and adding in its place ''; or'';

■ f. Adding paragraph (b)(2)(vi);

■ g. Removing the words ''high quality'' in paragraph (c)(3) and adding in their place the words ''high-quality''; and

■ h. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 75.105 Annual absolute, competitive preference, and invitational priorities.

* * * * *

(b) * * *

(2) * * *

(vi) The final annual priorities are developed under the exemption from rulemaking for the first grant competition under a new or substantially revised program authority pursuant to section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1), or an exemption from rulemaking under section 681(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1481(d), section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, or any other applicable exemption from rulemaking.

* * * * *

■ 14. Revise § 75.109 to read as follows:

§ 75.109 Changes to applications.

An applicant may make changes to its application on or before the deadline date for submitting the application under the program.

■ 15. Amend § 75.110 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (b), respectively;

■ c. In newly redesignated paragraph (b) introductory text, adding the word ''program'' before the words ''performance measurement'';

■ d. Revising newly redesignated paragraphs (b)(1)(ii) and (b)(2);

■ e. Revising newly redesignated paragraphs (c)(1) and (c)(2)(i); and

■ f. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 75.110 Information regarding performance measurement.

(a) The Secretary may establish, in an application notice for a competition, one or more program performance measurement requirements, including requirements for performance measures, baseline data, or performance targets, and a requirement that applicants propose in their applications one or more of their own project-specific performance measures, baseline data, or performance targets and ensure that the applicant's project-specific performance measurement plan would, if well implemented, yield quality data.

(b) * * *

(1) * * *

(ii) If the Secretary requires applicants to collect data after the substantive work

of a project is complete in order to measure progress toward attaining certain performance targets, the data-collection and reporting methods the applicant would use during the post-performance period and why those methods are likely to yield quality data.

(2) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(c) * * *

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) * * *

(i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or

* * * * *

■ 16. Amend § 75.112 by:

■ a. Revising the section heading;

■ b. Adding paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 75.112 Include a proposed project period, a timeline, and a logic model.

* * * * *

(c) The Secretary may establish, in an application notice, a requirement to include a logic model.

§ 75.117 [Amended]

■ 17. Amend § 75.117 in paragraph (a) by adding ''and'' after the semicolon.

§ 75.118 [Amended]

■ 18. Amend § 75.118 by:

■ a. In paragraph (a), removing ''2 CFR 200.327 and 200.328'' and adding in its place ''2 CFR 200.328 and 200.329''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 19. Revise § 75.119 to read as follows:

§ 75.119 Information needed if private school children participate.

If a program provides for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the application must include a description of how the applicant will meet the requirements under §§ 299.7–299.11.

■ 20. Amend § 75.127 by:

■ a. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively;

■ b. Adding new paragraph (b)(3) and paragraph (c); and

■ c. Removing the parenthetical authority citation at the end of the section.

The additions read as follows:

§ 75.127 Eligible parties may apply as a group.

* * * * *

(b) * * *

(3) Partnership.

* * * * *

(c) In the case of a group application submitted in accordance with §§ 75.127 through 75.129, all parties in the group must be eligible applicants under the competition.

§ 75.135 [Amended]

■ 21. Amend § 75.135 by:

■ a. In paragraph (a) introductory text, removing the citation ''2 CFR 200.320(c) and (d)'' and adding in its place the citation ''2 CFR 200.320(b)''; and

■ b. In paragraph (b) introductory text, removing the citation ''2 CFR 200.320(b)'' and adding in its place the citation ''2 CFR 200.320(a)''.

§ 75.155 [Amended]

■ 22. Amend § 75.155 by removing the words ''the authorizing statue requires'' and adding in their place the words ''applicable statutes and regulations require''.

§ 75.157 [Amended]

■ 23. Amend § 75.157 by removing the parenthetical authority citation at the end of the section.

§ 75.158 [Amended]

■ 24. Amend § 75.158 by:

■ a. In paragraph (c), removing the citation ''§ 75.102(b) and (d)'' and adding in its place the citation ''§ 75.102(d)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§§ 75.190 through 75.192 [Removed and Reserved]

■ 25. Remove the undesignated section heading before § 75.190, and remove and reserve §§ 75.190 through 75.192.

■ 26–27. Revise the undesignated center heading before § 75.200 and revise § 75.200 to read as follows:

Selection of New Discretionary Grant Projects

§ 75.200 How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

(a) The Secretary uses selection criteria to evaluate the applications submitted for new grants under a discretionary grant program.

(b) To evaluate the applications for new grants under the program, the Secretary may use—

(1) Selection criteria established under § 75.209;

(2) Selection criteria in § 75.210; or

(3) Any combination of criteria from paragraphs (b)(1) and (b)(2) of this section.

(c)(1) The Secretary may award a cooperative agreement instead of a grant if the Secretary determines that substantial involvement between the Department and the recipient is necessary to carry out a collaborative project.

(2) The Secretary uses the selection procedures in this subpart to select recipients of cooperative agreements.

§ 75.201 [Amended]

■ 28. Amend § 75.201 by:

■ a. In paragraph (b), adding the words ''or factors'' after the words ''selection criteria'';

■ b. In paragraph (c), removing the word ''and'' between the words ''selection criteria'' and ''selected factors'' and adding in its place the word ''or''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 75.209 [Amended]

■ 29. Amend § 75.209 by:

■ a. In the introductory text, adding a comma immediately after ''limited to''; and

■ b. In paragraph (c), removing the words ''the program statute or regulations'' and adding in their place the words ''applicable statutes and regulations''.

■ 30. Revise § 75.210 to read as follows:

§ 75.210 General selection criteria.

In determining the selection criteria to evaluate applications submitted in a grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. The Secretary may define a selection criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion to another criterion.

(a) *Need for the project.* (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The data presented (including a comparison to local, State, regional, national, or international data) that demonstrates the issue, challenge, or opportunity to be addressed by the proposed project.

(ii) The extent to which the proposed project demonstrates the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide support, resources, or services; close gaps in educational opportunity; or otherwise address the needs of the targeted population, including addressing the needs of underserved populations most affected by the issue, challenge, or opportunity to be addressed by the proposed project.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of underserved populations.

(v) The extent to which the specific nature and magnitude of gaps or challenges are identified and the extent to which these gaps or challenges will be addressed by the services, supports, infrastructure, or opportunities described in the proposed project.

(vi) The extent to which the proposed project will prepare individuals from underserved populations for employment in fields and careers in which there are demonstrated shortages.

(b) *Significance.* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the proposed project is relevant at the national level.

(ii) The significance of the problem or issue as it affects educational access and opportunity, including the underlying or related challenges for underserved populations.

(iii) The extent to which findings from the project's implementation will contribute new knowledge to the field by increasing knowledge or understanding of, including the underlying or related challenges, effective strategies for addressing educational challenges and their effective implementation.

(iv) The potential contribution of the proposed project to improve the provision of rehabilitative services, increase the number or quality of rehabilitation counselors, or develop and implement effective strategies for providing vocational rehabilitation services to individuals with disabilities.

(v) The likelihood that the proposed project will result in systemic change that supports continuous and sustainable improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study, including the extent to which the contributions may be used by other appropriate agencies, organizations, or institutions.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to build local, State, or national capacity to provide, improve, sustain, or expand training or services that address the needs of underserved populations.

(ix) The extent to which the proposed project involves the development or demonstration of innovative and effective strategies that build on, or are alternatives to, existing strategies.

(x) The extent to which the proposed project is innovative and likely to be effective compared to other efforts to address a similar problem.

(xi) The likely utility of the resources (such as materials, processes, or techniques) that will result from the proposed project, including the potential for effective use in a variety of conditions, populations, or settings.

(xii) The extent to which the resources, tools, and implementation lessons of the proposed project will be disseminated in ways to the targeted population and local community that will enable them and others (including practitioners, researchers, education leaders, and partners) to implement similar strategies.

(xiii) The potential effective replicability of the proposed project or strategies, including, as appropriate, the potential for implementation by a variety of populations or settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially contributions toward improving teaching practice and student learning and achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project that demonstrate the impact of the proposed project for the targeted underserved populations in terms of breadth and depth of services.

(xvii) The extent to which the proposed project introduces an innovative approach, such as a modification of an evidence-based project component to serve different populations, an extension of an existing evidence-based project component, a unique composition of various project components to explore combined effects, or an emerging project component that needs further testing.

(c) *Quality of the project design.* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and ambitious yet achievable within the project period, and aligned with the purposes of the grant program.

(ii) The extent to which the design of the proposed project demonstrates community engagement and input to ensure that the project is appropriate to successfully address the needs of the target population or other identified needs and will be used to inform continuous improvement strategies.

(iii) The quality of the conceptual framework, such as a logic model, underlying the proposed project, including how inputs are related to outcomes.

(iv) The extent to which the proposed project's logic model was developed based on engagement of a broad range of community members and partners.

(v) The extent to which the proposed project proposes specific, measurable targets, connected to strategies, activities, resources, outputs, and outcomes.

(vi) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to enable successful achievement of project objectives.

(vii) The quality of the proposed demonstration design, such as qualitative and quantitative design, and procedures for documenting project activities and results for underserved populations.

(viii) The extent to which the design for implementing and evaluating the proposed project will result in

information to guide possible replication of project activities or strategies, including valid and reliable information about the effectiveness of the approach or strategies employed by the project.

(ix) The extent to which the proposed development efforts include adequate quality controls, continuous improvement efforts, and, as appropriate, repeated testing of products.

(x) The extent to which the proposed project demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period.

(xi) The extent to which the design of the proposed project reflects the most recent and relevant knowledge and practices from research and effective practice.

(xii) The extent to which the proposed project represents an exceptional approach for meeting program purposes and requirements and serving the target population.

(xiii) The extent to which the proposed project represents an exceptional approach to any absolute priority or absolute priorities established for the competition.

(xiv) The extent to which the proposed project will integrate or build on ideas, strategies, and efforts from similar external projects to improve relevant outcomes, using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(xv) The extent to which the proposed project is informed by similar past projects implemented by the applicant with demonstrated results.

(xvi) The extent to which the proposed project will include coordination with other Federal investments, as well as appropriate agencies and organizations providing similar services to the target population.

(xvii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards and increased social, emotional, and educational development for students, including members of underserved populations.

(xviii) The extent to which the proposed project encourages explicit plans for authentic, meaningful, and ongoing community member and partner engagement, including their involvement in planning, implementing, and revising project activities for underserved populations.

(xix) The extent to which the proposed project encourages consumer involvement.

(xx) The extent to which performance feedback and formative data are integral to the design of the proposed project and will be used to inform continuous improvement.

(xxi) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(xxii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the project period, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; demonstration of broad support from community members and partners (such as State educational agencies, teachers' unions, families, business and industry, community members, and State vocational rehabilitation agencies) that are critical to the project's long-term success; or capacity-building leveraged from more than one of these types of resources.

(xxiii) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the applicant beyond the end of the project period.

(xxiv) The extent to which the proposed project will increase efficiency in the use of time, staff, money, or other resources in order to improve results and increase productivity.

(xxv) The extent to which the proposed project will integrate with, or build on, similar or related efforts in order to improve relevant outcomes, using nonpublic funds or resources.

(xxvi) The extent to which the proposed project demonstrates a rationale that is aligned with the purposes of the grant program.

(xxvii) The extent to which the proposed project represents implementation of the evidence cited in support of the proposed project with fidelity.

(xxiii) The extent to which the applicant plans to allocate a significant portion of its requested funding to the evidence-based project components.

(xxix) The strength of the commitment from key decision-makers at proposed implementation sites.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equitable and adequate access and participation for project participants who experience barriers based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation. This determination includes the steps developed and described in the form Equity For Students, Teachers, And Other Program Beneficiaries (OMB Control No. 1894–0005) (section 427 of the General Education Provisions Act (20 U.S.C. 1228a)).

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project were determined with input from the community to be served to ensure that they are appropriate to the needs of the intended recipients or beneficiaries, including underserved populations, of those services.

(ii) The extent to which the proposed project is supported by entities that it is intended to serve.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge and an evidence-based project component.

(iv) The likely benefit to the intended recipients, as indicated by the logic model, of the services to be provided.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to build recipient and project capacity in ways that lead to improvements in practice among the recipients of those services.

(vi) The extent to which the services to be provided by the proposed project are likely to provide long-term solutions to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the achievement of students as measured against rigorous and relevant standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in early childhood and family outcomes.

(ix) The likelihood that the services to be provided by the proposed project will lead to meaningful improvements in the skills and competencies necessary to gain employment in high-quality jobs,

careers, and industries or build capacity for independent living.

(x) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners, including those from underserved populations, for maximizing the effectiveness of project services.

(xi) The extent to which the services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xii) The extent to which the services to be provided by the proposed project are focused on recipients, community members, or project participants that are most underserved as demonstrated by the data relevant to the project.

(e) *Quality of the project personnel.* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant demonstrates that it has project personnel or a plan for hiring of personnel who are members of groups that have historically encountered barriers, or who have professional or personal experiences with barriers, based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The qualifications required of the project director or principal investigator, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects for the target population to be served by the project.

(ii) The qualifications required of each of the key personnel in the project, including formal training or work experience in fields related to the objectives of the project and be a representative of the target population.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The extent to which the proposed project team reflects the demographics of project participants to maximize inclusion of diverse perspectives.

(v) The extent to which the proposed planning, implementing, and evaluating project team are familiar with the assets, needs, and other contextual considerations of the proposed implementation sites.

(f) *Adequacy of resources.* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of support for the project, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iv) The extent to which the costs are reasonable in relation to the number of persons to be served, the depth and intensity of services, and the anticipated results and benefits.

(v) The extent to which the costs of the program are reasonable for potential entities to adopt.

(vi) The level of initial matching funds or other commitment from partners, indicating the likelihood for potential continued support of the project after Federal funding ends.

(vii) The potential for the purposes, activities, or benefits of the proposed project to be institutionalized into the ongoing practices and programs of the institution, agency, or organization and continue after the end date of Federal funding.

(g) *Quality of the management plan.* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of plans for ensuring the use of quantitative and qualitative data, including community member and partner input, to inform continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality and accessible products and services from the proposed project for the target population.

(iv) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives, including those from underserved populations, are brought to bear in the design, implementation, operation, evaluation, and improvement of the proposed project, including those of parents, educators, community-based organizations, civil rights organizations, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation or other evidence-building.* (1) The Secretary considers the quality of the evaluation or other evidence-building of the proposed project.

(2) In determining the quality of the evaluation or other evidence-building, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation or other evidence-building are thorough, feasible, relevant, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation or other evidence-building are appropriate to the context within which the project operates and the target population of the proposed project.

(iii) The extent to which the methods of evaluation or other evidence-building provide for describing the fidelity of implementation of the project.

(iv) The extent to which the methods of evaluation or other evidence-building include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quality data that are quantitative and qualitative.

(v) The extent to which the methods of the evaluation or other evidence-building will provide guidance for quality assurance and continuous improvement.

(vi) The extent to which the methods of evaluation or other evidence-building will provide performance feedback and provide formative or interim data that is a periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for

replication or testing and potential implementation in other settings.

(viii) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards without reservations, as described in the What Works Clearinghouse Handbooks.

(ix) The extent to which the methods of evaluation will, if well implemented, produce evidence about the effectiveness of the project on relevant outcomes that would meet the What Works Clearinghouse standards with or without reservations, as described in the What Works Clearinghouse Handbooks.

(x) The extent to which the methods of evaluation include an experimental study, a quasi-experimental design study, or a correlational study with statistical controls for selection bias (such as regression methods to account for differences between a treatment group and a comparison group) to assess the effectiveness of the project on relevant outcomes.

(xi) The extent to which the evaluation plan employs an appropriate analytic strategy to build evidence about the relationship between key project components, mediators, and outcomes for the purpose of informing specific actions on which elements to continue, revise, or dissolve.

(xii) The quality of the evaluation plan for measuring fidelity of implementation, including thresholds for acceptable implementation, to inform how implementation is associated with outcomes.

(xiii) The extent to which the evaluation plan includes a dissemination strategy that is likely to promote others' learning from the project.

(xiv) The qualifications, including relevant training, experience, and independence, of the evaluator, including experience conducting evaluations of similar methodology as proposed, familiar with evaluations for the proposed population and setting.

(xv) The extent to which the proposed project plan includes sufficient resources to conduct the project evaluation effectively.

(i) *Strategy to scale.* (1) The Secretary considers the applicant's strategy to effectively scale, including to underserved populations, the proposed project.

(2) In determining the applicant's capacity to effectively scale the proposed project for recipients and community members and partners, including those from underserved populations, the Secretary considers one or more of the following factors:

(i) The quality of the strategies to reach scale by expanding the project to new populations or settings.

(ii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity), including project partners, to bring the proposed project effectively to scale on a national or regional level working directly, or through partners, during the grant period.

(iii) The applicant's capacity (such as qualified personnel, financial resources, or management capacity) to further develop and bring the proposed project to scale on a regional level working directly, or through partners, during the grant period, based on the findings of the proposed project.

(iv) The mechanisms the applicant will use to broadly disseminate information and resources on its project to support further development, adaptation, or replication by other entities to implement project components in additional settings or with other populations.

(v) The extent to which there is unmet demand for broader implementation of the project that is aligned with the proposed level of scale.

(vi) The extent to which there is a market of potential entities that will commit resources toward implementation.

(vii) The quality of the strategies to scale that take into account previous barriers to being able to expand the proposed project.

(viii) The quality of the plan to deliver project services more efficiently at scale and maintain effectiveness.

(ix) The quality of the plan to develop revenue sources that will make the program self-sustaining.

■ 31. Revise § 75.215 to read as follows:

§ 75.215 How the Department selects a new project.

Sections 75.216 through 75.222 describe the process the Secretary uses to select applications for new grants. All these sections apply to a discretionary grant program. However, only § 75.216 applies also to a formula grant program.(See § 75.1(b) Discretionary grant programs, § 75.1(c) Formula grant programs, and § 75.200, How applications for new discretionary grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.)

■ 32. Revise § 75.216 to read as follows:

§ 75.216 Applications that the Secretary may choose not to evaluate for funding.

The Secretary may choose not to evaluate an application if—

(a) The applicant does not comply with all of the procedural rules that govern the submission of the application; or

(b) The application does not contain the information required under the program.

§ 75.217 [Amended]

■ 33. Amend § 75.217 by:

■ a. In paragraph (a), removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'';

■ b. In paragraph (c), removing the word ''solely'' and adding the words ''and any competitive preference points'' after the words ''selection criteria''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 34. Amend § 75.219 by:

■ a. Revising paragraph (b); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.219 Exceptions to the procedures under § 75.217.

* * * * *

(b)(1) The application was submitted under the preceding competition of the program;

(2) The application was not selected for funding because the application was mishandled or improperly processed by the Department; and

(3) The application has been rated highly enough to deserve selection under § 75.217; or

* * * * *

§ 75.220 [Amended]

■ 35. Amend § 75.220 by:

■ a. In paragraph (b)(2), removing the words ''Office of the Chief Financial Officer (OCFO)'' and adding, in their place, the words ''Office of Finance and Operations (OFO)''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 36. Revise § 75.221 to read as follows:

§ 75.221 Procedures the Department uses under § 75.219(b).

If the special circumstances of § 75.219(b) appear to exist for an application, the Secretary may select the application for funding if the Secretary has documentary evidence that those circumstances exist.

§ 75.222 [Amended]

■ 37. Amend § 75.222 by:

■ a. In paragraph (a)(1), removing the word ''under'' before ''which funds'' and adding in its place the word ''for'';

■ b. In paragraph (a)(2)(ii)(B), removing the citation ''(a)(2)(ii)'' and adding in its place the citation ''(a)(2)(ii)(A)'';
■ c. In paragraph (b)(1), removing the word ''ED'' and adding, it its place, the word ''the Department'';
■ d. Removing, in paragraph (b)(2), the word ''codified'';
■ e. Revising the Note; and
■ f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.222 Procedures the Department uses under § 75.219(c).

* * * * *

Note 1 to § 75.222: To assure prompt consideration, an applicant submitting an unsolicited application should send the application, marked ''Unsolicited Application'' on the outside, to U.S. Department of Education, OFO/G5 Functional Application Team, Mail Stop 5C231, 400 Maryland Avenue SW, Washington, DC 20202–4260.

■ 38. Revise § 75.225 to read as follows:

§ 75.225 What procedures does the Secretary use when deciding to give special consideration to new potential grantees?

(a) If the Secretary determines that special consideration of new potential grantees is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2).

(b) As used in this section, ''new potential grantee'' means an applicant that meets one or more of the following conditions—

(1) The applicant has never received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant does not, as of the deadline date for submission of applications, have an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has not had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(4) The applicant has not had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(5) The applicant has not had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program for which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years; or

(6) Any combination of paragraphs (b)(1) through (5) of this section.

(c) If the Secretary determines that special consideration of applications from new potential grantees is appropriate and chooses, under the procedures in § 75.105(c)(3), to establish a separate competition for those applicants that meet one or more of the conditions in paragraph (b) of this section, the Secretary may also establish a separate competition for applications that do not meet such priority under the procedures in § 75.105(c)(3) and consider those applications separately.

(d) As used in this section, an ''application from a grantee that is not a new potential grantee'' means an applicant that meets one or more of the following conditions—

(1) The applicant has received a grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that received a grant or cooperative agreement, under the program from which it seeks funds;

(2) The applicant has, as of the deadline date for submission of applications, an active grant or cooperative agreement, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129 that has an active grant or cooperative agreement, under the program from which it seeks funds;

(3) The applicant has had an active discretionary grant or cooperative agreement under the program from which it seeks funds, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(4) The applicant has had an active discretionary grant or cooperative agreement from the Department, including through membership in a group application submitted in accordance with §§ 75.127 through 75.129, within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years;

(5) The applicant has had an active contract from the Department within one of the following number of years before the deadline date for submission of applications under the program from which it seeks funds:

(i) 1 year;
(ii) 2 years;
(iii) 3 years;
(iv) 4 years;
(v) 5 years;
(vi) 6 years; or
(vii) 7 years.

(e) For the purpose of this section, a grant, cooperative agreement, or contract is active until the end of the grant's, cooperative agreement's, or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

■ 39. Revise § 75.226 to read as follows:

§ 75.226 What procedures does the Secretary use if the Secretary decides to give special consideration to an application supported by strong evidence, moderate evidence, or promising evidence, or an application that demonstrates a rationale?

If the Secretary determines that special consideration of applications supported by strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2), for applications that are supported by—

(a) Strong evidence;

(b) Moderate evidence;

(c) Promising evidence; or

(d) Evidence that demonstrates a rationale.

■ 40. Add § 75.227 before the undesignated center heading ''Procedures to Make a Grant'' to read as follows:

§ 75.227 What procedures does the Secretary use if the Secretary decides to give special consideration to rural applicants?

(a) If the Secretary determines that special consideration of rural applicants is appropriate, the Secretary may establish a separate competition under the procedures in § 75.105(c)(3), or provide competitive preference under the procedures in § 75.105(c)(2).

(b) As used in this section, ''rural applicant'' means an applicant that meets one or more of the following conditions—

(1) The applicant proposes to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant proposes to serve a community that is served by one or more LEAs—

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is an institution of higher education (IHE) with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics (NCES) College Navigator search tool.

(c) If the Secretary determines that special consideration of rural applicants is appropriate and chooses, under the procedures in § 75.105(c)(3), to establish a separate competition for those applicants that meet one or more of the conditions in paragraph (b) of this section, the Secretary may also establish a separate competition for applications that do not meet that priority under the procedures in § 75.105(c)(3) and consider such applications separately.

(d) As used in this section, a ''non-rural applicant'' means an applicant that meets one or more of the following conditions—

(1) The applicant does not propose to serve a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the Elementary and Secondary Education Act of 1965.

(2) The applicant does not propose to serve a community that is served by one or more LEAs—

(i) With a locale code of 32, 33, 41, 42, or 43; or

(ii) With a locale code of 41, 42, or 43.

(3) The applicant proposes a project in which a majority of the schools served—

(i) Have a locale code of 32, 33, 41, 42, or 43; or

(ii) Have a locale code of 41, 42, or 43.

(4) The applicant is not an institution of higher education (IHE) with a rural campus setting, or the applicant proposes to serve a campus with a rural setting. Rural settings include one or more of the following: Town-Fringe, Town-Distant, Town-Remote, Rural Fringe, Rural-Distant, and Rural-Remote, as defined by the National Center for Education Statistics (NCES) College Navigator search tool.

■ 41. Revise § 75.230 to read as follows:

§ 75.230 How the Department makes a grant.

(a) If the Secretary selects an application under §§ 75.217, 75.220, or 75.222, the Secretary follows the procedures in §§ 75.231 through 75.236 to set the amount and determine the conditions of a grant. Sections 75.235 through 75.236 also apply to grants under formula grant programs. (See § 75.200 for more information.)

§ 75.234 [Amended]

■ 42. Amend § 75.234 by:

■ a. In paragraph (a)(2), removing the word ''special'' and adding in its place the word ''specific''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 43. Revise § 75.250 to read as follows:

§ 75.250 Maximum project period.

The Secretary may approve a project period of up to 60 months to perform the substantive work of a grant unless an applicable statute provides otherwise.

■ 44. Revise § 75.253 to read as follows:

§ 75.253 Continuation of a multiyear project after the first budget period.

(a) *Continuation award.* A grantee, in order to receive a continuation award from the Secretary for a budget period after the first budget period of an approved multiyear project, must—

(1) Either—

(i) Demonstrate that it has made substantial progress in achieving—

(A) The goals and objectives of the project; and

(B) The performance targets in the grantee's approved application, if the Secretary established performance measurement requirements for the grant in the application notice; or

(ii) Obtain the Secretary's approval for changes to the project that—

(A) Do not increase the amount of funds obligated to the project by the Secretary; and

(B) Enable the grantee to achieve the goals and objectives of the project and meet the performance targets of the project, if any, without changing the scope or objectives of the project;

(2) Submit all reports as required by § 75.118;

(3) Continue to meet all applicable eligibility requirements of the grant program;

(4) Maintain financial and administrative management systems that meet the requirements in 2 CFR 200.302 and 200.303; and

(5) Receive a determination from the Secretary that continuation of the project is in the best interest of the Federal Government.

(b) *Information considered in making a continuation award.* In determining whether the grantee has met the requirements described in paragraph (a) of this section, the Secretary may consider any relevant information regarding grantee performance. This includes considering reports required by § 75.118, performance measures established by § 75.110, financial information required by 2 CFR part 200, and any other relevant information.

(c) *Funding for continuation awards.* Subject to the criteria in paragraphs (a) and (b) of this section, in selecting applications for funding under a

program, the Secretary gives priority to continuation awards over new grants.

(d) *Budget period.* If the Secretary makes a continuation award under this section—

(1) The Secretary makes the award under §§ 75.231 through 75.236; and

(2) The new budget period begins on the day after the previous budget period ends.

(e) *Amount of continuation award.* (1) Within the original project period of the grant and notwithstanding any requirements in 2 CFR part 200, a grantee may expend funds that have not been obligated at the end of a budget period for obligations of subsequent budget periods if—

(i) The obligation is for an allowable cost within the approved scope and objectives of the project; and

(ii) The obligation is not otherwise prohibited by applicable statutes, regulations, or the conditions of an award.

(2) The Secretary may—

(i) Require the grantee to submit a written statement describing how the funds made available under paragraph (e)(1) of this section will be used; and

(ii) Determine the amount of new funds that the Department will make available for the subsequent budget period after considering the statement the grantee provides under paragraph (e)(2)(i) of this section and any other information available to the Secretary about the use of funds under the grant.

(3) In determining the amount of new funds to make available to a grantee under this section, the Secretary considers whether the unobligated funds made available are needed to complete activities that were planned for completion in the prior budget period.

(4) A decision to reduce the amount of a continuation award under this paragraph (e) does not entitle a grantee to reconsideration under 2 CFR 200.341.

(f) *Decision not to make a continuation award.* The Secretary may decide not to make a continuation award if—

(1) A grantee fails to meet any of the requirements in paragraph (a) of this section; or

(2) A grantee fails to ensure that data submitted to the Department as a condition of the grant meet the definition of ''quality data'' in 34 CFR 77.1(c) and does not have a plan acceptable to the Secretary for addressing data-quality issues in the next budget period.

(g) *Request for reconsideration.* If the Secretary decides not to make a continuation award under this section, the Secretary will notify the grantee of that decision, the grounds on which it is based, and, consistent with 2 CFR 200.341, provide the grantee with an opportunity to request reconsideration of the decision.

(1) A request for reconsideration must—

(i) Be submitted in writing to the Department official identified in the notice denying the continuation award by the date specified in that notice; and

(ii) Set forth the grantee's basis for disagreeing with the Secretary's decision not to make a continuation award and include relevant supporting documentation.

(2) The Secretary will consider the request for reconsideration.

(h) *No-cost extension when a continuation award is not made.* If the Secretary decides not to make a continuation award under this section, the Secretary may authorize a no-cost extension of the last budget period of the grant in order to provide for the orderly closeout of the grant.

(i) *A decision to reduce or not to make a continuation award does not constitute withholding.* A decision by the Secretary to reduce the amount of a continuation award under paragraph (e) of this section or to not make a continuation award under paragraph (f) of this section does not constitute a withholding under section 455 of GEPA (20 U.S.C. 1234d).

■ 45. Revise § 75.254 to read as follows:

§ 75.254 Data collection period.

(a) The Secretary may approve a data collection period for a grant for a period of up to 72 months after the end of the project period and provide funds for the data collection period for the purpose of collecting, analyzing, and reporting performance measurement data on the project.

(b) If the Secretary plans to approve a data collection period, the Secretary may inform applicants of the Secretary's intent to approve data collection periods in the application notice published for a competition or may decide to fund data collection periods after grantees have started their project periods.

(c) If the Secretary informs applicants of the intent to approve data collection periods in the notice inviting applications, the Secretary may require applicants to include in the application a budget for, and description of, a data collection period for a period of up to 72 months, as specified in the notice inviting applications, after the end of the project period.

§ 75.260 [Amended]

■ 46. Amend § 75.260 by:

■ a. In paragraph (b), removing the words ''the authorizing statute for that program'' and adding in their place the words ''applicable statutes and regulations''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 47. Revise § 75.261 to read as follows:

§ 75.261 Extension of a project period.

(a) *One-time extension of project period without prior approval.* A grantee may extend the project period of an award one time, for a period up to 12 months, without the prior approval of the Secretary, if—

(1) The grantee meets the requirements for extension in 2 CFR 200.308(e)(2); and

(2) The extension is not otherwise prohibited by statute, regulation, or the conditions of an award.

(b) *Extension of project period with prior approval.* At the conclusion of the project period extension authorized under paragraph (a) of this section, or in any case in which a project period extension is not authorized under paragraph (a) of this section, a grantee, with prior approval of the Secretary, may extend a project for an additional period if—

(1) The extension is not otherwise prohibited by statute, regulations, or the conditions of an award;

(2) The extension does not involve the obligation of additional Federal funds;

(3) The extension is to carry out the approved objectives and scope of the project; and

(4)(i) The Secretary determines that, due to special or unusual circumstances applicable to a class of grantees, the project periods for the grantees should be extended; or

(ii)(A) The Secretary determines that special or unusual circumstances would delay completion of the project beyond the end of the project period;

(B) The grantee requests an extension of the project period at least 45 calendar days before the end of the project period; and

(C) The grantee provides a written statement, before the end of the project period, of the reasons the extension is appropriate under paragraph (b)(4)(ii)(A) of this section and the period for which the project extension is requested.

(c) *Waiver.* The Secretary may waive the requirement in paragraph (b)(4)(ii)(B) of this section if—

(1) The grantee could not reasonably have known of the need for the extension on or before the start of the 45-day period; or

(2) The failure to give notice on or before the start of the 45-day period was unavoidable.

§ 75.263 [Amended]

■ 48. Amend § 75.263 by:

■ a. Removing '', notwithstanding any requirement in 2 CFR part 200,'' from the introductory text.

■ b. Removing the parenthetical authority citation at the end of the section.

§ 75.264 [Amended]

■ 49. Remove the authority citation at the end of the section.

■ 50. Amend § 75.500 by revising paragraph (a) to read as follows:

§ 75.500 Federal statutes and regulations on nondiscrimination.

(a) Each grantee must comply with the following statutes and regulations:

TABLE 1 TO § 75.500(a)

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).	34 CFR part 106.
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104.
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

* * * * *

§ 75.519 [Amended]

■ 51. Amend § 75.519 by:

■ a. Removing the words ''its grantee'' and adding in their place the words ''its grant'';

■ b. Adding '', consistent with the cost principles described in 2 CFR part 200'' after the word ''funds''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 75.531 [Amended]

■ 52. Amend § 75.531 by removing the word ''insure'' and adding in its place the word ''ensure''.

§ 75.533 [Amended]

■ 53. Amend § 75.533 by:

■ a. Removing the words ''authorizing statute or implementing regulations for the program'' and adding in their place the words ''applicable statutes and regulations''.

■ b. Removing the parenthetical authority citation at the end of the section.

§ 75.534 [Amended]

■ 54. Amend § 75.534 in paragraph (a) by removing the words ''the program statute'' and adding in their place the words ''applicable statutes and regulations''.

■ 55. Revise § 75.560 to read as follows:

§ 75.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix XI; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have obtained a current indirect cost rate agreement or approved cost allocation plan from its cognizant agency, to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within 90 days after the date on which the Department issues the Grant Award Notification (GAN).

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the *de minimis* rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate agreement or approved cost allocation plan, the Secretary may permit the grantee to charge its grant for indirect costs at a temporary rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a current indirect cost rate and cost allocation plan approved by a grantee's cognizant

agency but may establish a restricted indirect cost rate or cost allocation plan compliant with 34 CFR 76.564 through 76.569 to satisfy the statutory requirements of certain programs administered by the Department.

■ 56. Amend § 75.561 by:

■ a. Revising the section heading and paragraph (a); and

■ b. Removing the second sentence of paragraph (b).

The revisions read as follows:

§ 75.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a grantee that is eligible and does not elect a *de minimis* rate, and is not a local educational agency. For the purposes of this section, the term ''local educational agency'' does not include a State agency.

* * * * *

■ 57. Revise § 75.562 to read as follows:

§ 75.562 Indirect cost rates for educational training projects; exceptions.

(a) Educational training grants provide funds for training or other educational services. Examples of the work supported by training grants are summer institutes, training programs for selected participants, the introduction of new or expanded courses, and similar instructional undertakings that are separately budgeted and accounted for by the sponsoring institution. These grants do not usually support activities involving research, development, and dissemination of new educational materials and methods. Training grants largely implement previously developed materials and methods and require no significant adaptation of techniques or instructional services to fit different circumstances.

(b) The Secretary uses the definition in paragraph (a) of this section to determine which grants are educational training grants.

(c)(1) Indirect cost reimbursement on a training grant is limited to the lesser of the recipient's approved indirect cost rate, or 8 percent of the modified total direct cost (MTDC) base. MTDC is defined in 2 CFR 200.1.

(2) If the grantee does not have a federally recognized indirect cost rate agreement on the date on which the training grant is awarded, the grantee may elect to use the temporary indirect cost rate authorized under § 75.560(d)(3) or a rate of 8 percent of the MTDC base. The *de minimis* rate may not be used on educational training programs.

(i) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(ii) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(3) The 8 percent indirect cost rate reimbursement limit specified in paragraph (c)(1) of this section also applies when subrecipients issue subawards that fund training, as determined by the Secretary under paragraph (b) of this section.

(4) The 8 percent limit does not apply to agencies of Indian tribal governments, local governments, and States as defined in 2 CFR 200.1.

(5) Indirect costs in excess of the 8 percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

(d) A grantee using the training rate of 8 percent is required to maintain documentation to justify the 8 percent rate.

■ 58. Revise § 75.563 to read as follows:

§ 75.563 Restricted indirect cost rate or cost allocation plans—programs covered.

If a grantee or subgrantee decides to charge indirect costs to a program that is subject to a statutory prohibition on using Federal funds to supplant non-Federal funds, the grantee shall—

(a) Use a negotiated restricted indirect cost rate or restricted cost allocation plan compliant with 34 CFR 76.564 through 76.569; or

(b) Elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate under 34 CFR 76.564 through 76.569, the lower rate shall be used on the affected program.

(c) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(d) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

■ 59. Amend § 75.564 by:

■ a. Revising paragraph (b);

■ b. Adding the words ''and other applicable restrictions'' at end of paragraph (d);

■ c. Removing the word ''for'' after the phrase ''to the direct cost base'' and adding in its place the word ''of'' in paragraph (e)(1);

■ d. Adding the words ''and program requirements'' at the end of paragraph (e)(1);

■ e. Removing the hyphen between ''sub'' and ''awards'' in paragraph (e)(2); and

■ f. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.564 Reimbursement of indirect costs.

* * * * *

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

* * * * *

§ 75.580 [Amended]

■ 60. Amend § 75.580 is amended by removing the parenthetical authority citation.

■ 61. Amend § 75.590 by:

■ a. Adding paragraph (c); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.590 Grantee evaluations and reports.

* * * * *

(c) An application notice for a competition may require each grantee under that competition to do one or more of the following:

(1) Conduct an independent evaluation;

(2) Make public the final report, including results of any required independent evaluation;

(3) Ensure that the data from the independent evaluation are made available to third-party researchers consistent with applicable privacy requirements;

(4) Submit the final evaluation to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences; or

(5) Submit the final performance report under the grant to ERIC.

■ 62. Revise § 75.591 to read as follows:

§ 75.591 Federal evaluation; cooperation by a grantee.

A grantee must cooperate in any evaluation of the program by the Secretary, in accordance with program

statute. If requested by the Secretary, a grantee must—

(a) Cooperate with the collection of information, including from all or a subset of subgrantees and potential project beneficiaries, including both participants and non-participants, through surveys, observations, administrative records, or other data collection and analysis methods. This information collection may include program characteristics, including uses of program funds, as well as beneficiary characteristics, participation, and outcomes; and

(b) If required by the Secretary, pilot its Department-funded activities with a subset of subgrantees, potential project beneficiaries, or eligible participants and allow the Department or its agent to randomly select the subset for the purpose of providing a basis for an experimental evaluation that could meet What Works Clearinghouse standards, with or without reservations.

■ 63. Revise § 75.600 to read as follows:

§ 75.600 Applicability of using grant funds for construction or real property.

(a) As used in this section, the terms ''construction'' and ''minor remodeling'' have the meanings given those terms in 34 CFR 77.1(c).

(b) Except as provided in paragraph (c) of this section, §§ 75.600 through 75.618 apply to:

(1) An applicant that requests funds for construction or real property; and

(2) A grantee whose grant includes funds for construction or real property.

(c) Sections 75.600 through 75.618 do not apply to grantees in—

(1) Programs prohibited from using funds for construction or real property under § 75.533; and

(2) Projects determined by the Secretary to be minor remodeling under 34 CFR 77.1(c).

■ 64. Revise § 75.601 to read as follows:

§ 75.601 Approval of the construction.

(a) The Secretary approves a direct grantee construction project—

(1) When the initial grant application is approved; or

(2) After the grant has been awarded.

(b) A grantee may not advertise or place the construction project on the market for bidding until after the Secretary has made a determination on the specifications of the project.

■ 65. Revise § 75.602 to read as follows:

§ 75.602 Planning the construction.

(a) In planning the construction project, a grantee—

(1) Must ensure that the design is functional, economical, and not elaborate in design or extravagant in the use of materials compared with facilities of a similar type constructed in the State or other applicable geographic area.

(2) May consider excellence of architecture and design and inclusion of works of art. A grantee must not spend more than 1 percent of the cost of the project on works of art.

(3) May make reasonable provision, consistent with the other uses to be made of the construction, for areas that are adaptable for artistic and other cultural activities.

(b) In developing the proposed budget for the construction project, a grantee—

(1) Must ensure that sufficient funds are available to meet any non-Federal share of the cost of the construction project.

(2) May budget for reasonable and predictable contingency costs consistent with 2 CFR 200.433.

(c) Prior to providing approval of the final working specifications of a construction project under § 75.601, the Secretary considers a grantee's compliance with the following requirements, as applicable—

(1) Title to site (§ 75.610).

(2) Environmental impact assessment (§ 75.611).

(3) Avoidance of flood hazards (§ 75.612).

(4) Compliance with the Coastal Barrier Resources Act (§ 75.613).

(5) Preservation of historic sites (§ 75.614).

(6) Build America, Buy America Act (§ 75.615).

(7) Energy conservation (§ 75.616).

(8) Access for individuals with disabilities (§ 75.617).

(9) Safety and health standards (§ 75.618).

■ 66. Revise § 75.603 to read as follows:

§ 75.603 Beginning the construction.

(a) A grantee must begin work on the construction project within a reasonable time after the Secretary has approved the project under § 75.601.

(b) A grantee must follow all applicable procurement standards in 2 CFR part 200, subpart D, when advertising or placing the project on the market for bidding.

■ 67. Revise § 75.604 to read as follows:

§ 75.604 During the construction.

(a) A grantee must maintain competent architectural engineering supervision and inspection at the construction site to ensure that the work conforms to the approved final working specifications.

(b) A grantee must complete the construction in accordance with the approved final working specifications unless a revision is approved.

(c) If a revision to the timeline, budget, or approved final working specifications is required, the grantee must request prior written approval consistent with 2 CFR 200.308(h).

(d) A grantee must comply with Federal laws regarding prevailing wages on construction and minor remodeling projects assisted with Department funding, including, as applicable, subchapter IV of chapter 31 of title 40, United States Code (commonly known as the ''Davis-Bacon Act''; as applied through section 439 of GEPA; 20 U.S.C. 1232b) and any tribally determined prevailing wages.

(e) A grantee must submit periodic performance reports regarding the construction project containing information specified by the Secretary consistent with 2 CFR 200.329(d).

■ 68. Revise § 75.605 to read as follows:

§ 75.605 After the construction.

(a) A grantee must ensure that sufficient funds will be available for effective operation and maintenance of the facilities after the construction is complete.

(b) A grantee must operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

(c) A grantee must maintain all financial records, supporting documents, statistical records, and other non-Federal entity records pertinent to the construction project consistent with 2 CFR 200.334.

■ 69. Revise § 75.606 is revised to read as follows:

§ 75.606 Real property requirements.

(a) The Secretary approves a direct grantee real property project—

(1) When the initial grant application is approved;

(2) After the grant has been awarded; or

(3) With the approval of a construction project under § 75.601.

(b) A grantee using any grant funds for real property acquisition must:

(1) Comply with the Real Property Standards of the Uniform Guidance (2 CFR 200.310 through 200.316).

(2) Not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without written permission and instructions from the Secretary.

(3) Record the Federal interest in the title of the real property in the official real property records for the jurisdiction in which the facility is located.

(4) Include a covenant in the title of the real property to ensure nondiscrimination.

(5) Report at least annually on the status of real property in which the

Federal Government retains an interest consistent with 2 CFR 200.330.

(c) A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15 and 49 CFR part 24, as applicable

§ 75.607 through 75.609 [Removed and Reserved]

■ 70. Remove and reserve §§ 75.607 through 75.609.

■ 71. Revise § 75.610 to read as follows:

§ 75.610 Title to site.

A grantee must have or obtain a full title or other interest in the site (such as a long-term lease), including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for at least 25 years after completion of the project or for the useful life of the construction, whichever is longer.

■ 72. Revise § 75.611 to read as follows:

§ 75.611 Environmental impact assessment.

(a) When a grantee's construction or real property project is considered a ''Major Federal Action,'' as defined in 40 CFR 1508.1(q), the grantee must include an assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and Executive Order 11514 (35 FR 4247).

(b) If a grantee's construction or real property project is not considered a ''Major Federal Action'' under NEPA, a NEPA environmental impact assessment is not required; however—

(1) An environmental impact assessment may be required under State or local requirements; and

(2) Grantees are encouraged to perform some type of environmental assessment for projects that involve breaking ground, such as projects to expand the size of an existing building or replace an outdated building.

■ 73. Revise § 75.612 to read as follows:

§ 75.612 Avoidance of flood hazards.

In planning the construction or real property project, a grantee must, in accordance with Executive Order 11988 of May 24, 1977 (3 CFR, 1978 Comp., pp. 117–120):

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

■ 74. Revise § 75.613 to read as follows:

§ 75.613 Compliance with the Coastal Barrier Resources Act.

A grantee may not use, within the Coastal Barrier Resources System, funds made available under a program administered by the Secretary for any purpose prohibited by the Coastal Barrier Resources Act (16 U.S.C. 3501–3510).

■ 75. Revise § 75.614 to read as follows:

§ 75.614 Preservation of historic sites.

(a) A grantee must describe the relationship of the proposed construction to, and probable effect on, any district, site, building, structure, or object that is:

(1) Included in the National Register of Historic Places; or

(2) Eligible under criteria established by the Secretary of the Interior for inclusion in the National Register of Historic Places.

(b) In deciding whether to approve a construction project, the Secretary considers:

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments received by the Advisory Council on Historic Preservation (see 36 CFR subpart 800.2).

■ 76. Revise § 75.615 to read as follows:

§ 75.615 Build America, Buy America Act.

A grantee must comply with the requirements of the Build America, Buy America Act, Public Law 117–58, § 70901–70927 and implementing regulations, as applicable.

■ 77. Revise § 76.616 to read as follows:

§ 75.616 Energy conservation.

(a) To the extent practicable, a grantee must design and construct facilities to maximize the efficient use of energy.

(b) A grantee must comply with ASHRAE 90.1 in their construction project.

(c) ASHRAE 90.1, Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings, 2022 is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the Department of Education (the Department) and at the National Archives and Records Administration (NARA). Contact the Department at: Department of Education, 400 Maryland Avenue SW, Room 4C212, Washington, DC 20202–8472; phone: 202–245–6776; email: *EDGAR@ed.gov.* 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.* The material may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) at American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, Georgia 30329; *www.ashrae.org.*

■ 78. Revise § 75.617 to read as follows:

§ 75.617 Access for individuals with disabilities.

A grantee must comply with the following Federal regulations on access by individuals with disabilities that apply to the construction of facilities:

(a) For residential facilities: 24 CFR part 40; and

(b) For non-residential facilities: 41 CFR 102–76.60 to 102–76.95.

§ 75.618 [Redesignated as § 75.619]

■ 79. Redesignate § 75.618 as § 75.619.

■ 80. Add new § 75.618 to read as follows:

§ 75.618 Safety and health standards.

In planning for and designing a construction project, a grantee must comply with the following:

(a) The standards under the Occupational Safety and Health Act of 1970 (See 29 CFR part 1910); and

(b) State and local codes, to the extent that they are more stringent.

■ 81. Revise § 75.620 to read as follows:

§ 75.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published.

(b) *Required statement.* The grantee must ensure that any publication that contains project materials also contains the following statement:

The contents of this [insert type of publication; such as book, report, film, website, and web page] were developed under a grant from the U.S. Department of Education (Department). The Department does not mandate or prescribe practices, models, or other activities described or discussed in this document. The contents of this [insert type of publication] may contain examples of, adaptations of, and links to resources created and maintained by another public or private organization. The Department does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. The content of this [insert type of publication] does not necessarily represent the policy of the Department. This publication is not intended to represent the views or policy of, or be an endorsement of any

views expressed or materials provided by, any Federal agency.

■ 82. Revise § 75.622 to read as follows:

§ 75.622 Definition of ''project materials.''

As used in §§ 75.620 through 75.621, ''project materials'' means a copyrightable work developed with funds from a grant of the Department. (See 2 CFR 200.307 and 200.315.)

■ 83. Add § 75.623 to read as follows:

§ 75.623 Public availability of grant-supported research publications.

(a) Grantees must make final peer-reviewed scholarly publications resulting from research supported by Department grants available to the Education Resources Information Center (ERIC), which is administered by the Institute of Education Sciences, upon acceptance for publication.

(b) A final, peer-reviewed scholarly publication is the final version accepted for publication and includes all edits made as part of the peer review process, as well as all graphics and supplemental materials that are associated with the article.

(c) The Department will make the final, peer-reviewed scholarly publication available to the public through ERIC no later than 12 months after the official date of publication.

(d) Grantees are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this section.

■ 84. Remove the cross-reference under the heading ''Inventions and Patents'' before § 75.626.

■ 85. Amend § 75.626 by:

■ a. Revising the section heading; and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.626 Show Federal support.

* * * * *

■ 86. Revise § 75.650 to read as follows:

§ 75.650 Participation of students enrolled in private schools.

If applicable statutes and regulations provide for participation of students enrolled in private schools and, as applicable, their teachers or other educational personnel, and their families, the grantee must provide, as applicable, services in accordance with §§ 299.7 through 299.11.

§ 75.682 [Amended]

■ 87. Amend § 75.682 by:

■ a. Removing the word ''shall'' and adding in its place the word ''must'';

■ b. Removing the words ''of 1970'' after the words ''Animal Welfare Act''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 88. Revise § 75.700 to read as follows:

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee must comply with § 75.500, applicable statutes, regulations, Executive orders, stated institutional policies, and applications, and must use Federal funds in accordance with the U.S. Constitution and those statutes, regulations, Executive orders, stated institutional policies, and applications.

§ 75.702 [Amended]

■ 89. Amend § 75.702 by removing the word ''insure'' and adding in its place the word ''ensure''.

■ 90. Amend § 75.708 by:

■ a. Revising paragraph (b) introductory text;

■ b. In paragraph (d)(2), removing the words ''Federal statute and executive orders and their implementing regulations'' and adding in their place the words ''applicable law'';

■ c. In paragraph (d)(3), removing the word ''anti-discrimination'' and adding in its place the word ''nondiscrimination'';

■ d. Revising paragraph (e); and

■ e. Removing the parenthetical authority citation at the end of the section.

The revisions reads as follows:

§ 75.708 Subgrants.

* * * * *

(b) The Secretary may, through an announcement in the **Federal Register** or other reasonable means of notice, authorize subgrants when necessary to meet the purposes of a program. In this announcement, the Secretary will—

* * * * *

(e) Grantees that are not allowed to make subgrants under paragraph (b) of this section are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

■ 91. Amend § 75.720 by:

■ a. In paragraph (a)(1), removing the citation ''2 CFR 200.327'' and adding in its place the citation ''2 CFR 200.328'';

■ b. In paragraph (a)(2), removing the citation ''2 CFR 200.328'' and adding in its place the citation ''2 CFR 200.329'';

■ c. Adding paragraph (d); and

■ d. Removing the parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 75.720 Financial and performance reports.

* * * * *

(d) Upon request of the Secretary, a grantee shall, at the time of submission to the Secretary, post any report on performance and financial expenditure required by this section on a public-facing website maintained by the grantee.

■ 92. Amend § 75.740 by:

■ a. In paragraph (a), revising the parenthetical sentence at the end;

■ b. In paragraph (b), adding '' ; 20 U.S.C. 1232h, commonly known as the ''Protection of Pupil Rights Amendment'' or ''PPRA''; and the Common Rule for the protection of Human Subjects and its implementing regulations at 34 CFR part 97, as applicable'' '' after the word ''GEPA and its implementing regulations at 34 CFR part 98''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the ''Family Educational Rights and Privacy Act of 1974'' or ''FERPA''.)

* * * * *

§ 75.900 [Amended]

■ 93. Amend § 75.900 by removing ''ED'' in paragraphs (a) and (b) and adding in its place the words ''the Department''.

§ 75.901 [Amended]

■ 94. Amend § 75.901 by:

■ a. In the introductory text, removing the words ''that are not subject to other procedures''; and

■ b. Removing the parenthetical authority citation from the end of the section.

PART 76—STATE-ADMINISTERED FORMULA GRANT PROGRAMS

■ 95. The authority citation for part 76 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

Section 76.101 also issued under 20 U.S.C. 1221e–3, 3474, and 7844(b).

Section 76.127 also issued under 48 U.S.C. 1469a.

Section 76.128 also issued under 48 U.S.C. 1469a.

Section 76.129 also issued under 48 U.S.C. 1469a.

Section 76.130 also issued under 48 U.S.C. 1469a.

Section 76.131 also issued under 48 U.S.C. 1469a.

Section 76.132 also issued under 48 U.S.C. 1469a.

Section 76.134 also issued under 48 U.S.C. 1469a.

Section 76.136 also issued under 48 U.S.C. 1469a.

Section 76.140 also issued under 20 U.S.C. 1221e–3, 1231g(a), and 3474.

Section 76.301 also issued under 1221e–3, 3474, and 7846(b).

Section 76.401 also issued under 20 U.S.C. 1221e–3, 1231b–2, and 3474.

Section 76.709 also issued under 20 U.S.C. 1221e–3, 1225(b), and 3474.

Section 76.710 also issued under 20 U.S.C. 1221e–3, 1225(b), and 3474.

Section 76.720 also issued under 20 U.S.C. 1221e–3, 1231a, and 3474.

Section 76.740 also issued under 20 U.S.C. 1221e–3, 1232g, 1232h, and 3474.

Section 76.783 also issued under 20 U.S.C. 1231b–2.

Section 76.785 also issued under 20 U.S.C. 7221e.

Section 76.786 also issued under 20 U.S.C. 7221e

Section 76.787 also issued under 20 U.S.C. 7221e.

Section 76.788 also issued under 20 U.S.C. 7221e.

Section 76.901 also issued under 20 U.S.C. 1234.

■ 96. The part heading for part 76 is revised to read as set forth above.

§ 76.1 [Amended]

■ 97. Revise § 76.1 to read as follows:

§ 76.1 Programs to which this part applies.

(a) The regulations in this part apply to each State-administered formula grant program of the Department.

(b) If a State-administered formula grant program does not have implementing regulations, the Secretary implements the program under the applicable statutes and, to the extent consistent with the authorizing statute, under the GEPA and the regulations in this part. For the purposes of this part, the term State-administered formula grant program means a program whose applicable statutes or implementing regulations provide a formula for allocating program funds among eligible States.

§ 76.2 [Amended]

■ 98. Amend § 76.2 by removing the parenthetical authority citation at the end of the section.

■ 99. Revise § 76.50 to read as follows:

§ 76.50 Basic requirements for subgrants.

(a) Under a program covered by this part, the Secretary makes a grant—

(1) To the State agency designated by applicable statutes and regulations for the program; or

(2) To the State agency designated by the State in accordance with applicable statutes and regulations.

(b) Unless prohibited by applicable statutes or regulations or by the terms and conditions of the grant award, a State may use State-administered formula grant funds—

(1) Directly;

(2) To make subgrants to eligible applicants; or

(3) To authorize a subgrantee to make subgrants.

(c) Grantees are responsible for monitoring subgrantees consistent with 2 CFR 200.332.

(d) Grantees, in cases where subgrants are prohibited by applicable statutes or regulations or the conditions of a grant award, are authorized to contract, as needed, for supplies, equipment, and other services, in accordance with 2 CFR part 200, subpart D (2 CFR 200.317 through 200.326).

§ 76.51 [Amended]

■ 100. Amend § 76.51 by:

■ a. In the introductory text, removing the words ''a program statute authorizes'' and adding in their place ''applicable statutes and regulations authorize''; and

■ b. Removing the parenthetical citation authority at the end of the section.

§ 76.52 [Amended]

■ 101. Amend § 76.52 by:

■ a. In paragraphs (a)(3) and (4), (b), (c)(1), and (d)(1) and (2), removing the words ''State-Administered Formula Grant'' and adding in their place ''State-administered formula grant''; and

■ b. In paragraph (e), adding the word ''Federal'' between the words ''indirect'' and ''financial assistance''.

§ 76.100 [Amended]

■ 102. Amend § 76.100 by removing the words ''the authorizing statute and implementing regulations'' and adding in their place the words ''applicable statutes and regulations''.

■ 103. Revise § 76.101 to read as follows:

§ 76.101 State plans in general.

(a) Except as provided in paragraph (b) of this section, a State that makes subgrants to local educational agencies under a program subject to this part must have on file with the Secretary a State plan that meets the requirements of section 441 of GEPA (20 U.S.C. 1232d).

(b) The requirements of section 441 of GEPA do not apply to a State plan submitted for a program under the Elementary and Secondary Education Act of 1965.

■ 104. Revise § 76.102 to read as follows:

§ 76.102 Definition of ''State plan'' for this part.

As used in this part, *State plan* means any document that applicable statutes and regulations for a State-administered formula grant program require a State to submit in order to receive funds for the program. To the extent that any provision of this part conflicts with program-specific implementing regulations related to the plan, the program-specific implementing regulations govern.

■ 105. Revise § 76.103 to read as follows:

§ 76.103 Multiyear State plans.

Unless otherwise specified by statute, regulations, or the Secretary, each State plan is effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

§ 76.125 [Amended]

■ 106. Amend § 76.125 by:

■ a. In paragraph (b), removing ''the Trust Territory of the Pacific Islands,'';

■ b. In paragraph (c), adding '', consistent with applicable law'' after the word ''Department''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 76.127 [Amended]

■ 107. Amend § 76.127 by:

■ a. In the introductory text, removing the words ''of the programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 108. Amend § 76.128 by:

■ a. Removing the words ''of the programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';

■ b. Revising the example at the end of the section; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.128 What is a consolidated grant?

* * * * *

Example 1 to § 76.128. Assume the Virgin Islands applies for a consolidated grant that includes funds under the Carl D. Perkins Career and Technical Education Act of 2006 and title I, part A; title II, part A; and title IV, part A of the Elementary and Secondary Education Act of 1965. If the Virgin Islands' allocation under the formula for each of these four programs is $150,000, the total consolidated grant to the Virgin Islands would be $600,000.

■ 109. Amend § 76.129 by:

■ a. Revising the example after paragraph (a) and the example after paragraph (b).

■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 76.129 How does a consolidated grant work?

(a) * * *

Example 1 to paragraph (a). Assume that Guam receives, under the consolidated grant, funds from Carl D. Perkins Career and Technical Education Act of 2006, Title I, part A of the ESEA, and Title IV, part A of the ESEA. The sum of the allocations under these programs is $600,000. Guam may choose to allocate this $600,000 among one, two, or all three of the programs.

(b) * * *

Example 2 to paragraph (b). Assume that American Samoa uses part of the funds under a consolidated grant to carry out programs and activities under Title IV, part A of the ESEA. American Samoa need not submit to the Secretary a State plan that addresses the program's application requirement that the State educational agency describe how it will use funds for State-level activities. However, in carrying out the program, American Samoa must use the required amount of funds for State-level activities under the program.

§ 76.130 [Amended]

■ 110. Amend § 76.130 by:

■ a. Removing in paragraph (d) the words ''statute and regulations for that program'' and adding in their place the words ''statutes and regulations that apply to that program''; and

■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.131 [Amended]

■ 111. Amend § 76.131 by:

■ a. In paragraph (a), removing the words ''programs listed in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';

■ b. In paragraph (b), removing the words ''the authorizing statutes and regulations'' and adding in their place the words ''applicable statutes and regulations'';

■ c. In paragraph (c)(1), removing the words ''programs in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs'';

■ c. In paragraph (c)(2), removing the words ''program or programs in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and

■ d. Removing the parenthetical authority citation at the end of the section.

§ 76.132 [Amended]

■ 112. Amend § 76.132 by:

■ a. In paragraphs (a)(2),removing the word ''authorizing'' and adding in its place the word ''applicable'';

■ b. In paragraph (a)(4), removing the word ''assure'' and adding in its place the word ''ensure'';

■ c. In paragraph (a)(5), removing the phrase ''2 CFR 200.327 and 200.328'' and adding in its place ''2 CFR 200.328 and 200.329'';

■ d. In paragraph (a)(9),removing the word ''authorizing'' and adding in its place the word ''applicable''; and

■ e. Removing the parenthetical authority citation at the end of the section.

■ 113. Amend § 76.134 by:

■ a. Revising paragraph (a);

■ b. In paragraph (b), removing the words ''the program statute'' and adding in their place the words ''applicable statutes''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any State-administered formula grant programs be included in its consolidated grant and may apply separately for assistance under any other of those programs for which it is eligible.

* * * * *

§ 76.136 [Amended]

■ 114. Amend § 76.136 by:

■ a. Removing the words ''programs described in § 76.125(c)'' and adding in their place the words ''State-administered formula grant programs''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 115. Revise § 76.140 to read as follows:

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State must make the amendment.

(b) A State must also amend a State plan if there is a significant and relevant change in the information or the assurances in the plan.

(c) If a State amends a State plan, to the extent consistent with applicable law, the State must use the same procedures as those it must use to prepare and submit a State plan, unless the Secretary prescribes different procedures based on the characteristics of a particular State-administered formula grant program.

§§ 76.141 and 76.142 [Removed and Reserved]

■ 116. Remove and reserve §§ 76.141 and 76.142.

§ 76.260 [Amended]

■ 117. Amend § 76.260 by:

■ a. In the section heading, removing the words ''program statute'' and adding in their place the words ''applicable statutes''.

■ b. Removing the words ''the authorizing statute'' wherever they appear and adding in their place the words ''applicable statutes''.

■ 118. Revise § 76.301 to read as follows:

§ 76.301 Local educational agency application in general.

(a) A local educational agency (LEA) that applies for a subgrant under a program subject to this part must have on file with the State an application that meets the requirements of section 442 of GEPA (20 U.S.C. 1232e).

(b) The requirements of section 442 of GEPA do not apply to an LEA's application for a program under the ESEA.

§ 76.400 [Amended]

■ 119. Amend § 76.400 in paragraphs (b)(2), (c)(2), and (d) by removing the words ''Federal statutes'' and adding in their place the words ''applicable statutes''.

■ 120. Revise § 76.401 to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State educational agency hearing regarding disapproval of an application.* When financial assistance is provided to (or through) a State educational agency (SEA) consistent with an approved State plan and the SEA takes final action by disapproving or failing to approve an application for a subgrant in whole or in part, the SEA must provide the aggrieved applicant with notice and an opportunity for a hearing regarding the SEA's disapproval or failure to approve the application.

(b) *Applicant request for SEA hearing.* (1) The aggrieved applicant must request a hearing within 30 days of the final action of the SEA.

(2) The aggrieved applicant's request for a hearing must include, at a minimum, a citation to the specific State or Federal statute, rule, regulation, or guideline that the SEA allegedly violated when disapproving or failing to approve the application in whole or in part and a brief description of the alleged violation.

(3) The SEA must make available, at reasonable times and places to each applicant, all records of the SEA pertaining to the SEA's failure to approve the application in whole or in part that is the subject of the applicant's request for a hearing under this paragraph (b).

(c) *SEA hearing procedures.* (1) Within 30 days after it receives a request that meets the requirements of paragraphs (b)(1) and (2) of this section, the SEA must hold a hearing on the record to review its action.

(2) No later than 10 days after the hearing, the SEA must issue its written ruling, including findings of fact and reasons for the ruling.

(3) If the SEA determines that its action was contrary to State or Federal statutes, rules, regulations, or guidelines that govern the applicable program, the SEA must rescind its action in whole or in part.

(d) *Procedures for appeal of SEA action to the Secretary.* (1) If an SEA does not rescind its final action disapproving or failing to approve an application in whole or in part after the SEA conducts a hearing consistent with paragraph (c) of this section, the applicant may appeal the SEA's final action to the Secretary.

(2) The applicant must file a notice of appeal with the Secretary within 20 days after the applicant has received the SEA's written ruling.

(3) The applicant's notice of appeal must include, at a minimum, a citation to the specific Federal statute, rule, regulation, or guideline that the SEA allegedly violated and a brief description of the alleged violation.

(4) The Secretary may issue interim orders at any time when considering the appeal, including requesting the hearing record and any additional documentation, such as additional documentation regarding the information provided pursuant to paragraph (d)(3) of this section.

(5) After considering the appeal, the Secretary issues an order either affirming the final action of the SEA or requiring the SEA to take appropriate action, if the Secretary determines that the final action of the SEA was contrary to a Federal statute, rule, regulation, or guideline that governs the applicable program.

(e) *Programs administered by State agencies other than an SEA.* Under programs with an approved State plan under which financial assistance is provided to (or through) a State agency that is not the SEA, that State agency is not required to comply with this section unless specifically required to do so by Federal statute or regulation.

■ 121. Amend § 76.500 by revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.500 Federal statutes and regulations on nondiscrimination.

(a) A State and a subgrantee must comply with the following statutes and regulations:

TABLE 1 TO § 76.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).	34 CFR part 106.
Discrimination on the basis of disability	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR part 104.
Discrimination on the basis of age	Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*)	34 CFR part 110.

* * * * *

§ 76.532 [Amended]

■ 122. Amend § 76.532 by removing the parenthetical authority citation at the end of the section.

§ 76.533 [Amended]

■ 123. Amend § 76.533 by:

■ a. Removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 124. Revise § 76.560 to read as follows:

§ 76.560 General indirect cost rates and cost allocation plans; exceptions.

(a) The differences between direct and indirect costs and the principles for determining the general indirect cost rate that a grantee may use for grants under most programs are specified in the cost principles for—

(1) All grantees, other than hospitals and commercial (for-profit) organizations, at 2 CFR part 200, subpart E;

(2) Hospitals, at 45 CFR part 75, appendix IX; and

(3) Commercial (for-profit) organizations, at 48 CFR part 31.

(b) Except as specified in paragraph (c) of this section, a grantee must have a current indirect cost rate agreement or approved cost allocation plan to charge indirect costs to a grant. To obtain a negotiated indirect cost rate agreement or approved cost allocation plan, a grantee must submit an indirect cost rate proposal or cost allocation plan to its cognizant agency.

(c) A grantee that meets the requirements in 2 CFR 200.414(f) may elect to charge the *de minimis* rate of modified total direct costs (MTDC) specified in that provision, which may be used indefinitely. The *de minimis* rate may not be used on programs that have statutory or regulatory restrictions on the indirect cost rate. No documentation is required to justify the *de minimis* rate.

(1) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(2) For purposes of the MTDC base and application of the 10 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) If a grantee is required to, but does not, have a federally recognized indirect cost rate or approved cost allocation plan, the Secretary may permit the grantee to charge a temporary indirect cost rate of 10 percent of budgeted direct salaries and wages.

(e)(1) If a grantee fails to submit an indirect cost rate proposal or cost allocation plan to its cognizant agency within the required 90 days, the grantee may not charge indirect costs to its grant from the end of the 90-day period until it obtains a federally recognized indirect cost rate agreement applicable to the grant.

(2) If the Secretary determines that exceptional circumstances warrant continuation of a temporary indirect cost rate, the Secretary may authorize

the grantee to continue charging indirect costs to its grant at the temporary rate specified in paragraph (d) of this section even though the grantee has not submitted its indirect cost rate proposal within the 90-day period.

(3) Once a grantee obtains a federally recognized indirect cost rate that is applicable to the affected grant, the grantee may use that indirect cost rate to claim indirect cost reimbursement for expenditures made on or after the date on which the grantee submitted its indirect cost proposal to its cognizant agency or the start of the project period, whichever is later. However, this authority is subject to the following limitations:

(i) The total amount of funds recovered by the grantee under the federally recognized indirect cost rate is reduced by the amount of indirect costs previously recovered under the temporary indirect cost rate specified in paragraph (d) of this section.

(ii) The grantee must obtain prior approval from the Secretary to shift direct costs to indirect costs in order to recover indirect costs at a higher negotiated indirect cost rate.

(iii) The grantee may not request additional funds to recover indirect costs that it cannot recover by shifting direct costs to indirect costs.

(f) The Secretary accepts a negotiated indirect cost rate or approved cost allocation plan but may establish a restricted indirect cost rate or cost allocation plan compliant with §§ 76.564 through 76.569 for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

■ 125. Revise § 76.561 to read as follows:

§ 76.561 Approval of indirect cost rates and cost allocation plans.

(a) If the Department of Education is the cognizant agency, the Secretary approves an indirect cost rate or cost allocation plan for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term ''local educational agency'' does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

■ 126. Add § 76.562 to read as follows:

§ 76.562 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions.

(b) The application of the negotiated indirect cost rate (determination of the direct cost base) or cost allocation plan (charging methodology) must be in accordance with the agreement/plan approved by the grantee's cognizant agency.

(c) Indirect costs for joint applications and projects (see § 76.303) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the direct cost base for the grant in keeping with the terms of the applicant's federally recognized indirect cost rate agreement and program requirements.

§ 76.563 [Amended]

■ 127. Amend § 76.563 by:

■ a. Removing the words ''agencies of State and local governments that are grantees under'';

■ b. Removing the words ''their subgrantees'' and adding in their place the word ''subgrants''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 128. Revise § 76.654 to read as follows:

§ 76.564 Restricted indirect cost rate formula.

(a) An indirect cost rate for a grant covered by §§ 76.563 or 75.563 is determined by the following formula:

Restricted indirect cost rate = (General management costs + Fixed costs) ÷ (Other expenditures).

(b) General management costs, fixed costs, and other expenditures must be determined under §§ 76.565 through 76.567.

(c) Under the programs covered by § 76.563, a grantee or subgrantee that is not a State or local government agency—

(1) Shall use a negotiated restricted indirect cost rate computed under paragraph (a) of this section or cost allocation plan that complies with the formula in paragraph (a) of this section; or

(2) May elect to use an indirect cost rate of 8 percent of the modified total direct costs (MTDC) base if the grantee or subgrantee does not have a negotiated restricted indirect cost rate. MTDC is defined in 2 CFR 200.1. If the Secretary determines that the grantee or subgrantee would have a lower rate as calculated under paragraph (a) of this section, the lower rate shall be used for the affected program.

(3) If the grantee has established a threshold for equipment that is lower than the amount specified in the Uniform Guidance, the grantee must use that threshold to exclude equipment from the MTDC base.

(4) For purposes of the MTDC base and application of the 8 percent rate, MTDC includes up to the amount specified in the definition of MTDC in the Uniform Guidance of each subaward, each year.

(d) Indirect costs that are unrecovered as a result of these restrictions may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

§ 76.565 [Amended]

■ 129. Amend § 76.565 by removing the parenthetical authority citation at the end of the section.

§ 76.566 [Amended]

■ 130. Amend § 76.566 by:

■ a. In the introductory text, adding the word ''allowable'' before the words ''indirect costs''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 131. Amend § 76.567 by:

■ a. Revising paragraph (b)(3);

■ b. In paragraph (b)(7), removing the punctuation and word ''; and'';

■ c. Redesignating paragraph (b)(8) as paragraph (b)(9);

■ d. Adding a new paragraph (b)(8); and

■ e. Removing the parenthetical authority citation at the end of the section.

The revision and addition read as follows:

§ 76.567 Other expenditures—restricted rate.

* * * * *

(b) * * *

(3) Subawards exceeding the amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year;

* * * * *

(8) Other distorting items; and

* * * * *

§ 76.568 [Amended]

■ 132. Amend § 76.568 by:

■ a. In paragraph (c), adding the word ''(denominator)'' after the word ''expenditures''; and

■ b. Removing the parenthetical authority citation at the end of the section.

■ 133. Amend § 76.569 by:

■ a. Revising paragraph (a) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.569 Using the restricted indirect cost rate.

(a) Under the programs referenced in §§ 75.563 and 76.563, the maximum amount of indirect costs recovery under a grant is determined by the following formula:

Indirect costs = (Restricted indirect cost rate) × (Total direct costs of the grant minus capital outlays, subawards exceeding amount specified in the definition of Modified Total Direct Cost in the Uniform Guidance each, per year, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement)

* * * * *

§ 76.580 [Amended]

■ 134. Amend § 76.580 by removing the parenthetical authority citation at the end of the section.

■ 135. Revise § 76.600 to read as follows:

§ 76.600 Where to find the construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, must comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600 through 75.618.

(b) The State must perform the functions of the Secretary for subgrantee requests under 34 CFR 75.601 (Approval of the construction).

(c) The State must perform the functions that the Secretary performs under 34 CFR 75.614(b). The State may consult with the State Historic Preservation Officer and Tribal Historic Preservation Officer to identify and evaluate historic properties and assess effects. The Secretary will continue to participate in the consultation process when:

(1) The State determines that ''Criteria of Adverse Effect'' applies to a project;

(2) There is a disagreement between the State and the State Historic Preservation Officer or Tribal Historic Preservation Officer regarding identification and evaluation or assessment of effects;

(3) There is an objection from consulting parties or the public regarding findings, determinations, the implementation of agreed-upon provisions, or their involvement in a National Historic Preservation Act Section 106 review (see 36 CFR part 800); or

(4) There is the potential for a foreclosure situation or anticipatory demolition as specified in Section 110(k) of the National Historic Preservation Act (see 36 CFR part 800).

(d) The State must provide to the Secretary the information required under 34 CFR 75.614(a) (Preservation of historic sites).

(e) The State must submit periodic reports to the Secretary regarding the State's review and approval of construction or real property projects containing information specified by the Secretary consistent with 2 CFR 200.329(d).

■ 136–137. Revise the undesignated center heading before § 76.650 and revise § 76.650 to read as follows:

Participation of Private School Children, Teachers or Other Educational Personnel, and Families

§ 76.650 Participation of private school children, teachers or other educational personnel, and families.

If a program provides for participation by private school children, teachers or other educational personnel, and families, and the program is not otherwise governed by applicable regulations, the grantee or subgrantee must provide, as applicable, services in accordance with the requirements under §§ 299.7 through 299.11.

§§ 76.651 through 76.662 [Removed and Reserved]

■ 138. Remove and reserve §§ 76.651 through 76.662.

§ 76.665 [Removed and Reserved]

■ 139. Remove the undesignated center heading ''Equitable Services under the CARES Act'' above § 76.665 and remove and reserve § 76.665.

§§ 76.670 through 76.677 [Removed and Reserved]

■ 140. Remove the undesignated section heading ''Procedures for Bypass'' above § 76.670 and remove and reserve §§ 76.670 through 76.677.

§ 76.682 [Amended]

■ 141. Amend § 76.682 by removing the parenthetical authority citation at the end of the section.

§ 76.702 [Amended]

■ 142. Amend § 76.702 removing the word ''insure'' and adding in its place the word ''ensure''.

■ 143. Amend § 76.707 by revising paragraph (h) and removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.707 When obligations are made.

* * * * *

If the obligation is for—	The obligation is made—
* * * * * * *	
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 CFR part 200, subpart E.	On the first day of the grant or subgrant period of performance.

§ 76.708 [Amended]

■ 144. Amend § 76.708 by:

■ a. In paragraph (a) introductory text, removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'', removing the word ''requires'' and adding in its place the word ''require'', and removing the words ''(see § 76.5)'' and adding, in their place, the words ''(see § 76.51(a))'';

■ b. In paragraph (c), removing the words ''the authorizing statute'' and adding in their place the words ''applicable statutes and regulations'' and removing the word ''gives'' and adding in its place the word ''give''; and

■ c. Removing the parenthetical authority citation at the end of the section.

§ 76.709 [Amended]

■ 145. Amend § 76.709 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.710 [Amended]

■ 146. Amend § 76.710 by removing the Note and the parenthetical authority citation at the end of the section.

§ 76.711 [Amended]

■ 147. Amend § 76.711 by:

■ a. In the section heading, removing the abbreviation ''CFDA'' and adding in its place the abbreviation ''ALN''; and

■ b. Removing the phrase ''Catalog of Federal Domestic Assistance (CFDA)'' and adding in its place the phrase ''Assistance Listing Number (ALN)''.

§ 76.714 [Amended]

■ 148. Amend § 76.714 by adding ‘‘, as defined in § 76.52(c)(3),’’ after ‘‘Federal financial assistance’’.

§ 76.720 [Amended]

■ 149. Amend § 76.720 by:
■ a. In paragraph (a), removing the citation ‘‘2 CFR 200.327’’ and adding in its place the citation ‘‘2 CFR 200.328’’, removing the citation ‘‘2 CFR 200.328’’ and adding, in its place, the citation ‘‘2 CFR 200.329’’, and removing the words ‘‘the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520’’ and adding, in their place, the words ‘‘Subchapter 1 of Chapter 35 (sections 3501–3521) of Title 44, U.S. Code, commonly known as the ‘‘Paperwork Reduction Act’’ ’’;
■ b. In paragraph (c)(2), removing the words ‘‘the General Education Provisions Act’’ and adding, in their place, the word ‘‘GEPA’’; and
■ c. Removing the parenthetical authority citation at the end of the section.
■ 150. Amend § 76.740 by:
■ a. In paragraph (a), removing the number ‘‘438’’ and adding in its place the number ‘‘444’’ in the first sentence and revising the parenthetical sentence at the end;
■ b. In paragraph (b), removing the number ‘‘439’’ and adding in its place the number ‘‘445’’; and adding the words ‘‘(20 U.S.C. 1232h; commonly known as the ‘‘Protection of Pupil Rights Amendment’’ or ‘‘PPRA’’)’’ after the words ‘‘of GEPA’’; and
■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 76.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

(a) * * * (Section 444 of GEPA (20 U.S.C. 1232g) is commonly referred to as the ‘‘Family Educational Rights and Privacy Act of 1974’’ or ‘‘FERPA’’.)
* * * * *

§ 76.761 [Amended]

■ 151. Amend § 76.761 in paragraph (b) by removing the words ‘‘the authorizing statute and implementing regulations for the program’’ and adding in their place the words ‘‘applicable statutes and regulations’’.
■ 152. Amend § 76.783 by:
■ a. In paragraph (a)(1), removing the word ‘‘or’’ ’
■ b. In paragraph (a)(2), removing the period and adding in its place ‘‘; or’’;
■ c. Adding paragraph (a)(3);
■ d. Removing the citation ‘‘76.401(d)(2)–(7)’’ in paragraph (b) and adding in its place the citation ‘‘76.401(a) through (d)’’; and
■ e. Removing the Note and parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 76.783 State educational agency action—subgrantee’s opportunity for a hearing.

(a) * * *
(3) Failing to provide funds in amounts in accordance with the requirements of applicable statutes and regulations.
* * * * *

§ 76.785 [Amended]

■ 153. Amend § 76.785 by:
■ a. Removing the words ‘‘section 10306’’ and adding in their place the words ‘‘section 4306’’; and
■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.786 [Amended]

■ 154. Amend § 76.786 by:
■ a. In paragraph (a), removing the words ‘‘Public Charter Schools Program’’ and adding in their place the words ‘‘Charter School State Entity Grant Program’’; and
■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.787 [Amended]

■ 155. Amend § 76.787 by:
■ a. In the definition of ‘‘charter school,’’ removing the words ‘‘title X, part C of the ESEA’’ and adding in their place the words ‘‘section 4310(2) of the ESEA (20 U.S.C. 7221i(2))’’;
■ b. In the definition of ‘‘covered program,’’ removing the words ‘‘an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis’’ and adding in their place the words ‘‘a State-administered formula grant program’’;
■ c. In the definition of ‘‘local educational agency,’’ removing the words ‘‘the authorizing statute’’ and adding in their place the words ‘‘applicable statutes and regulations’’; and
■ d. Removing the parenthetical authority citation at the end of the section.
■ 156. Revise the undesignated center heading before § 76.788 to read ‘‘Responsibilities for Notice and Information’’.

§ 76.788 [Amended]

■ 157. Amend § 76.788 by:
■ a. In paragraph (c), removing the words ‘‘the authorizing statute or implementing regulations for the applicable covered program’’ and adding in their place the words ‘‘applicable statutes or regulations’’; and
■ b. Removing the parenthetical authority citation at the end of the section.

§ 76.900 [Amended]

■ 158. Amend § 76.900 by removing ‘‘ED’’ in paragraphs (a) and (b) and adding in its place the words ‘‘the Department’’.

§ 76.901 [Amended]

■ 159. Amend § 76.901 by:
■ a. In paragraph (a) introductory text, removing the words ‘‘Part E’’ and adding in their place the words ‘‘Part D (20 U.S.C. 1234–1234h)’’; and
■ b. Removing the parenthetical authority citation at the end of the section.

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

■ 160. The authority citation for part 77 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 161. Amend § 77.1 by:
■ a. Revising paragraph (b); and
■ b. In paragraph (c):
■ i. In the definition of ‘‘Applicant’’ removing the word ‘‘requesting’’ and adding in its place the words ‘‘applying for’’;
■ ii. In the definition of ‘‘Award’’ removing the words ‘‘the definition of’’;
■ iii. In the definition of ‘‘Budget’’ removing the words ‘‘that recipient’s’’ and adding in their place ‘‘a recipient’s’’;
■ iv. Adding in alphabetical order a definition for ‘‘construction’’;
■ v. Revising the definition of ‘‘Demonstrates a rationale’’;
■ vi. Removing the definitions of ‘‘Direct grant program’’ and ‘‘Director of the Institute of Museum Services’’;
■ vii. Revising the definition of ‘‘Director of the National Institute of Education’’;
■ viii. Adding in alphabetical order a definition for ‘‘Evaluation’’;
■ ix. In the definition of ‘‘Evidence-based’’ adding ‘‘, for the purposes of 34 CFR part 75,’’ after the word ‘‘Evidence-based’’;
■ x. Adding in alphabetical order a definition for ‘‘Evidence-building’’;
■ xi. In the definition of ‘‘GEPA’’ removing the word ‘‘The’’ and adding in its place the word ‘‘the’’;
■ xii. Adding in alphabetical order definitions for ‘‘independent evaluation’’;
■ xiii. Revising the definitions of ‘‘minor remodeling’’, ‘‘Moderate evidence’’, and ‘‘National level’’;

■ xiv. Adding in alphabetical order a definition for ''peer-reviewed scholarly publication'';
■ xv. In the definition of ''Project period'' removing the citation ''2 CFR 200.77'' and adding in its place the citation ''2 CFR 200.1'';
■ xvi. Revising the definition of ''Promising evidence'';
■ xvii. Adding in alphabetical order a definition for ''quality data'';
■ xviii. Revising the definitions of ''Regional level'', ''State'', and ''Strong evidence'';
■ xix. In the definition of ''Subgrant'' removing the words ''definition of ''grant or award'' '' and adding in their place the words ''definitions of ''Grant'' or ''Award'' '';
■ xx. Revising the definition of ''What Works Clearinghouse (WWC) Handbooks (WWC Handbooks)''; and
■ xxi. In the definition of ''Work of art'' removing the word ''facilities'' and adding it its place the words ''a facility''.

The revisions and additions read as follows:

§ 77.1 Definitions that apply to all Department programs.

* * * * *

(b) Unless a statute or regulation provides otherwise, the following definitions in 2 CFR part 200 apply to the regulations in subtitles A and B of this title. The following terms have the definitions given those terms in 2 CFR part 200.1. Phrasing given in parentheses references the term or terms used in title 34 that are consistent with the term defined in title 2.

Contract

Equipment

Federal award (The terms ''award,'' ''grant,'' and ''subgrant'', as defined in paragraph (c) of this section, have the same meaning, depending on the context, as ''Federal award'' in 2 CFR 200.1.).

Period of performance (For discretionary grants, ED uses the term ''project period,'' as defined in paragraph (c) of this section, instead of ''period of performance,'' to describe the period during which funds can be obligated by the grantee.).

Personal property

Real property

Recipient

Subaward (The term ''subgrant,'' as defined in paragraph (c) of this section, has the same meaning as ''subaward'' in 2 CFR 200.1).

Supplies

(c) * * *

Construction means

(i)(A) the preparation of drawings and specifications for a facilities project;

(B) erecting, building, demolishing, acquiring, renovating, major remodeling of, or extending a facilities project; or

(C) inspecting and supervising the construction of a facilities project;

(ii) Does not include minor remodeling.

* * * * *

Demonstrates a rationale means that there is a key project component included in the project's logic model that is supported by citations of high-quality research or evaluation findings that suggest that the project component is likely to significantly improve relevant outcomes.

* * * * *

Director of the Institute of Education Sciences means the Director of the Institute of Education Sciences or an officer or employee of the Institute of Education Sciences acting for the Director under a delegation of authority.

* * * * *

Evaluation means an assessment using systematic data collection and analysis of one or more programs, policies, practices, and organizations intended to assess their implementation, outcomes, effectiveness, or efficiency.

Evidence-building means a systematic plan for identifying and answering questions relevant to programs and policies through performance measurement, exploratory studies, or program evaluation.

* * * * *

Independent evaluation means an evaluation of a project component that is designed and carried out independently of, but in coordination with, the entities that develop or implement the project component.

* * * * *

Minor remodeling means minor alterations in a previously completed facilities project. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed facility. The term may also include related designs and drawings for these projects. The term does not include construction or renovation, structural alterations to buildings, facilities maintenance, or repairs.

Moderate evidence means evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''strong evidence'' or ''moderate evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''Tier 1 strong evidence'' of effectiveness or ''Tier 2 moderate evidence'' of effectiveness or a ''positive effect'' on a relevant outcome based on a sample including at least 20 students or other individuals from more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), or a ''potentially positive effect'' on a relevant outcome based on a sample including at least 350 students or other individuals from more than one site (such as a State, county, city, LEA, school, or postsecondary campus), with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

National level means the level of scope or effectiveness of a project component that is able to be effective in a wide variety of communities, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status, race, ethnic, gender, disability, language, and migrant populations), populations, and settings.

* * * * *

Peer-reviewed scholarly publication means a final peer-reviewed manuscript accepted for publication, that arises from research funded, either fully or partially, by Federal funds awarded through a Department-managed grant, contract, or other agreement. A final peer-reviewed manuscript is defined as an author's final manuscript of a peer-reviewed scholarly paper accepted for publication, including all modifications resulting from the peer review process. The final peer-reviewed manuscript is not the same as the final published article, which is defined as a publisher's authoritative copy of the paper including all modifications from the publishing peer review process, copyediting, stylistic edits, and formatting changes. However, the content included in both the final peer-reviewed manuscript and the final published article, including all findings, tables, and figures should be identical.

* * * * *

Promising evidence means evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC reporting ''strong evidence'', ''moderate evidence'', or ''promising evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting ''Tier 1 strong evidence'' of effectiveness, or ''Tier 2 moderate evidence'' of effectiveness, or ''Tier 3 promising evidence'' of effectiveness, or a ''positive effect,'' or ''potentially positive effect'' on a relevant outcome, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—-

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (such as a study using regression methods to account for differences between a treatment group and a comparison group);

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome; and

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report.

* * * * *

Quality data encompasses utility, objectivity, and integrity of the information. ''Utility'' refers to how the data will be used, either for its intended use or other uses. ''Objectivity'' refers to data being accurate, complete, reliable, and unbiased. ''Integrity'' refers to the protection of data from being manipulated.

* * * * *

Regional level means the level of scope or effectiveness of a project component that is able to serve a variety of communities within a State or multiple States, including rural and urban areas, as well as groups with different characteristics (such as socioeconomic status, race, ethnicity, gender, disability, language, and migrant status). For an LEA-based project, to be considered a regional-level project, a project component must serve students in more than one LEA, unless the project component is implemented in a State in which the State educational agency is the sole educational agency for all schools.

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Strong evidence means evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''strong evidence'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks reporting ''Tier 1 strong evidence'' of effectiveness or a ''positive effect'' on a relevant outcome based on a sample including at least 350 students or other individuals across more than one site (such as a State, county, city, local educational agency (LEA), school, or postsecondary campus), with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC most recently using version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks, or otherwise assessed by the Department using version 5.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, 4.1, or 5.0 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (such as a State, county, city, LEA, school, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet the requirements in paragraphs (iii)(A) through (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

* * * * *

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 5.0, or in the WWC Standards Handbook, Version 4.0 or 4.1, or in the WWC Procedures Handbook, Version 4.0 or 4.1, the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

* * * * *

■ 162. Revise § 77.2 to read as follows:

§ 77.2 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Department of Education (the Department) and the National Archives and Records Administration (NARA). Contact the Department at: Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, 550 12th Street SW, PCP–4158, Washington, DC 20202–5900; phone: (202) 245–6940; email: *Contact.WWC@ed.gov*. 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. The following material may be obtained from Institute of Education Sciences, 550 12th Street SW, Washington, DC 20202; phone: (202) 245–6940; website: *http://ies.ed.gov/ncee/wwc/Handbooks:*

(b) What Works Clearinghouse Procedures and Standards Handbook, Version 5.0, August 2022 (Revised December 2022); IBR approved for § 77.1.

(c) What Works Clearinghouse Standards Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(d) What Works Clearinghouse Procedures Handbook, Version 4.1, January 2020, IBR approved for § 77.1.

(e) What Works Clearinghouse Standards Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(f) What Works Clearinghouse Procedures Handbook, Version 4.0, October 2017, IBR approved for § 77.1.

(g) What Works Clearinghouse Procedures and Standards Handbook, Version 3.0, March 2014, IBR approved for § 77.1.

(h) What Works Clearinghouse Procedures and Standards Handbook, Version 2.1, September 2011, IBR approved for § 77.1.

PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

■ 163. The authority citation for part 79 continues to read as follows:

Authority: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

Section 79.2 also issued under E.O. 12372.

■ 164. In part 79, remove the word ''state'' wherever it appears and in its place add the word ''State'' and remove the word ''states'' where it appears and in its place add the word ''States''.

§ 79.1 [Amended]

■ 165. Amend § 79.1 by removing the second sentence in paragraph (a).

■ 166. Amend § 79.2 by:

■ a. Removing the definitions of ''Department'' and ''Secretary''.

■ b. Revising the definition of ''State''.

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 79.2 What definitions apply to these regulations?

* * * * *

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 79.3 [Amended]

■ 167. Amend § 79.3 by:

■ a. In paragraph (a), removing the words ''and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act'';

■ b. In paragraph (c)(6), removing the words ''(*e.g.,* block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981)''; and

c. In paragraph (c)(7), removing the words ''development national'' and adding in their place the words ''development that is national''.

§ 79.4 [Amended]

■ 168. Amend § 79.4 in paragraph (b)(3) by removing the word ''official's'' and adding in its place the word ''officials' ''.

§ 79.5 [Amended]

■ 169. Amend § 79.5 by removing the word ''assure'' and adding in its place the word ''ensure''.

§ 79.6 [Amended]

■ 170. Amend § 79.6 by removing the word ''state's'' and adding in its place the word ''State's''.

§ 79.8 [Amended]

■ 171. Amend § 79.8 by removing paragraph (d).

§ 79.9 [Amended]

■ 172. Amend § 79.9 in paragraph (e) by removing the words ''of this part''.

§ 79.10 [Amended]

■ 173. Amend § 79.10 in paragraph (a)(2) by removing the words ''a mutually agreeable solution with the state process'' and adding in their place the words ''an agreement with the State''.

PART 299—GENERAL PROVISIONS

■ 174. The authority citation for part 299 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

Section 299.4 also issued under 20 U.S.C. 7821 and 7823.

Section 299.5 also issued under 20 U.S.C. 7428(c), 7801(11), 7901.

Section 299.6 also issued under 20 U.S.C. 7881.

Section 299.7 also issued under 20 U.S.C. 7881.

Section 299.8 also issued under 20 U.S.C. 7881.

Section 299.9 also issued under 20 U.S.C. 7881.

Section 299.10 also issued under 20 U.S.C. 7881.

Section 299.11 also issued under 20 U.S.C. 7881.

Section 299.12 also issued under 20 U.S.C. 7881(a)(3)(B).

Section 299.13 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.14 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.15 also issued under 20 U.S.C. 7844(a)(3)(C), 7883.

Section 299.16 also issued under 20 U.S.C. 7883.

Section 299.17 also issued under 20 U.S.C. 7883.

Section 299.18 issued under 20 U.S.C. 6320(e), 7882, and 7883.

Section 299.19 issued under 20 U.S.C. 6320(e) and 7882(a).

Section 299.20 issued under 20 U.S.C. 6320(b)(6) and (e), 7881(c)(6), 7882, and 7883.

Section 299.21 issued under 20 U.S.C. 7884(a)(1).

Section 299.22 issued under 20 U.S.C. 7884(a)(1).

Section 299.23 issued under 20 U.S.C. 7884(a)(1).

Section 299.24 issued under 20 U.S.C. 7884(a)(1).

Section 299.25 issued under 20 U.S.C. 7884(a)(1).

Section 299.26 issued under 20 U.S.C. 7884(a)(1).

Section 299.27 issued under 20 U.S.C. 7884(a)(2).

Section 299.28 issued under 20 U.S.C. 7884(b).

§ 299.6 [Amended]

■ 175. Amend § 299.6 by removing paragraph (c).

§§ 299.7 through 299.13 [Redesignated as §§ 299.9 through 299.15]

■ 176. Redesignate §§ 299.7 through 299.13 as §§ 299.9 through 299.15.

■ 177. Add new §§ 299.7 and 299.8 to subpart E to read as follows:

§ 299.7 What are the requirements for consultation?

(a)(1) In order to have timely and meaningful consultation, an agency, consortium, or entity must—

(i) Consult with appropriate private school officials during the design and development of the agency, consortium, or entity's program for eligible private school children and their teachers and other educational personnel; and

(ii) Consult before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children and their teachers and other educational personnel to participate in the applicable program.

(2) Such consultation must continue throughout the implementation and assessment of equitable services.

(b) Both the agency, consortium, or entity and private school officials must have the goal of reaching agreement on how to provide equitable and effective programs for private school children and their teachers and other educational personnel, including, at a minimum, on issues such as—

(1) How the agency, consortium, or entity will identify the needs of eligible private school children and their teachers and other educational personnel;

(2) What services the agency, consortium, or entity will offer to eligible private school children and their teachers and other educational personnel;

(3) How and when the agency, consortium, or entity will make decisions about the delivery of services;

(4) How, where, and by whom the agency, consortium, or entity will provide services to eligible private school children and their teachers and other educational personnel;

(5) How the agency, consortium, or entity will assess the services and use the results of the assessment to improve those services;

(6) Whether the agency, consortium, or entity will provide services directly or through a separate government agency, consortium, entity, or third-party contractor;

(7) The size and scope of the equitable services that the agency, consortium, or entity will provide to eligible private school children and their teachers and other educational personnel, the amount of funds available for those services, and how that amount is determined; and

(8) Whether to provide equitable services to eligible private school children and their teachers and other educational personnel—

(i) On a school-by-school basis;

(ii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served by the same agency, consortium, or entity, provided that all the affected private schools agree to receive services in this way; or

(iii) By creating a pool or pools of funds with all the funds allocated under the applicable program based on the amount of funding allocated for equitable services to two or more participating private schools served across multiple agencies, consortia, or entities, provided that all the affected private schools agree to receive services in this way.

(c)(1) Consultation must include—

(i) A discussion of service delivery mechanisms the agency, consortium, or entity can use to provide equitable services to eligible private school children and their teachers and other educational personnel; and

(ii) A thorough consideration and analysis of the views of private school officials on the provision of services through a contract with a third-party provider.

(2) If the agency, consortium, or entity disagrees with the views of private school officials on the provision of services through a contract, the agency, consortium, or entity must provide in writing to the private school officials the reasons why the agency, consortium, or entity chooses not to use a contractor.

(d)(1) The agency, consortium, or entity must maintain in its records and provide to the SEA a written affirmation, signed by officials of each private school with participating children or appropriate private school representatives, that the required consultation has occurred. The written affirmation shall provide the option for private school officials to indicate such officials' belief that timely and meaningful consultation has not occurred or that the program design is not equitable with respect to eligible private school children.

(2) If private school officials do not provide the affirmations within a reasonable period of time, the agency, consortium, or entity must submit to the SEA documentation that the required consultation occurred.

(e) A private school official has the right to complain to the SEA that the agency, consortium, or entity did not—

(1) Engage in timely and meaningful consultation;

(2) Give due consideration to the views of the private school official; or

(3) Make a decision that treats the private school or its students equitably as required by this section.

§ 299.8 Use of Private School Personnel.

A grantee or subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

■ 178. Transfer newly redesignated § 299.12 from subpart F to subpart E and revise it to read as follows:

§ 299.12 Ombudsman.

To help ensure equity for eligible private school children, teachers, and other educational personnel, an SEA must direct the ombudsman designated under section 1117 of the ESEA and § 200.68 to monitor and enforce the requirements in §§ 299.6–299.11.

■ 179. Add §§ 299.16 and 299.17 to subpart F to read as follows:

§ 299.16 What must an SEA include in its written resolution of a complaint?

An SEA must include the following in its written resolution of a complaint under an applicable program:

(a) A description of applicable statutory and regulatory requirements.

(b) A description of the procedural history of the complaint.

(c) Findings of fact supported by citation, including page numbers, to supporting documents under paragraph (g) of this section.

(d) Legal analysis and conclusions.

(e) Corrective actions, if applicable.

(f) A statement of applicable appeal rights.

(g) A statement regarding the State's determination about whether it will provide services.

(h) All documents reviewed by the SEA in reaching its decision, paginated consecutively.

§ 299.17 What must a party seeking to appeal an SEA's written resolution of a complaint or failure to resolve a complaint in 45 days include in its appeal request?

(a) A party appealing an SEA's written resolution of a complaint, or failure to resolve a complaint, must include the following in its request within 30 days of either the SEA's resolution or the 45-day time limit:

(i) A clear and concise statement of the parts of the SEA's decision being appealed, if applicable.

(ii) The legal and factual basis for the appeal.

(iii) A copy of the complaint filed with the SEA.

(iv) A copy of the SEA's written resolution of the complaint being appealed, if one is available, including all supporting documentation required under § 299.16(h).

(v) Any supporting documentation not included as part of the SEA's written resolution of the complaint being appealed.

(b) Unless substantiating documentation identified in paragraph (a) of this section is provided to the Department, the appeal is not considered complete. Statutory or regulatory time limits are stayed until the appeal is complete as determined by the Department.

(c) In resolving the appeal, if the Department determines that additional information is necessary, all applicable statutory or regulatory time limits are stayed pending receipt of that information.

■ 180. Add subpart G part 299 to read as follows:

Subpart G—Procedures for Bypass

Sec.

299.18 Applicability.

299.19 Bypass—general.
299.20 Requesting a bypass.
299.21 Notice of intent to implement a bypass.
299.22 Filing requirements.
299.23 Bypass procedures.
299.24 Appointment and functions of a hearing officer.
299.25 Hearing procedures.
299.26 Decision.
299.27 Judicial review.
299.28 Continuation of a bypass.

Subpart G—Procedures for Bypass

§ 299.18 Applicability.

The regulations in this subpart apply to part A of Title I and applicable programs under section 8501(b)(1) of the ESEA under which the Secretary is authorized to waive the requirements for providing services to private school children, teachers or other educational personnel, and families, as applicable, and to implement a bypass.

§ 299.19 Bypass—general.

(a) The Secretary arranges for a bypass if—

(1) An agency, consortium, or entity is prohibited by law from providing for the participation in programs of children enrolled in, or teachers or other educational personnel from, private elementary and secondary schools, on an equitable basis; or

(2) The Secretary determines that the agency, consortium, or entity has substantially failed, or is unwilling, to provide for that participation as required by section 1117 or 8501 of the ESEA, as applicable.

(b) If the Secretary determines that a bypass is appropriate after following the requirements in §§ 299.21 through 299.26, the Secretary—

(1) Waives the requirements under section 1117 or 8501 of the ESEA, as applicable, for the agency, consortium, or entity; and

(2) Arranges for the provision of equitable services to those children, teachers or other educational personnel, and families, as applicable, through arrangements subject to the requirements of section 1117 or 8501 of the ESEA, as applicable, and sections 8503 and 8504 of the ESEA.

§ 299.20 Requesting a bypass.

(a) A private school official may request a bypass of an agency, consortium, or entity under the following circumstances:

(1) The private school official has—

(i) Filed a complaint with the State educational agency (SEA) under section 1117(b)(6)(A)–(B) or section 8501(c)(6)(A)–(B) of the ESEA and §§ 299.13 through 299.17 that an agency, consortium, or entity other than the SEA has substantially failed or is unwilling to provide equitable services;

(ii) Requested that the SEA provide equitable services on behalf of the agency, consortium, or entity under section 1117(b)(6)(C) or section 8501(c)(6)(C) of the ESEA; and

(iii) Submitted an appeal of the SEA's resolution of the complaint filed under this paragraph (a)(1) to the Secretary under section 8503(b) of the ESEA and § 299.17.

(2) If an SEA has substantially failed, or is unwilling, to provide equitable services, the private school official has—

(i) Filed a complaint with the SEA under section 8503(a) of the ESEA and §§ 299.13 through 299.16; and

(ii) Submitted an appeal to the Secretary under section 8503(b) of the ESEA and § 299.17 of the SEA's resolution of the complaint filed under paragraph (a)(1) of this section in which the private school official requests a bypass.

(b) An agency, consortium, or entity may request that the Secretary implement a bypass if the agency, consortium, or entity is prohibited by law from providing equitable services under section 1117 or section 8501 of the ESEA.

§ 299.21 Notice of intent to implement a bypass.

(a) Before taking any final action to implement a bypass, the Secretary provides the affected agency, consortium, or entity with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the agency, consortium, or entity to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the agency, consortium, or entity that it—

(i) Has a deadline (which shall not be fewer than 45 days after receiving the written notice) to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the Secretary should not implement the bypass.

§ 299.22 Filing requirements.

(a) Any written submission under § 299.21 must be filed by hand delivery, mail, or email.

(b) The filing date for a written submission is the date on which the document is—

(1) Hand delivered;

(2) Mailed; or

(3) Emailed.

§ 299.23 Bypass procedures.

Sections 299.24 through 299.26 describe the procedures that the Secretary uses in conducting a show-cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree that the modification is appropriate.

§ 299.24 Appointment and functions of a hearing officer.

(a) If an agency, consortium, or entity requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children, teachers or other educational personnel, or families that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families of the time and place of the hearing.

§ 299.25 Hearing procedures.

(a) The following procedures apply to a show-cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be created.

(2) The agency, consortium, or entity and representatives of the private school children, teachers or other educational personnel, or families each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued based on the existing record; or

(2) Requests further information from the agency, consortium, or entity, representatives of the private school children, teachers or other educational personnel, or families, or Department officials.

§ 299.26 Decision.

(a)(1) Within 120 days after the record of a show-cause hearing is closed, the hearing officer issues a written decision on whether the Secretary should implement a bypass.

(2) The hearing officer sends copies of the decision to the agency, consortium, or entity; representatives of the private school children, teachers or other

educational personnel, or families; and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the agency, consortium, or entity, and representatives of the private school children, teachers or other educational personnel, or families may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

§ 299.27 Judicial review.

If an agency, consortium, or entity is dissatisfied with the Secretary's final action after a proceeding under §§ 299.13 through 299.26, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which it is located.

§ 299.28 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines, in consultation with the relevant agency, consortium, or entity and representatives of the affected private school children, teachers or other educational personnel, or families, that there will no longer be any failure or inability on the part of the agency, consortium, or entity to meet the requirements for providing services.

[FR Doc. 2023–27682 Filed 1–10–24; 8:45 am]

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Part III

Federal Trade Commission

16 CFR Part 312
Children's Online Privacy Protection Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB20

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend the Children's Online Privacy Protection Rule, consistent with the requirements of the Children's Online Privacy Protection Act. The proposed modifications are intended to respond to changes in technology and online practices, and where appropriate, to clarify and streamline the Rule. The proposed modifications, which are based on the FTC's review of public comments and its enforcement experience, are intended to clarify the scope of the Rule and/or strengthen its protection of personal information collected from children.

DATES: Comments must be received by March 11, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule Review, Project No. P195404'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex E), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Manmeet Dhindsa (202–326–2877) or James Trilling (202–326–3497), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Children's Online Privacy Protection Act (''COPPA'' or ''COPPA statute''), 15 U.S.C. 6501 *et seq.,* in 1998. The COPPA statute directed the Federal Trade Commission (''Commission'' or ''FTC'') to promulgate regulations implementing COPPA's requirements. On November 3, 1999, the Commission issued its Children's Online Privacy Protection Rule, 16 CFR part 312 (''COPPA Rule'' or ''Rule''), which became effective on April 21, 2000.[1] Section 6506 of the COPPA statute and § 312.11 of the initial Rule required that the Commission initiate a review no later than five years after the initial Rule's effective date to evaluate the Rule's implementation. The Commission commenced this mandatory review on April 21, 2005.[2] After receiving and considering extensive public comment, the Commission determined in March 2006 to retain the COPPA Rule without change.[3] In 2010, the Commission once again undertook a review of the COPPA Rule to determine whether the Rule was keeping pace with changing technology. After notice and comment, the Commission issued final amendments to the Rule, which became effective on July 1, 2013 (''2013 Amendments'').[4]

The COPPA Rule imposes certain requirements on operators of websites [5] or online services directed to children under 13 years of age, and on operators of websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, ''operators''). The Rule requires that operators provide notice to parents and obtain verifiable parental consent before collecting, using, or disclosing personal information from children under 13 years of age.[6] Additionally, the Rule requires that operators must provide parents the opportunity to review the types or categories of personal information collected from their child, the opportunity to delete the collected information, and the opportunity to prevent further use or future collection of personal information from their child.[7] The Rule also requires operators to keep personal information they collect from children secure, including by imposing retention and deletion requirements, and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities.[8] The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[9]

The 2013 Amendments [10] revised the COPPA Rule to address changes in the way children use and access the internet, including through the increased use of mobile devices and social networking. In particular, the 2013 Amendments:

- Modified the definition of ''operator'' to make clear that the Rule covers an operator of a child-directed website or online service that integrates outside services—such as plug-ins or advertising networks—that collect personal information from the website's or online service's visitors, and expanded the definition of ''website or online service directed to children'' to clarify that those outside services are subject to the Rule where they have actual knowledge that they are collecting personal information directly from users of a child-directed website or online service;
- Permitted a subset of child-directed websites or online services that do not target children as their primary audience to differentiate among users, requiring them to comply with the Rule's obligations only as to users who identify as under the age of 13;
- Expanded the definition of ''personal information'' to include geolocation information; photos, videos and audio files containing a child's image or voice; and persistent identifiers that can be used to recognize a user over time and across different websites or online services;
- Streamlined the direct notice requirements to ensure that key information is presented to parents in a succinct ''just-in-time'' notice;
- Expanded the non-exhaustive list of acceptable methods for obtaining prior verifiable parental consent;
- Created three new exceptions to the Rule's notice and consent requirements, including for the use of persistent identifiers for the support for the internal operations of a website or online service;

[1] Children's Online Privacy Protection Rule, Statement of Basis and Purpose, 64 FR 59888 (Nov. 3, 1999), available at *https://www.federalregister.gov/documents/1999/11/03/99-27740/childrens-online-privacy-protection-rule.*

[2] Children's Online Privacy Protection Rule, Request for Public Comment, 70 FR 21107 (Apr. 22, 2005), available at *https://www.federalregister.gov/documents/2005/04/22/05-8160/childrens-online-privacy-protection-rule-request-for-comments.*

[3] Children's Online Privacy Protection Rule, Retention of Rule Without Modification, 71 FR 13247 (Mar. 15, 2006), available at *https://www.federalregister.gov/documents/2006/03/15/06-2356/childrens-online-privacy-protection-rule.*

[4] *See* Children's Online Privacy Protection Rule, Statement of Basis and Purpose, 78 FR 3972 (Jan. 17, 2013), available at *https://www.federalregister.gov/documents/2013/01/17/2012-31341/childrens-online-privacy-protection-rule.*

[5] *See* Part IV for further discussion of the Commission's proposal to change the term ''Web site'' to ''Web site'' throughout the Rule. This Notice of Proposed Rulemaking incorporates this proposed change in all instances in which the term ''Web site'' is used.

[6] 16 CFR 312.3, 312.4, and 312.5.

[7] 16 CFR 312.3 and 312.6.

[8] 16 CFR 312.3, 312.7, 312.8, and 312.10.

[9] 16 CFR 312.11.

[10] 78 FR 3972.

• Strengthened data security protections by requiring operators to take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security, and integrity of such information, and required reasonable data retention and deletion procedures; and

• Strengthened the Commission's oversight of self-regulatory safe harbor programs.[11]

On July 25, 2019, the FTC announced in the **Federal Register** that it was again undertaking a review of the COPPA Rule, noting that questions had arisen about the Rule's application to the educational technology (''ed tech'') sector, voice-enabled connected devices, and general audience platforms that host third-party child-directed content (''2019 Rule Review Initiation'').[12] The Commission sought public comment on these and other issues in its 2019 Rule Review Initiation. In addition to its standard regulatory review questions to determine whether the Commission should retain, eliminate, or modify the COPPA Rule, the Commission asked whether the 2013 Amendments have resulted in stronger protections for children and whether the revisions have had any negative consequences. The Commission also posed specific questions about the Rule's provisions, including the Rule's definitions, notice and consent requirements, access and deletion rights, security requirements, and safe harbor provisions.

During the comment period, the Commission held a public workshop on October 7, 2019, to discuss in detail several of the areas where it sought public comment (''COPPA Workshop'').[13] Specific discussion included such topics as application of the COPPA Rule to the ed tech sector, how the development of new technologies and business models have affected children's privacy, and whether the 2013 Amendments have worked as intended.

In response to the 2019 Rule Review Initiation, the Commission received more than 175,000 comments from various stakeholders, including industry representatives, video content creators, consumer advocacy groups, academics, technologists, FTC-approved COPPA Safe Harbor programs, members of Congress, and individual members of the public. While many of these comments expressed overall support for COPPA,[14] the comments identified a number of areas where the Commission could provide additional clarification or guidance about the COPPA Rule's requirements. The comments also proposed a number of potential changes to the Rule.

Following consideration of the submitted public comments, viewpoints expressed during the COPPA Workshop, and the Commission's experience enforcing the Rule, the Commission proposes modifying most provisions of the Rule. Part II of this notice of proposed rulemaking (''NPRM'') discusses commenters' calls to expand the COPPA Rule's coverage by amending the definition of ''website or online service directed to children'' or by changing the Rule's actual knowledge standard. Part III of this NPRM discusses commenters' viewpoints on whether the Commission should permit general audience platforms that allow third parties to upload content to the platform to rebut the presumption that all users of uploaded child-directed content are children. Part IV addresses the Commission's proposed modifications to the Rule. Parts V–X provide information about requests for comment, the Paperwork Reduction Act, the Regulatory Flexibility Act, communications by outside parties to the Commissioners or their advisors, questions for the proposed revisions to the Rule, a list of subjects in the Rule, and the amended text of the Rule.

II. Comments on Expanding the COPPA Rule's Coverage

As part of its 2019 Rule Review Initiation, the Commission requested comment on questions regarding whether the Commission should revise the definition of ''website or online service directed to children.'' In response, the Commission received various comments regarding expanding the COPPA Rule's coverage by either amending the definition of ''website or online service directed to children'' or by changing the Rule's actual knowledge standard. This Part includes discussion of comments advocating for and against such expansions.

A. Amending the Definition of ''Website or Online Service Directed to Children''

In its 2019 Rule Review Initiation, the Commission asked for comment on various aspects of the Rule's definition of ''website or online service directed to children.'' Among other questions, the Commission asked whether it should amend the definition to address websites and online services that do not include traditionally child-oriented activities but still have large numbers of child users.[15]

Some commenters argued that the definition of ''website or online service directed to children'' should be modified to include sites and services with large numbers of children, those with a certain percentage of child users, or those that include child-attractive

[11] *Id.*

[12] *See* Children's Online Privacy Protection Rule, Request for Public Comment, 84 FR 35842 (July 25, 2019), available at *https://www.federalregister.gov/documents/2019/07/25/2019-15754/request-for-public-comment-on-the-federal-trade-commissions-implementation-of-the-childrens-online.*

[13] *See The Future of the COPPA Rule: An FTC Workshop* (Oct. 7, 2019), available at *https://www.ftc.gov/news-events/events/2019/10/future-coppa-rule-ftc-workshop;* 84 FR 35842.

[14] *See, e.g.,* Joint Comment of the Attorneys General of New Mexico, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, and Washington (''Joint Attorneys General''), at 2 (''As more and more of our lives are lived online, and as digital tools make their way into our schools and into our lives at ever-earlier ages, rules like the COPPA Rule must continue not only to exist, but grow and adapt to ever-changing regulatory landscapes''); SuperAwesome Inc. (''SuperAwesome''), at 8 (''As a result of the rapid evolution of the [I]nternet economy and in particular services that rely on user data, the need for the COPPA Rule has never been greater''); Privacy Vaults Online, Inc. (''PRIVO''), at 2 (''In PRIVO's experience, both children and operators benefit when COPPA-compliant processes are in place to permit operators to offer relevant content to children and permit children to engage with that content in an appropriate and permissioned manner''); The LEGO Group (''Lego''), at 3 (''COPPA has played and continues to play an important role in raising awareness of the importance of protecting children's privacy online. COPPA has been effective because of its future-proof language, which has allowed it to protect against real harms today, that were not clear when the Rule was enacted in 1998''); Internet Association, at 1 (''Nearly 20 years after its adoption, COPPA remains an important mechanism for preserving parental choice with respect to the privacy and security of personal information about children under 13''); Consumer Reports, at 5 (''Due to the increase in connected products generally, and children's products specifically, there is only heightened need for the COPPA rules in the coming years''); and Association of National Advertisers (''ANA''), at 3 (''The current COPPA Rule is protective of children's privacy interests and generally workable for businesses. The FTC has given parents the ability to protect children's privacy and entities clear 'rules of the road' regarding how to comply with COPPA''). *But see* Committee for Justice, at 2 (''In addition to being ineffective at preventing the personal information of children from being collected without parental consent, [COPPA's] approach has the effect of burdening sites targeted towards children''); International Center for Law & Economics (''ICLE''), at 3 (regarding the aggregate costs and benefits of the Rule, ''[t]he benefits are unclear, but the costs—in the form of restricting the ability of family-friendly content creators to monetize their products—are real''); Connected Camps, at 1–3 (stating that COPPA has resulted in a number of unintended consequences based on mistaken assumptions).

[15] Other aspects of this definition are discussed in Part IV.A.5.

content.[16] For example, FTC-approved COPPA Safe Harbor program PRIVO asserted that general audience services with large numbers of children should be required to comply with COPPA, noting that ''[s]ervices not targeted to children that have large numbers of children must be addressed as it can result in online harm to the child due to inherent privacy and safety risks.'' [17] PRIVO further argued that the Commission should define thresholds for the number of child users at which COPPA's protections must be provided.[18] Similarly, Common Sense Media encouraged the Commission to interpret the definition of ''website or online service directed to children'' to include ''sites and services that attract, or are likely to be accessed by, disproportionate numbers of children.'' [19]

However, other commenters opposed expanding the definition of ''website or online service directed to children'' in such ways.[20] For example, The Toy Association opposed the adoption of a numerical or percentage audience threshold as a determinative factor in identifying child-directed websites or online services.[21] Similarly, panelists during the COPPA Workshop noted that ''[a]ttractive to children is very different from targeted to children,'' [22] and that COPPA's statutory language is ''child-directed'' and not ''child-attractive.'' [23] Commenters raised additional concerns with expanding the definition to include sites and services that do not include child-oriented activities but have large numbers of children, including because such a change would be inconsistent with the statute,[24] decrease online offerings for children,[25] be unduly burdensome to operators of non-child-directed websites or online services,[26] and lead to regulatory uncertainty.[27] Some commenters also noted that this amendment would be unnecessary since the definition already includes ''competent and reliable empirical evidence regarding audience composition'' as a factor to consider in determining whether a site or service is directed to children.[28]

During the Rule review that resulted in the 2013 Amendments, the Commission considered amending the definition of ''website or online service directed to children'' to cover sites or services that ''[b]ased on the overall content of the website or online service, [are] likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population. . . .'' [29] In response, the Commission received numerous comments raising concerns that such a standard was vague, potentially unconstitutional, and unduly expansive, and could lead to widespread age-screening and more intensive age verification across all websites and online services.[30] In ultimately declining to adopt this standard, the Commission stated it did not intend to expand the reach of the Rule to include additional sites and services.

The Commission again declines to modify the Rule in this manner. The definition of ''website or online service directed to children'' includes a number of factors the Commission will consider in determining whether a particular website or online service is child-directed, including consideration of ''competent and reliable empirical evidence regarding audience composition.'' Because the Commission already considers the demographics of a website's or online service's user base in its determination, the Commission does not believe it is necessary to modify the definition.

Similarly, the Commission also previously considered amending the Rule to set forth that websites and online services with a specified percentage of child users would be considered directed to children. As part of the Rule review that led to the 2013 Amendments, the Institute for Public Representation recommended that the Commission amend the Rule so that a website per se should be deemed ''directed to children'' if audience demographics show that 20% or more of its visitors are children under age 13.[31] The Commission determined not to adopt this as a per se legal standard, in part because the Commission noted that the definition of ''website or online service directed to children'' already positions the Commission to consider empirical evidence of the number of child users on a site.

While the Commission continues to believe that there are good reasons not to ground COPPA liability simply on an assessment of the percentage of a site's or service's audience that is under 13, the Commission would like to obtain additional comment on whether it should provide an exemption under which an operator's site or service would not be deemed child-directed if the operator undertakes an analysis of the site's or service's audience composition and determines that no more than a specific percentage of its users are likely to be children under 13. In particular, the Commission seeks comment on (1) whether the Rule should provide an exemption or other incentive to encourage operators to conduct an analysis of their sites' or services' user bases; (2) what the reliable means are by which operators can determine the likely ages of a site's or service's users; (3) whether and how the COPPA Rule should identify such means; (4) what the appropriate percentage of users should be to qualify for this potential exemption; [32] and (5)

[16] *See, e.g.,* Children's Advertising Review Unit (''CARU''), at 6–7; PRIVO, at 7; Common Sense Media, at 12.

[17] PRIVO, at 7.

[18] *Id.*

[19] Common Sense Media, at 12, 15–17.

[20] *See, e.g.,* Computer & Communications Industry Association (''CCIA''), at 6–7; U.S. Chamber of Commerce, at 3–4; ANA, at 6–7; Network Advertising Initiative (''NAI''), at 3–5; ViacomCBS Inc. (''Viacom''), at 5–6; Internet Association, at 9; Entertainment Software Association (''ESA''), at 8–12; TechFreedom, at 18.

[21] The Toy Association, at 9–10 (adding that ''[d]oing so is inconsistent with traditional norms for advertising and risks undermining the intent of the statute by elevating a single factor over others. Such an approach is also entirely inconsistent with how the FTC and advertising self-regulatory bodies handle advertising'').

[22] P. Aftab, Remarks from the *Scope of the COPPA Rule* panel at *The Future of the COPPA Rule: An FTC Workshop* 52 (Oct. 7, 2019), available at *https://www.ftc.gov/news-events/events/2019/10/future-coppa-rule-ftc-workshop.*

[23] *See* D. McGowan, Remarks from the *Scope of the COPPA Rule* panel at *The Future of the COPPA Rule: An FTC Workshop* 48 (Oct. 7, 2019), available at *https://www.ftc.gov/news-events/events/2019/10/future-coppa-rule-ftc-workshop.*

[24] *See, e.g.,* CCIA, at 6; NAI, at 3; ANA, at 6; Viacom, at 5–6; U.S. Chamber of Commerce, at 3–4.

[25] *See, e.g.,* ANA, at 7 (noting that ''[b]roadening the Rule's scope by making it applicable to websites or online services that do not include traditionally child-oriented activities, but that have large numbers of child users, would negatively impact consumers and children because operators would be disincentivized from producing content, products, and online services that, while not directed to them, have the potential to attract child users'').

[26] *See, e.g.,* CCIA, at 7 (noting that ''[a]udience metrics alone are a poor basis for determining COPPA applicability because they can shift over time, may be highly responsive to fads, cannot necessarily be predicted by an operator at the outset of (launching a website or online service, and cannot be reliably calculated'').

[27] *See, e.g.,* ESA, at 8.

[28] *See, e.g.,* CCIA, at 6–7; ANA, at 6–7.

[29] Children's Online Privacy Protection Rule, Supplemental Notice of Proposed Rulemaking; Request for Comment, 77 FR 46643, 46646 (Aug. 6, 2012), available at *https://www.federalregister.gov/documents/2012/08/06/2012-19115/childrens-online-privacy-protection-rule.*

[30] *See* 78 FR 3972 at 3983–3984.

[31] Children's Online Privacy Protection Rule, Proposed Rule; Request for Comment, 76 FR 59804, 59814 (Sept. 27, 2011), available at *https://www.federalregister.gov/documents/2011/09/27/2011-24314/childrens-online-privacy-protection-rule.*

[32] Because this exemption would rely on a single factor (*i.e.,* audience composition) to exempt sites or services from being deemed child-directed, the Commission anticipates that the appropriate

whether such an exemption would be inconsistent with the COPPA Rule's multi-factor test for determining whether a website or online service, or a portion thereof, is directed to children.

B. Changing the COPPA Rule's ''Actual Knowledge'' Standard

In responding to the Commission's request for comment on the definition of ''website or online service directed to children,'' a number of commenters recommended that the Commission revise COPPA's actual knowledge standard by moving to a constructive knowledge standard.[33] Namely, these commenters sought to bring within COPPA's jurisdiction those operators that have reason to know they may be collecting information from a child and those operators that willfully avoid gaining actual knowledge that they are collecting information from a child. Common Sense Media, for example, encouraged the Commission to broaden its view of ''actual knowledge'' to prevent the ''willful disregard that children's personal[ ] information is being collected.'' [34] Other commenters, referencing the California Consumer Privacy Act, similarly recommended that COPPA's actual knowledge standard should cover operators of general audience sites and services that ignore or willfully disregard the age of their users.[35] Children's privacy advocate 5Rights Foundation further recommended that the Commission should consider current and historic audience composition evidence of both the specific service and similar services in determining whether an operator has met the actual knowledge standard.[36]

A number of industry commenters opposed the Commission adopting a constructive knowledge standard. Several of these commenters pointed to the COPPA statute's language [37] and argued that the Commission lacks authority to change the actual knowledge standard.[38] Others asserted that a constructive knowledge standard would result in operators collecting additional data from all users, including children, and might lead to a reduction in available online content because operators may decide to withdraw content intended for teenagers and young adults to avoid the risk of interacting with children.[39] Additionally, the Association of National Advertisers stated that a constructive knowledge standard would conflict with the Commission's long-established position that operators are not obligated to investigate the age of their users [40] and would increase uncertainty about companies' potential COPPA obligations.[41] Similarly, Engine, a non-profit policy organization, noted that moving from the ''bright-line'' standard of actual knowledge to a less clear constructive knowledge standard could disproportionately burden small companies and start-ups.[42]

The Commission declines to change the Rule to bring operators of general audience sites and services under COPPA's jurisdiction based on constructive knowledge. As the Commission noted in 2011, Congress has already rejected a constructive knowledge approach with respect to COPPA. Specifically, the legislative history indicates that Congress originally drafted COPPA to apply to operators that ''knowingly'' collect personal information from children, a standard which would include actual, implied, or constructive knowledge.[43] After consideration of witness testimony, however, Congress modified the knowledge standard in the final legislation to require ''actual knowledge.'' [44] This deliberate decision to reject the more expansive approach makes clear that Congress did not intend for the ''actual knowledge'' standard to be read to include the concept of constructive knowledge. The Commission rejected calls for a move to a lesser knowledge standard for general audience operators while considering the 2013 Amendments,[45] and the Commission again declines to do so.[46]

III. Comments on the Rebuttable Presumption

Operators of websites or online services directed to children that collect personal information from their users must comply with COPPA regardless of whether they have actual knowledge that a particular user is, in fact, a child. Accordingly, as a practical matter, operators of child-directed sites and services must presume that all users are children.[47]

Through the 2013 Amendments, the Commission extended COPPA liability to operators that have actual knowledge

percentage to qualify for this exemption would be very low.

[33] *See, e.g.,* London School of Economics and Political Science, at 9 (noting that the FTC should re-examine its definition of child-directed websites and online services to include '''constructive knowledge' *i.e.,* what an operator ought to know about its users if they have carried their work in due diligence'') (bold typeface omitted); S. Egelman, at 3–4 (asserting that ''actual knowledge'' should include third-party recipients of data from a mobile app that can be identified as child-directed); Color of Change, at 4–5 (advocating that the FTC should move from an actual knowledge standard to a constructive knowledge standard); SuperAwesome, at 18 (recommending the Commission amend the definition of ''website or online service directed to children'' to include situations where an operator has, or should be reasonably expected to have, actual knowledge that it is collecting information from children or from users of a child-directed website or online service).

[34] Common Sense Media, at 12.

[35] 5Rights Foundation, at 3–4; Consumer Reports, at 8–9.

[36] 5Rights Foundation, at 4.

[37] 15 U.S.C. 6502(a)(1) (providing that ''[i]t is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b)'').

[38] *See, e.g.,* ANA, at 4–5; Interactive Advertising Bureau (''IAB''), at 4–5; internet Association, at 19; Software & Information Industry Association (''SIIA''), at 4; The Toy Association, at 3, 8, 10, 16.

[39] *See, e.g.,* Family Online Safety Institute (''FOSI''), at 6 (noting that ''[i]f a constructive knowledge standard were imposed, it is likely that all general audience sites and services would start treating all users as children, or turn off any services that might benefit minors clearly older than 13. This would have serious implications for free speech, or could lead to an increase in age gating, which is ineffective and often results—paradoxically—in increased collection of data from all users, including children''); Digital Content Next, at 1 (stating that ''[w]e believe that expanding the actual knowledge standard might inadvertently harm the privacy of children in two ways. First, if COPPA were expanded to apply in situations where a company has no actual knowledge that the consumer is under 13 years of age or when the company is not providing services directed to children, companies would need to collect significantly more data from children and their parents or guardians to meet the obligations of COPPA including obtaining consent. Second, in order to avoid COPPA compliance, some companies may decide to withdraw content that is intended for teenagers or young adults in order to avoid the risk of interacting with children'').

[40] *See, e.g.,* 64 FR 59888 at 59892 (noting that ''COPPA does not require operators of general audience sites to investigate the ages of their site's visitors . . .'').

[41] *See* ANA, at 5.

[42] Engine, at 5.

[43] *See* 76 FR 59804 at 59806, n. 26 (citing Senate and House bills), noting that ''Under federal case law, the term 'knowingly' encompasses actual, implied, and constructive knowledge.''

[44] *Id.* (citing *internet Privacy Hearing: Hearing on S. 2326 Before the Subcomm. On Commc'ns of the S. Comm. On Commerce, Science, & Transp.,* 105th Cong. 1069 (1998)).

[45] *See* 76 FR 59804 at 59806.

[46] As noted above, various commenters recommended that the Rule's actual knowledge standard cover operators of general audience sites and services that ignore or willfully disregard the age of their users. *See, e.g.,* Common Sense Media, at 12; 5Rights Foundation, at 3–4; Consumer Reports, at 8–9.

The concept of actual knowledge includes willful disregard. *See, e.g., Glob.-Tech Appliances, Inc.* v. *SEB S.A.,* 563 U.S. 754, 766 (2011) (noting that ''[i]t is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts''). Therefore, the Rule already applies to instances in which an operator of a general audience site or service willfully disregards the fact that a particular user is a child.

[47] *See, e.g.,* 78 FR 3972 at 3984 (''The Commission retains its longstanding position that child-directed sites or services whose primary target audience is children must continue to presume all users are children and to provide COPPA protections accordingly'').

they are collecting personal information directly from the users of another website or online service that is child-directed.[48] Under the Rule, such an operator ''has effectively adopted that child-directed content as its own and that portion of its service may appropriately be deemed to be directed to children.'' [49]

The Commission sought comments in its 2019 Rule Review Initiation on whether it should permit general audience platforms that allow third parties to upload content to the platform to rebut the presumption that all users of uploaded child-directed content are in fact children. In seeking comment on this issue, the Commission stated that absent actual knowledge that the uploaded content is child-directed, the platform operator is not responsible for complying with the Rule. Therefore, the FTC noted that the platform operator may have an incentive to avoid gaining knowledge about the nature of the uploaded content.[50] The Commission asked whether allowing general audience platform operators to rebut this presumption, thereby allowing them to treat users under age 13 differently from older users, would incentivize platform operators to take affirmative steps to identify child-directed content and treat users of that content in accordance with the Rule. The Commission also asked about the types of steps platforms could take to overcome the presumption that all users of child-directed content are children.

Relying on a variety of arguments, many consumer and privacy advocates opposed the notion of modifying the Rule to allow operators of general audience platforms to rebut the presumption that users of child-directed content uploaded to the platform by third parties are children. For example, a coalition of consumer organizations argued against allowing general audience platforms to rebut the presumption, pointing to the fact that families often share devices, accounts, and apps and that, as a result, many children likely access child-directed content while logged into a parent's account. Because of this, they argued that if the FTC modifies the presumption, ''it would lead to widespread mislabeling of children as adults and large numbers of under-protected children.'' [51] Other commenters echoed the concern that because users in a household may share devices that are persistently signed in, operators may incorrectly determine that a user is an adult.[52]

Another commenter, while acknowledging the ''perverse incentive'' operators have to avoid gaining actual knowledge, raised concern about operators' ability to effectively establish which of their users are children.[53] The commenter argued that, until operators are transparent about methods used to determine which users are children and such methods are deemed effective, permitting operators to rebut the presumption may result in children being treated as adults.[54]

One commenter argued that, ''in the vast majority of cases,'' users of child-directed content are, in fact, children.[55] This commenter further stated that allowing operators to rebut the presumption would prioritize allowing companies to engage in targeted advertising over ensuring that general audience platforms comply with COPPA.[56] Another commenter noted that, despite the alleged existence of subcultures of adult viewership of kids' content, the adult viewership of such content is likely very small.[57] The commenter further argued that protecting those adults' right to receive personalized advertising does not outweigh the risk of collecting personal data from children and tracking them online.[58]

A number of State Attorneys General argued that modifying the Rule to allow rebuttal is unlikely to incentivize platforms to identify and police child-directed content.[59] These commenters claimed that, even with the ability to rebut the presumption, platforms would have a greater incentive not to know about the presence of child-directed content because this would allow them to collect data for targeted ads from all users.[60] Additionally, an FTC-approved COPPA Safe Harbor program argued that allowing rebuttal would ''be complex and unfairly benefit large tech companies who may be the only companies with the wherewithal, rich customer data, and back-end infrastructure to meet the criteria for rebuttal.'' [61]

On the other hand, a number of industry commenters supported allowing general audience platforms to rebut the presumption that all users of child-directed content are necessarily children. Google argued that rebuttal ''with the appropriate safeguards, would allow those users to benefit from social engagement with the content and would allow content creators to benefit from increased monetization options, supporting continued investment in such content.'' [62] Without the ability to rebut the presumption, Google argued that platforms must degrade adults' user

[48] *See* 16 CFR 312.2, definition of ''website or online service directed to children,'' paragraph 2.

[49] 78 FR 3972 at 3978.

[50] 84 FR 35842 at 35845–35846. In extending liability to operators of general audience sites and services with actual knowledge, the Commission discussed, but expressly rejected, imposing a ''reason to know'' standard. 78 FR 3972 at 3977–78. Accordingly, the 2013 Amendments do not impose a duty on operators of general audience websites and online services to investigate whether they are collecting personal information from users of child-directed sites or services.

[51] Georgetown University Law Center's Institute for Public Representation submitted a joint comment on behalf of the following nineteen consumer groups: Campaign for a Commercial-Free Childhood; The Center for Digital Democracy; Alana Institute; American Academy of Pediatrics; Badass Teachers Association; Berkeley Media Studies Group; Consumer Action; Consumer Watchdog; Defending the Early Years; Electronic Frontier Foundation; Obligation, Inc.; P.E.A.C.E (Peace Educators Allied for Children Everywhere); Parent Coalition for Student Privacy; Parents Across America; Parents Television Council; Public Citizen; Story of Stuff; TRUCE (Teachers Resisting Unhealthy Childhood Entertainment); and U.S. PIRG (''Joint Consumer Groups''), at iii, 35–36.

[52] *See, e.g.,* Consumer Reports, at 19 (''[B]rowsers and other connected services are increasingly using always-logged-in features in order to make the browsing experience more seamless across devices . . . Although this allows the company to easily sync data across devices, it means that if a child then uses that device to go to YouTube [K]ids or another service it will appear that an adult is logged on and viewing the content''); SuperAwesome, at 28 (''Given the prevalence of shared devices, the only current method to safely detect whether a child or an adult is viewing particular content is by virtue of the type of content. E.g., preschool content is mostly likely viewed by preschoolers. We are particularly concerned about logged-in parents on kids' content, where there is a presumption that the adult is enjoying the kids' content. In our experience, this is rarely the case. In the vast majority of situations it is a child using an adult's device. For this reason, the only safe approach is to default to considering the user a child based on a subjective assessment of the content'') (bold typeface omitted).

[53] 5Rights Foundation, at 4 (also arguing that that the most privacy-protective way of addressing the incentive is to make it more difficult for operators to avoid gaining actual knowledge). *See also* Consumer Reports, at 18–19 (raising concern about the lack of transparency as to how general audience services determine the population of children that use the service).

[54] 5Rights Foundation, at 4.

[55] Consumer Reports, at 19.

[56] *Id.*

[57] SuperAwesome, at 27.

[58] *Id. See also* P. Aftab, at 15 (arguing that the convenience of adults accessing child-directed material should not outweigh children's privacy).

[59] Joint Attorneys General, at 13–14 (adding that they do not support permitting a rebuttable presumption absent robust measures—beyond logged in status or periodic reauthorization—to confirm a user is 13 or older, stating that such measures can include requiring operators to ask during the account creation process whether a child ever uses the account holder's device).

[60] *Id.* At 13.

[61] kidSAFE, at 13 (also suggesting that the Rule's existing mixed audience category could potentially serve the underlying purpose of not treating child-directed content audiences as exclusively under 13).

[62] Google, at 7–8, 11–12 (also arguing that allowing rebuttal does not require a Rule modification because the presumption is not codified in the COPPA statute or Rule).

experience, including by preventing interactivity with other adults. Google also distinguished general audience platforms with third-party content from ''static'' child-directed websites intended for a single audience, noting that such platforms ''have significant adult user bases that engage with traditionally child-directed content.'' [63]

Other commenters made similar arguments. One trade association stated that some general audience platforms ''have significant adult user bases'' and feature child-directed content that may appeal to users of varying ages, such as crafting or science education content.[64] It claimed that the audience presumption harms adult users of child-directed content by denying them the ability ''to find community, learn, and discover new content.'' [65] Another trade association noted that adults might want ''to interact with child-directed content for a variety of reasons, including nostalgia or to find content suitable for their children or students.'' [66]

A majority of the commenters that support modifying the Rule to permit rebuttal also recommended against the Commission proscribing specific means by which a general audience platform could rebut the presumption, calling instead for a flexible, standards-based approach that would allow platforms to employ a variety of measures to overcome the presumption. For example, citing ''advancements in technology and age-screening,'' one trade association recommended allowing rebuttal through reliance on a neutral age gate combined with additional steps to confirm identity, such as re-entry of a password.[67] The commenter also suggested that the Commission allow industry to explore alternative methods such as fingerprint, voiceprint, or device PIN.[68] Other commenters recommended similar flexibility in approach.[69]

Many of the comments supporting rebuttal of the presumption also argued against tying rebuttal to a requirement that the platform investigate and identify child-directed content on the platform. These commenters asserted that such a requirement would change the Rule's actual knowledge standard to a constructive knowledge standard, which would ''contravene [c]ongressional intent'' [70] and impose an unreasonable burden on platforms that would chill investment into the production of child-directed content.[71] One commenter cautioned that requiring the platform operators to identify whether uploaded content is child-directed could raise First Amendment concerns.[72]

After reviewing the submitted comments, the Commission does not propose modifying the Rule to permit general audience platforms to rebut the presumption that all users of child-directed content are children. The Commission finds persuasive the concerns raised in the comments about the practicality of allowing operators of such platforms to rebut this presumption. In particular, the Commission believes that the reality of parents and children sharing devices, along with account holders remaining perpetually logged into their accounts, could make it difficult for an operator to distinguish reliably between those users who are children and those who are not.

The Commission recognizes that allowing platforms to rebut the presumption would permit additional forms of monetization and, in some instances, provide additional functionality and convenience for adults interacting with child-directed content. Such benefits, however, simply do not outweigh the important goal of protecting children's privacy. Moreover, as set forth in the Commission's 2019 Rule Review Initiation, the reason for considering whether to allow platforms to rebut the audience presumption was to create an incentive for them to ''identify and police child-directed content uploaded by others.'' [73] Many commenters supporting the addition of this rebuttal expressed strong opposition to such a duty, thereby undercutting the rationale for modifying the Rule.

Finally, through its recognition of the ''mixed audience'' category of websites and online services, the Commission essentially allows operators to rebut the presumption as to the users of a subset of child-directed sites and services that do not target children as their primary audience. For example, where third-party content on a platform is child-directed under the Rule's multi-factor test but the platform does not target children as its primary audience, the operator can request age information and provide COPPA protections only to those users who are under 13. The Commission believes the mixed audience category affords operators an appropriate degree of flexibility.[74]

IV. Proposed Modifications to the Rule

As discussed in Part I, comments reflect overall support for COPPA and a recognition that it is an important and helpful tool for protecting children's online privacy. Additionally, many comments indicate support for the 2013 Amendments.[75]

[63] *Id.* At 8.

[64] SIIA, at 5.

[65] *Id.*

[66] CCIA, at 13.

[67] internet Association, at 18–19.

[68] *Id.* At 19.

[69] *See* Centre for Information Policy Leadership (''CIPL''), at 7 (supporting rebuttal where platforms take reasonable steps such as a neutral age gate plus additional verification, adding that the Commission should permit companies to adopt their own approach as long as they meet certain standards set by FTC); CCIA, at 14 (recommending the FTC adopt an ''adaptable standards-based approach'' for permitting general audience services to treat adult users interacting with child-directed content as adults, including the use of neutral age screening in conjunction with periodic password reauthorization and ''verification methods that may be appropriate in additional contexts, such as submitting a voiceprint or device PIN''); Google, at 10–11 (recommending the FTC adopt a ''reasonably calculated'' standard similar to the parental consent standard that provides reasonable assurance that the person engaging with the content is an adult, and further suggesting use of a neutral age gate in combination with such mechanisms as password re-authentication, fingerprint, or device PINs); SIIA, at 5 (supporting a ''standards-based approach to rebut presumption relying on neutral age gates plus additional steps like password authorization or alternative verification methods''); U.S. Chamber of Commerce, at 7 (supporting an adaptable standards-based approach rather than prescriptive measures); Yoti, at 16 (supporting the various mechanisms suggested in the Commission's 2019 Rule Review Initiation, but adding that because some may not work in certain circumstances, they should be options as opposed to a mandatory list).

[70] CCIA, at 14.

[71] *See* U.S. Chamber of Commerce, at 7; ANA, at 5–6; Google, at 11.

[72] Center for Democracy & Technology (''CDT''), at 9 (further adding that the Commission should not consider costs and benefits unrelated to privacy (*e.g.,* exposure to age-inappropriate content) as such concerns fall outside COPPA's statutory focus). *But see* SuperAwesome, at 29 (recommending the Commission consider costs and benefits unrelated to privacy, noting that allowing a rebuttal ''will significantly increase the risk of exposing children to inappropriate content, including inappropriate advertising, and potentially dangerous user-generated content'').

[73] 84 FR 35842 at 35846.

[74] While it is possible that the sharing of devices between parents and children can lead to complexities in determining the ''mixed audience'' nature of a website or online service, the Commission believes on balance that there is value in continuing to allow for a mixed audience designation.

[75] *See, e.g.,* SuperAwesome; PRIVO; ESA; Electronic Privacy Information Center (''EPIC''); and Joint Consumer Groups. *But see, e.g.,* Skyship Entertainment; J. Johnston (J House Vlogs); H. and S. Jho (Sockeye Media LLC); and ICLE. These commenters, many of whom are content creators on YouTube, opposed the Rule changes and/or the FTC's 2019 enforcement action against Google LLC and its subsidiary YouTube, LLC (''YouTube Case''), *Federal Trade Commission & People of the State of New York* v. *Google LLC & YouTube, LLC,* Case No. 1:19–cv–2642 (D.D.C. 2019), *available at https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3083-google-llc-youtube-llc.* These commenters asserted that the 2013 Amendments and the YouTube Case have affected the availability of children's content on YouTube due to creators' inability to monetize through personalized advertisements. Additional commenters criticized the 2013 Amendments for other reasons, such as

Continued

Despite this overall support, the Commission believes it is appropriate to modify a number of the Rule's provisions in light of the record developed through the 2019 Rule Review Initiation—including the COPPA Workshop and the large number of public comments received—as well as the FTC's two decades of experience enforcing the Rule. The Commission intends these modifications to update certain aspects of the Rule, taking into account technological and other relevant developments, and to provide additional clarity to operators on the Rule's existing requirements. Specifically, the Commission proposes modifying most provisions of the Rule, namely the following areas: Definitions; Notice; Parental Consent; Parental Right to Review; Confidentiality, Security, and Integrity of Children's Personal Information; Data Retention and Deletion; and Safe Harbor Programs. In addition, the Commission proposes minor modifications to the sections on Scope of Regulations and Voluntary Commission Approval Processes to address technical corrections.

Additionally, the Commission proposes some revisions to the Rule to address spelling, grammatical, and punctuation issues. For example, as noted above, the Commission proposes to modify § 312.1 regarding the scope of regulations, specifically to change the location of commas. Similarly, the Commission proposes amending the Rule to change the term ''Web site'' to ''website'' throughout the Rule, including in various definitions that use this term. This construction aligns with the COPPA statute's use of the term, as well as how that term is currently used in today's marketplace. This NPRM incorporates this proposed change in all instances in which the term ''Web site'' is used. The Commission does not intend for these proposed modifications to alter existing obligations or create new obligations under the Rule.

A. Definitions (16 CFR 312.2)

The Commission proposes to modify a number of the Rule's definitions in order to update the Rule's coverage and functionality and, in certain areas, to provide greater clarity regarding the Rule's intended application. The Commission proposes modifications to the definitions of ''online contact information'' and ''personal information.'' The Commission also proposes modifications to the definition of ''website or online service directed to children,'' including by adding a stand-alone definition for ''mixed audience website or online service.'' Additionally, the Commission proposes adding definitions for ''school'' and ''school-authorized education purpose.'' These two new definitions relate to the Rule's proposed new parental consent exception—a codification of longstanding Commission guidance by which operators rely on school authorization to collect personal information in limited circumstances rather than on parental consent. Finally, the Commission proposes modifications to the second paragraph of the definition of ''support for the internal operations of the website or online service.''

1. Online Contact Information

Section 312.2 of the Rule defines ''online contact information'' as ''an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.'' Online contact information is considered ''personal information'' under the Rule. Under certain parental consent exceptions, the Rule permits operators to collect online contact information from a child for certain purposes, such as initiating the process of obtaining verifiable parental consent, without first obtaining verifiable parental consent.

To improve the Rule's functionality, the Commission proposes amending this definition by adding ''an identifier such as a mobile telephone number provided the operator uses it only to send a text message'' to the non-exhaustive list of identifiers that constitute ''online contact information.'' As discussed later in this Part, this modification would allow operators to collect and use a parent's or child's mobile phone number in certain circumstances, including in connection with obtaining parental consent through a text message.

Although the Commission did not raise the issue of adding mobile telephone numbers to the online contact information definition in its 2019 Rule Review Initiation, some commenters supported such a modification in discussing the Rule's parental consent requirement.[76] One commenter noted that parents increasingly rely on telephone and cloud-based text messaging services,[77] and another similarly noted that permitting parents to utilize text messages to provide consent would be more in sync with current technology and parental expectations.[78] Commenters also stated that mobile communication mechanisms are more likely to result in operators reaching parents for the desired purpose of providing notice and obtaining consent, and that sending a text message may be one of the most direct and easily verifiable methods of contacting a parent.[79] Further, one commenter posited that the chance of a child submitting his or her own mobile number in order to circumvent a valid consent mechanism is no greater than, for instance, a child submitting his or her own email address.[80]

The Commission agrees that permitting parents to provide consent via text message would offer them significant convenience and utility. The Commission also recognizes that consumers are likely accustomed to using mobile telephone numbers for account creation or log-in purposes. For these reasons, the Commission is persuaded that operators should be able to collect parents' mobile telephone numbers as a method to obtain consent from the parent. Therefore, the Commission proposes adding mobile telephone numbers to the definition of ''online contact information.''

Modifying the definition in this way, however, will also enable operators to collect and use a child's mobile telephone number to communicate with the child, including—under various parental consent exceptions—prior to the operator obtaining parental consent.[81] The Commission does not seek to allow operators to use children's mobile telephone numbers to call them prior to the operator obtaining parental consent. Therefore, the Commission proposes including the qualifier ''provided the operator uses it only to send a text message'' to ensure that operators cannot call the child using the mobile telephone number, unless and until the operator seeks and obtains a parent's verifiable parental consent to do so.[82]

purported negative consequences to industry or beliefs that the 2013 Amendments strayed from the purpose of the COPPA statute. *See, e.g.,* Committee for Justice; TechFreedom; and Competitive Enterprise Institute.

[76] *See, e.g.,* kidSAFE, at 3–4. More generally, several other commenters recommended modifying the Rule to allow the use of text messaging in connection with obtaining parental consent. *See* The Toy Association, at 4; ESA, at 24–26; ANA, at 12; Entertainment Software Rating Board (''ESRB''), at 8.

[77] kidSAFE, at 4.

[78] ESA, at 24–25.

[79] kidSAFE, at 3–4; ANA, at 12.

[80] kidSAFE, at 4.

[81] 16 CFR 312.5(c)(1), (3), (4), (5), and (6).

[82] Because various parental consent exceptions allow operators to collect a child's ''online contact information'' without first obtaining verifiable parental consent, the Commission proposes limiting operators from using such information to call a child. However, this proposal does not prevent an

This proposed modification is a departure from the position the Commission previously took when it declined to include mobile telephone numbers within the definition of ''online contact information.'' In discussing the 2013 Amendments, the Commission stated that the COPPA statute did not contemplate adding mobile telephone numbers as a form of online contact information, and therefore it determined not to include mobile telephone numbers within the definition.[83] However, the Commission also stated at that time that the list of identifiers constituting online contact information was non-exhaustive and would encompass other substantially similar identifiers that permit direct contact with a person online.[84] As part of the 2013 Amendments, the Commission revised the definition to include examples of such identifiers, and the Commission now believes that adding mobile telephone numbers to this list is appropriate.

Specifically, consumers today widely use over-the-top messaging platforms, which are platforms that utilize the internet instead of a carrier's mobile network to exchange messages. These platforms include Wi-Fi messaging applications, voice over internet protocol applications that have messaging features, and other messaging applications. Because a consumer's mobile telephone number is often used as the unique identifier through which a consumer can exchange messages through these over-the- top platforms, mobile telephone numbers permit direct contact with a person online, thereby meeting the statutory requirements for this definition.[85]

When the Commission enacted the 2013 Amendments, the use of over-the-top messaging platforms was more nascent and growing in adoption. Today, the prevalent and widespread adoption of such messaging platforms allows consumers to use these platforms as their primary form of text messaging. Therefore, the Commission finds it appropriate to propose amending the definition of ''online contact information'' to include ''an identifier such as a mobile telephone number provided the operator uses it only to send a text message.'' The Commission welcomes comment on this proposed modification. In particular, the Commission is interested in understanding whether allowing operators to contact parents through a text message to obtain verifiable parental consent presents security risks to the recipient of the text message, especially if the parent would need to click on a link provided in the text message.

2. Personal Information

The COPPA statute defines ''personal information'' as individually identifiable information about an individual collected online, including, for example, a first and last name, an email address, or a Social Security number.[86] The COPPA statute also includes within the definition ''any other identifier that the Commission determines permits the physical or online contacting of a specific individual.'' [87]

a. Biometric Data

The Commission proposes using its statutory authority to expand the Rule's coverage by modifying the Rule's definition of ''personal information'' to include ''[a] biometric identifier that can be used for the automated or semi-automated recognition of an individual, including fingerprints or handprints; retina and iris patterns; genetic data, including a DNA sequence; or data derived from voice data, gait data, or facial data.'' [88] The Commission believes this proposed modification is necessary to ensure that the Rule is keeping pace with technological developments that facilitate increasingly sophisticated means of identification.

The majority of comments addressing the question of whether to expand the Rule's definition of ''personal information'' supported the addition of biometric data.[89] These commenters asserted that different types of biometric data can be used to contact specific individuals. For example, a coalition of consumer groups recommended adding biometric data, including genetic data, fingerprints, and retinal patterns, to the Rule's enumerated list of ''personal information.'' [90] These commenters cited consumer products' current use of biometrics to identify and authenticate users through such mechanisms as fingerprints and face scans.[91] They also noted that while some types of personal information may be altered to protect privacy, biometric data collected today may be used to identify and contact specific children for the rest of their lives.[92] Several other commenters also argued that the permanent and unalterable nature of biometric data makes it particularly sensitive.[93] Additional commenters noted that many states have expanded the definition of personally identifiable information to include biometric data as have other federal laws and regulations, such as the Department of Education's Family Educational Rights and Privacy Act (''FERPA'') Regulations, 34 CFR 99.3.[94]

A small number of commenters urged the Commission to proceed cautiously with respect to adding biometric data to the Rule's personal information definition. These commenters suggested that such an expansion could stifle innovation [95] or questioned whether biometric data allows the physical or online contacting of a specific individual.[96] Some commenters also

operator from making telephone calls after the operator has obtained consent. Indeed, the definition of ''personal information'' includes a telephone number under COPPA and the COPPA Rule, and neither the statute nor the Rule includes a prohibition on using that information to make telephone calls.

[83] *See* 78 FR 3972 at 3975. At that time, the Commission also questioned whether adding mobile telephone numbers would result in greater convenience for parents in providing consent, noting that children might have difficulty distinguishing between a parent's mobile number and a landline number. *See* 78 FR 3972 at 3975. This concern seems less significant today given that many more consumers now rely exclusively on their mobile phone.

[84] 78 FR 3972 at 3975, citing 76 FR 59804 at 59810.

[85] 15 U.S.C. 6501(12) (providing that ''the term 'online contact information' means an email address or *another substantially similar identifier that permits direct contact with a person online*'' (emphasis added)).

[86] *See* 15 U.S.C. 6501(8).

[87] 15 U.S.C. 6501(8)(F). As part of the 2013 Amendments, the Commission used this statutory authority to add several new identifiers to the COPPA Rule's definition of ''personal information.'' *See* 78 FR 3972 at 3978–83. For example, the Commission added a photograph, video, or audio file containing a child's image or voice, and it also included geolocation information sufficient to identify street name and name of a city or town. Additionally, the Commission added persistent identifiers that can be used to recognize a user over time and across different websites or online services, which the Rule had previously only covered when associated with individually identifiable information. *See* 64 FR 59888 at 59912.

[88] Given that the Rule's definition of ''personal information'' currently includes ''a photograph, video, or audio file where such file contains a child's image or voice,'' the Commission believes facial features, voice, and gait are already covered under the Rule. 16 CFR 312.2, definition of ''personal information,'' paragraph 8. However, in light of the inherently personal and sensitive nature of data derived from voice data, gait data, and facial data, the Commission proposes to cover this data within the proposed list of biometric identifiers.

[89] *See, e.g.,* Attorney General of Arizona, at 2; Joint Attorneys General, at 7; Consumer Reports, at 14; SuperAwesome, at 12; CARU, at 3–5; ESRB, at 5; and kidSAFE, at 6.

[90] Joint Consumer Groups, at 52–53.

[91] *Id.* at 53 (citing Heather Kelly, *Fingerprints and Face Scans Are the Future of Smartphones. These Holdouts Refuse to Use Them,* Wash. Post (Nov. 15, 2019)).

[92] Joint Consumer Groups, at 53.

[93] CARU, at 4; H. Adams, at 3; Joint Attorneys General, at 7, 11–12.

[94] Future of Privacy Forum (''FPF''), at 4–5; D. Derigiotis Burns Wilcox, at 1–2.

[95] The App Association (''ACT''), at 4.

[96] CCIA, at 4; The Toy Association, at 3, 17.

recommended that, if the Commission does define biometric data as personal information, it should consider appropriate exceptions, for example, where the data enhances the security of a child-directed service [97] or the operator promptly deletes the data.[98]

The Commission believes that, as with a photograph, video, or audio file containing a child's image or voice, biometric data is inherently personal in nature. Indeed, the Commission agrees with the many commenters [99] who argued that the personal, permanent, and unique nature of biometric data makes it sensitive, and the Commission believes that the privacy interest in protecting such data is a strong one.

And, as with some facial and voice recognition technologies, the Commission believes that biometric recognition systems are sufficiently sophisticated to permit the use of identifiers such as fingerprints and handprints; retina and iris patterns; genetic data, including a DNA sequence; and data derived from voice data, gait data, or facial data to identify and contact a specific individual either physically or online.

The Commission notes that the specific biometric identifiers that it proposes adding to the Rule's personal information definition are examples and not an exhaustive list. The Commission welcomes further comment on this proposed modification, including whether it should consider additional biometric identifier examples and whether there are appropriate exceptions to any of the Rule's requirements that it should consider applying to biometric data, such as exceptions for biometric data that has been promptly deleted.

b. Inferred and Other Data

In addition to biometric data, the Commission also asked for comment on whether it should expand the Rule's definition of ''personal information'' to include data that is inferred about, but not directly collected from, children, or other data that serves as a proxy for ''personal information.'' Several commenters recommended such an expansion.[100] For example, one commenter stated that inferred data, including predictive behavior, is often incredibly sensitive and that even when it is supplied in the aggregate, can be easily re-identified.[101] The commenter also noted that certain State laws include inferred data in their definitions of personally identifiable information.[102] Another pointed to the ability of analysts to infer personal information that the Rule covers, such as an individual's geolocation, from data that currently falls outside the Rule's scope.[103]

Commenters opposed to including inferred data stated that such an expansion would not be in accordance with the COPPA statute, which covers data collected ''from'' a child.[104] Some commenters opposed to the inclusion of inferred data argued that inferred data does not permit the physical or online contacting of the child.[105] Some commenters also expressed concern that adding inferred data would create ambiguity and hamper companies' abilities to provide websites and online services to children, would stifle new products and services, and may prohibit the practice of contextual advertising.[106]

The Commission has decided not to propose including inferred data or data that may serve as a proxy for ''personal information'' within the definition. As several commenters correctly note, the COPPA statute expressly pertains to the collection of personal information *from* a child.[107] Therefore, to the extent data is collected from a source other than the child, such information is outside the scope of the COPPA statute and such an expansion would exceed the Commission's authority. Inferred data or data that may serve as a proxy for ''personal information'' could fall within COPPA's scope, however, if it is combined with additional data that would meet the Rule's current definition of ''personal information.'' In such a case, the existing ''catch-all'' provision of that definition would apply.[108]

c. Persistent Identifiers

In 2013, the Commission used its authority under 15 U.S.C. 6501(8)(F) to modify the Rule's definition of ''personal information'' to include persistent identifiers that can be used to recognize a user over time and across different websites or online services. Prior to that change, the Rule covered persistent identifiers only when they were combined with certain types of identifying information.[109] As part of the 2019 Rule Review Initiation, the Commission asked for comment on whether this modification has resulted in stronger privacy protections for children. The Commission also asked whether the modification has had any negative consequences.

A number of commenters, citing a variety of reasons, argued that the amendment to include ''stand-alone'' persistent identifiers as personal information was incorrect or had caused harm. Several commenters claimed that persistent identifiers alone do not allow for the physical or online contacting of a child, and thus should not be included unless linked to other forms of personal information.[110] Commenters also argued

[97] The Toy Association, at 3, 17.

[98] kidSAFE, at 6.

[99] *See, e.g.,* Joint Consumer Groups, at 53; CARU, at 3–5; H. Adams, at 3; Joint Attorneys General, at 11–12.

[100] *See, e.g.,* Joint Consumer Groups, at 53–54 (supporting the inclusion of inferred data); London School of Economics, at 1, 9 (supporting the inclusion of inferred data from profiling and other data analytics); SuperAwesome, at 18 (supporting the inclusion of inferred data, health and activity information derived from fitness trackers, and household viewing data from automated content recognition systems in televisions and video streaming devices); C. Frascella, at 2–3 (supporting the inclusion of personal information collected from children through digital reproduction technology); Parent Coalition for Student Privacy, at 5–8 (supporting, among other things, the inclusion of inferred data and proxy data, such as the language spoken at home and the length of time the child has lived in the United States); UnidosUS (''Unidos''), at 5 (urging the Commission to study the use of ''cultural cues'' as personal information). *See also, e.g.,* National Center on Sexual Exploitation, at 2 (expressing general support for expanding the definition of ''personal information'' to protect children).

[101] Parent Coalition for Student Privacy, at 5.

[102] *Id.* (citing Colorado's Student Data Transparency and Security Act and California's Consumer Privacy Act).

[103] Joint Consumer Groups, at 54 (''For example, non-geolocation ambient data collected by a mobile device operating system does not constitute an independently enumerated category of personal information under the current iteration of the COPPA Rule. But a savvy analyst could use data collected by a mobile device to infer specific geolocation or other details that clearly *would* fall under the COPPA Rule definition of personal information'') (emphasis in original).

[104] *See, e.g.,* IAB, at 4; NCTA—The internet and Television Association (''NCTA''), at 5–7; U.S. Chamber of Commerce, at 3. *See also* CCIA, at 4 (asserting that the COPPA Rule already covers the processing of personal information to derive inferences about a specific user and that the use of aggregated data that does not relate to a specific user is outside the scope of the COPPA statute's definition of ''personal information'').

[105] *See, e.g.,* IAB, at 4; The Toy Association, at 16–17.

[106] *See* CIPL, at 2; U.S. Chamber of Commerce, at 3; IAB, at 4; internet Association, at 5–6; PRIVO, at 8.

[107] 15 U.S.C. 6502(a)(1).

[108] *See* 16 CFR 312.2, definition of ''personal information,'' paragraph 10 (defining ''personal information'' to include ''[i]nformation concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition'').

[109] *See* 64 FR 59888 at 59912.

[110] *See, e.g.,* TechFreedom, at 8 (''[P]ersistent identifiers on their own can only identify a device, not a 'specific person' as the COPPA statute requires''); Competitive Enterprise Institute, at 2 (''[P]ersistent online identifiers do not 'permit[] the physical or online contacting of a specific individual' in the sense that Congress contemplated when it enacted COPPA in 1998''); ICLE, at 6 (''Neither IP addresses nor device identifiers alone 'permit the physical or online contacting of a specific individual' as required by 15 U.S.C. 6501(8)(F)''); NetChoice, at 3 (''Persistent

that the persistent identifier modification harmed both operators and children. Specifically, some commenters pointed to operators' lost revenue from targeted advertising, which requires collection of persistent identifiers, and the resulting reduction of available child-appropriate content online due to operators' inability to monetize such content.[111] One commenter stated that while the 2013 modification ''served the widely held goal of excluding children from interest-based advertising,'' it created uncertainty for operators' use of data for internal operations.[112] The commenter suggested that the Commission consider exempting persistent identifiers used for internal operations from the Rule's deletion requirements.[113]

In contrast, other commenters expressed strong support for the 2013 persistent identifier modification. For example, while acknowledging that it took time for the digital advertising industry to adapt to the new definition, one commenter described the 2013 modification as ''wholly positive.'' [114] The commenter also noted that the change recognized that unique technical identifiers might be just as personal as traditional identifiers such as name or address when used to contact, track, or profile users.[115] The commenter stated that this change ''laid the groundwork for many countries adopting this expanded definition of personal information in their updated privacy laws.'' [116]

After reviewing the comments relevant to this issue, the Commission has decided to retain the 2013 modification including stand-alone persistent identifiers as ''personal information.'' The Commission is not persuaded by the argument that persistent identifiers must be associated with other individually identifiable information to permit the physical or online contacting of a specific individual. The Commission specifically addressed, and rejected, this argument during its discussion of the 2013 Amendments. There, the Commission rejected the claim that persistent identifiers only permit contact with a device. Instead, the Commission pointed to the reality that at any given moment a specific individual is using that device, noting that this reality underlies the very premise behind behavioral advertising.[117] The Commission also reasoned that while multiple people in a single home often use the same phone number, home address, and email address, Congress nevertheless defined these identifiers as ''individually identifiable information'' in the COPPA statute.[118] The adoption of similar approaches in other legal regimes enacted since the 2013 Amendments further supports the Commission's position.[119]

Nor does the Commission find compelling the argument that the 2013 persistent identifier modification has caused harm by hindering the ability of operators to monetize online content through targeted advertising. One of the stated goals of including persistent identifiers within the definition of ''personal information'' was to prevent the collection of personal information from children for behavioral advertising without parental consent.[120] After reviewing the comments, the Commission has determined that the privacy benefits of such an approach outweigh the potential harm, including the purported harm created by requiring operators to provide notice and seek verifiable parental consent in order to contact children through targeted advertising.[121]

Moreover, it bears noting, as the Commission did in 2013, that the expansion of the personal information definition was coupled with a newly created exception that allows operators to collect persistent identifiers from children to provide support for the internal operations of the website or online service without providing notice or obtaining parental consent. One of these purposes is serving contextual advertising, which provides operators another avenue for monetizing online content. The Commission continues to believe that it struck the proper balance in 2013 when it expanded the personal information definition while also creating a new exception to the Rule's requirements.

3. School and School-Authorized Education Purpose

As discussed in Part IV.C.3.a., the Commission proposes codifying current guidance on ed tech [122] by adding an

identifiers, like cookies, only identify devices—not a person'').

[111] *See, e.g.,* ICLE, at 7–12. These commenters also included content creators on YouTube. *See, e.g.,* Skyship Entertainment; J. Johnston (J House Vlogs); H. and S. Jho (Sockeye Media LLC). *See also* CARU, at 1 (noting that ''[t]he addition of 'persistent identifier' to the definition of 'Personal Information' has resulted in improved privacy protections for children but has had negative consequences for industry, specifically the lack of robust and creative child-directed content''); IAB, at 4 (noting that this modification may have had the unintended effect of reducing the availability of children's online content).

[112] CCIA, at 3.

[113] *Id.*

[114] SuperAwesome, at 18.

[115] *Id. See also* Princeton University Center for Information Technology Policy (''Princeton University''), at 4 (''In the most recent COPPA Rule revision, the FTC recognized that 'persistent identifiers' are a form of 'personal information,' because they enable singling out a specific user through their device for contact. This makes sense; we see no basis in computer science for treating persistent identifiers any differently from other means of directing communications, such as telephone numbers or email addresses. While the technical details differ, the use of the information is the same'').

[116] SuperAwesome, at 18. This commenter also recommended that the Commission expand the ''personal information'' definition's non-exhaustive list of persistent identifiers to include ''device ID, [a]dvertising ID or similar'' IDs and a ''user agent or other device information which, when combined, can be used to create a unique fingerprint of the device.'' SuperAwesome, at 17. Because the Rule provides examples of persistent identifiers rather than an exhaustive list, the Commission does not find it necessary to include these elements within the definition.

[117] 78 FR 3972 at 3980.

[118] *Id.* (citing 15 U.S.C. 6501(8)).

[119] *See* The European Union's General Data Protection Regulation (''GDPR''), which defines ''personal data'' as ''any information relating to an identified or identifiable natural person . . . [A]n identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as . . . an online identifier.'' GDPR, Article 4, *available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0679-20160504&qid=1532348683434.* Recital 30 of the GDPR notes that ''natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as [I]nternet [P]rotocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags.'' Recital 30, *available at https://eur-lex.europa.eu/eli/reg/2016/679.* The California Privacy Rights Act similarly defines ''personal information'' as ''information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household,'' and includes identifiers such as online identifiers. Section 3, Title 1.81.5 of the CCPA, added to Part 4 of Division 3 of the California Civil Code § 1798.140(v). This approach is also consistent with the FTC's own precedent. *See Protecting Consumer Privacy in an Era of Rapid Change,* Federal Trade Commission (March 2012), available at *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326bprivacybreport.pdf; FTC Staff Report: Self-Regulatory Principles For Online Behavioral Advertising* (February 2009), available at *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf.*

[120] 78 FR 3972 at 3979–3981.

[121] The Commission received comments from content creators who indicated that the 2013 Amendments resulted in the loss of the ability to monetize content through targeted advertising. *See* Skyship Entertainment; J. Johnston (J House Vlogs); H. and S. Jho (Sockeye Media LLC). As discussed in Part IV.A.2.c., the 2013 Amendments permit monetization through other avenues, such as contextual advertising, or through providing notice and seeking parental consent for the use of personal information for targeted advertising.

[122] *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act,* Federal Trade Commission (May 19, 2022), available at

Continued

exception for parental consent in certain, limited situations in which a school authorizes an operator to collect personal information from a child. The Commission also proposes adding definitions for ''school'' and ''school-authorized education purpose,'' terms that are incorporated into the functioning of the proposed exception and necessary to cabin its scope. Part IV.C.3.a. provides further discussion about these definitions.

4. Support for the Internal Operations of the Website or Online Service

As discussed in Part IV.A.2.c., the 2013 Amendments expanded the definition of ''personal information'' to include stand-alone persistent identifiers ''that can be used to recognize a user over time and across different websites or online services.'' [123] The 2013 Amendments balanced this expansion by creating an exception to the Rule's notice and consent requirements for operators that collect a persistent identifier for the ''sole purpose of providing support for the internal operations of the website or online service.'' [124] The Rule defines ''support for the internal operations of the website or online service'' to include a number of specified activities and provides that the information collected to perform those activities cannot be used or disclosed ''to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.'' [125]

A variety of commenters recommended modifying the definition of ''support for the internal operations of the website or online service.'' Multiple consumer and privacy advocates, academics, and one advertising platform called for the Commission to define ''support for the internal operations'' narrowly and thereby restrict the exception's use.[126] For example, a coalition of consumer groups argued that the current definition is overly broad, too vague, and allows operators to avoid or minimize their COPPA obligations.[127] These commenters cited the lack of clarity between data collection for permissible content personalization versus collection for impermissible behavioral advertising.[128] To prevent operators from applying the exception too broadly, the coalition recommended a number of modifications to the definition, including limiting ''personalization'' to user-driven actions and to exclude methods designed to maximize user engagement.[129]

Several commenters specifically recommended that the Commission exclude the practice of ''ad attribution''—which allows the advertiser to associate a consumer's action with a particular ad—from the support for the internal operations definition.[130] A group of State Attorneys General argued that ad attribution is unrelated to the activities enumerated in the definition and that the practice ''necessarily involves 'recogniz[ing] a user over time and across different [websites] or online services.' '' [131] Another commenter argued that companies should not be able to track children across online services to determine which ads are effective because the harm to privacy outweighs the practice's negligible benefit.[132]

In contrast, many industry commenters recommended that the Commission expand the list of activities that fall under the support for the internal operations definition. With respect to ad attribution, these commenters generally cited the practical need of websites and online services that monetize through advertising to evaluate the effectiveness of ad campaigns or to measure conversion in order to calculate compensation for advertising partners.[133] Some commenters characterized the practice as common and expected, and they argued that reducing the ability to monetize would result in the development of fewer apps and online experiences for children.[134]

Several commenters stated that ad attribution already falls within the definition but supported a Rule modification to make this clear.[135] One argued that the definition's prohibition on the collection of persistent identifiers for behavioral advertising ''serves as a safeguard to assure that [attribution] is appropriately limited.'' [136]

Commenters also recommended that a number of other practices should fall within the definition of ''support for the internal operations of the website or online service.'' These include additional ad measuring techniques,[137] different types of personalization activities,[138] product improvement,[139] and fraud detection.[140]

https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection; ComplyingwithCOPPA:FrequentlyAskedQuestions (''*COPPA FAQs*''), *FAQ Section N,* available at *https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions.*

[123] 16 CFR 312.2, definition of ''personal information,'' paragraph 7.

[124] 16 CFR 312.5(c)(7).

[125] 16 CFR 312.2, definition of ''support for the internal operations of the website or online service.'' The definition includes activities such as those necessary to maintain or analyze the functioning of a site or service; personalize content; serve contextual advertising or cap the frequency of advertising; and protect the security or integrity of the user, site, or service.

[126] Joint Consumer Groups, at 48–52; S. Egelman, at 5–6 (stating that, from a technical standpoint, persistent identifiers are not needed to carry out the activities listed in the support for the internal operations of the website or online service definition); Princeton University, at 5–7 (expressing reservations about the scope of the internal operations exception); SuperAwesome, at 5–7 and 19–20 (noting that the industry-standard persistent identifiers are not needed for most internal operations and that the support for the internal operations exception should be significantly narrowed, if not eliminated).

[127] Joint Consumer Groups, at 48–52.

[128] *Id.* at 48–49.

[129] *Id.* at 50–52.

[130] Joint Attorneys General, at 8; Joint Consumer Groups, at 51–52; Consumer Reports, at 14–15.

[131] Joint Attorneys General, at 8.

[132] Consumer Reports, at 14–15 (noting that it is unclear whether companies are following COPPA's existing restraints on operators' use of the support for the internal operations exception).

[133] ESA, at 17–18; CARU, at 5; The Toy Association, at 14–15; NCTA, at 10. *See also* Committee for Justice, at 4.

[134] *See, e.g.,* kidSAFE, at 6.

[135] *See, e.g.,* The Toy Association, at 14–15; NCTA, at 10; ESA, at 18; CARU, at 5. *See also* PRIVO, at 8 (noting that ''the Commission should make clear whether attribution and remarketing can be claimed to be support for internal operations'').

[136] The Toy Association, at 15.

[137] *See, e.g.,* ANA, at 11 (recommending including click/conversion tracking, ad modeling, and A/B testing, practices that provide operators with information about the value of their ads, reduce the need for behavioral targeted ads, and allow operators to determine the most ''user-friendly'' version of a site); Google, at 17 (recommending adding conversion tracking and ad modeling, which allow measuring the relevance and appropriateness of ads); IAB, at 3 (recommending including conversion tracking and advertising modeling because they ''are fundamental activities that improve the customer and business experience without creating additional privacy risks to children''); internet Association, at 6–7 (recommending including click/conversion tracking and ad modeling support because they ''support child-centered content creation and, in each case, can be undertaken without focusing on a specific child's behavior over time for targeting purposes'').

[138] *See, e.g.,* NCTA, at 9–10 (recommending including user-driven and user-engagement personalization to allow, for example, ''activities to tailor users' experiences based on their prior interactions with a site or service (whether derived from predictive analytics, real-time behaviors, or both)''); Viacom, at 3 (requesting the Commission clarify that the definition includes ''enhanced personalization techniques based on operator-driven first-party metrics and inferences about user interaction''); CCIA, at 5–6 (recommending including personalization to a user, such as ''the recommendation of content based on prior activity on the website or online service'').

[139] *See, e.g.,* ANA, at 11; kidSAFE, at 7; Khan Academy, at 2–3 (noting that it is important to preserve the operator's ability to use data for educational research, product development, and to analyze the functioning of a product).

[140] *See, e.g.,* SIIA, at 5 (recommending amending (1)(v) of the definition to ''[p]rotect the security or

By expanding the definition of ''personal information'' to include stand-alone persistent identifiers, while at the same time creating an exception that allowed operators to collect such identifiers without providing notice and obtaining consent for a set of prescribed internal operations, the Commission struck an important balance between privacy and practicality in the 2013 Amendments.[141] After careful consideration of the comments that addressed the Rule's support for the internal operations definition, the Commission does not believe that significant modifications to either narrow or expand the definition are necessary.

With respect to ad attribution, which generated significant commentary, the Commission believes the practice currently falls within the support for the internal operations definition. When it amended the definition in 2013, the Commission declined to enumerate certain categories of uses, including payment and delivery functions, optimization, and statistical reporting, in the Rule, stating that the definitional language sufficiently covered such functions as activities necessary to '' 'maintain or analyze' the functions'' of the website or service.[142] The Commission believes that ad attribution, where a persistent identifier is used to determine whether a particular advertisement led a user to take a particular action, falls within various categories, such as the concept of ''payment and delivery functions'' and ''optimization and statistical reporting.'' When used as a tool against click fraud, ad attribution also falls within the category of ''protecting against fraud or theft,'' an activity that served as a basis for the Commission's creation of the support for the internal operations exception.[143] That said, as the definition makes clear, the Commission would not treat ad attribution as support for the internal operations of the website or online service if the information collected to perform the activity is used or disclosed ''to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.'' [144]

The definition's use restriction is an important safeguard to help ensure that operators do not misuse the exception that allows them to collect a persistent identifier in order to provide support for the internal operations without providing notice and obtaining consent.[145] The Commission appreciates the concerns expressed by some commenters that there is a lack of clarity in how operators implement the support for the internal operations exception and that certain operators may not comply with the use restriction. To increase transparency and to help ensure that operators follow the use restriction, the Commission proposes modifying the online notice requirements in § 312.4(d) to require any operator using the support for the internal operations exception to specifically identify the practices for which the operator has collected a persistent identifier and the means the operator uses to comply with the definition's use restriction.[146]

With respect to the other proposed additions, the Commission does not believe additional enumerated activities are necessary. Other proposed additions—such as personalization, product improvement, and fraud prevention—are already covered.[147] As the Commission noted in developing the 2013 Amendments, the Commission is cognizant that future technical innovation may result in additional activities that websites or online services find necessary to support their internal operations.[148] Therefore, the Commission reminds interested parties that they may utilize the process permitted under § 312.12(b) of the Rule, which allows parties to request Commission approval of additional activities to be included within the support for the internal operations definition based on a detailed justification and an analysis of the activities' potential effects on children's online privacy.

Although the Commission does not find it necessary to modify the definition's enumerated activities, it does propose modifications to the definition's use restriction. Currently, the use restriction applies to each of the seven enumerated activities in the definition, and it states that information collected for those enumerated activities may not be used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.[149] However, certain of these activities likely necessarily require an operator to contact an individual, for example in order to ''[f]ulfill a request of a child as permitted by §§ 312.5(c)(3) and (4).'' [150] Therefore, the Commission proposes clarifying language to indicate that the information collected for these enumerated activities may be used or disclosed to carry out the activities permitted under the support for the internal operations exception.

In addition, the Commission proposes expanding its non-exhaustive list of use restrictions. The Commission agrees with commenters who argued that the support for the internal operations exception should not be used to allow operators to maximize children's engagement without verifiable parental consent. Therefore, the Commission proposes prohibiting operators that use this exception from using or disclosing personal information in connection with processes, including machine learning processes, that encourage or prompt use of a website or online service. This proposed addition prohibits operators from using or disclosing persistent identifiers to optimize user attention or maximize user engagement with the website or online service, including by sending notifications to prompt the child to engage with the site or service, without verifiable parental consent.

The Commission welcomes comment on whether there are other engagement

integrity of the user, [website], or online service of the operator or its service providers''). *See also* kidSAFE, at 7 (recommending expanding the definition to include customer or technical support, market research and user surveys, demographic analysis, ''or any other function that helps operate internal features and activities offered by a site or app'').

[141] *See* 78 FR 3972 at 3980 (noting that ''the Commission recognizes that persistent identifiers are also used for a host of functions that have little or nothing to do with contacting a specific individual, and that these uses are fundamental to the smooth functioning of the internet, the quality of the site or service, and the individual user's experience'').

[142] *Id.* at 3981.

[143] 76 FR 59804 at 59812; 77 FR 46643 at 46647–46648.

[144] 16 CFR 312.2, definition of ''support for the internal operations of the website or online service,'' paragraph 2. This restriction applies to each of the activities enumerated in the definition.

[145] 16 CFR 312.5(c)(7).

[146] *See* Part IV.B.3. for further discussion of these proposed changes.

[147] *See, e.g.,* 77 FR 46643 at 46647 (noting that ''[b]y carving out exceptions for support for internal operations, the Commission stated it intended to exempt from COPPA's coverage the collection and use of identifiers for authenticating users, improving site navigation, maintaining user preferences, serving contextual advertisements, protecting against fraud or theft, or otherwise personalizing, improving upon, or securing a [website] or online service'').

[148] 78 FR 3972 at 3981.

[149] 16 CFR 312.2, definition of ''support for the internal operations of the website or online service,'' paragraph 2.

[150] 16 CFR 312.2, definition of ''support for the internal operations of the website or online service,'' paragraph (1)(vii). For example, § 312.5(c)(3) allows an operator to ''respond directly on a one-time basis to a specific request from the child.'' The Commission notes that the exceptions set forth in §§ 312.5(c)(3) and (4) are limited to responding to a child's specific request. Such a response would not include contacting an individual for another purpose, including through behavioral advertising, amassing a profile on a specific individual, or for any other purpose.

techniques the Rule should address. The Commission also welcomes comment on whether and how the Rule should differentiate between techniques used solely to promote a child's engagement with the website or online service and those techniques that provide other functions, such as to personalize the child's experience on the website or online service.

5. Website or Online Service Directed to Children

The Commission proposes a number of changes to the definition of ''website or online service directed to children.'' Overall, the Commission does not intend these proposed changes to alter the definition substantively; rather, the changes will provide additional insight into and clarity regarding how the Commission currently interprets and applies the definition.

a. Multi-Factor Test

The first paragraph of the definition sets forth a list of factors the Commission will consider in determining whether a particular website or online service is child-directed. The Commission received a significant number of comments regarding the Rule's multi-factor test. Several industry commenters encouraged the FTC to continue relying on a multi-factor test to determine whether a site or service is directed to children, balancing both context (*e.g.,* intent to target children, promoted to children, and empirical evidence of audience) and content (*e.g.,* subject matter, animation, and child-oriented activities) factors.[151] These commenters discouraged the FTC from relying on a single factor taken alone, arguing that a multi-factor evaluation allows flexibility and takes into account that some factors may be more or less indicative than others.[152]

At the same time, commenters also recommended that the Commission reevaluate the test's existing factors, claiming that some are outdated and no longer seem indicative of child-directed websites or online services. For example, several industry members noted that content styles such as animation are not necessarily determinative of whether a service is child-directed.[153] In addition, several industry members recommended that the FTC consider giving more weight to particular factors when determining whether a website or online service is directed to children or that it create a sliding scale for existing factors to provide more guidance for operators.[154] For example, a number of commenters recommended that the Commission weigh more heavily operators' intended audience as opposed to empirical evidence of audience composition.[155]

Several FTC-approved COPPA Safe Harbor programs suggested adding new factors to the Rule to help guide operators, including by adding an operator's self-categorization to third parties. One such program, for example, recommended considering marketing materials directed to third-party partners or advertisers, claiming that such materials can provide insights on the operator's target and users.[156] Another supported consideration of ''whether an operator self-categorizes its website or online service as child-directed on third[-]party platforms.'' [157] A third FTC-approved COPPA Safe Harbor program recommended requiring operators to periodically analyze the demographics of their audience or users and to consider consumer inquiries and complaints.[158]

Some commenters cautioned against relying on an operator's internal rating system or a third party's rating system as a factor.[159] One such commenter argued that relying on operators' internal rating systems would potentially punish those that engage in good faith, responsible review activities and might violate section 230 of the Communications Decency Act.[160] The commenter also argued that a third party's ratings do not constitute competent and empirical evidence regarding audience composition or evidence regarding the intended audience, and further argued that relying on such ratings increases an operator's risk of unexpected liability, particularly if the rating system may have been developed for a purpose unrelated to the COPPA Rule's factors.[161]

The Commission continues to believe that the Rule's multi-factor test, which applies a ''totality of the circumstances'' standard, is the most practical and effective means for determining whether a website or online service is directed to children. The determination of whether a given site or service is child-directed is necessarily fact-based and requires flexibility as individual factors may be more or less relevant depending on the context. Moreover, a requirement that the Commission, in all cases, weigh more heavily certain factors could unduly hamper the Commission's law enforcement efforts. For example, it is

[151] *See, e.g.,* Google, at 15 (''By equally balancing both content and context factors in applying the multi-factor test, operators—including creators, developers and platforms—are less likely to be over- or under-inclusive in making determinations about child-directed services, particularly when decisions are being made at the margins. We are concerned that pulling out a single factor as a litmus test for child-directedness can lead to bad outcomes, resulting in the application of COPPA obligations to general audience content where it doesn't make sense to apply the same protections we'd apply to children's services''); internet Association, at 9 (''The Commission should continue to consider these factors holistically, with no single factor taking precedence over others. Reliance on a comprehensive multi-factor test that includes audience composition as one of many factors balances both content and context inputs and provides the flexibility needed to apply the Rule in the context of new technology and evolving platforms such as interactive media'').

[152] *See, e.g.,* internet Association, at 9; CIPL, at 3–4; Google, at 15–16; Pokémon Company International, Inc. (''Pokémon''), at 1–2; ESA, at 3–8. *See also* TechFreedom, at 19 (''The FTC should reinforce its prior decision to apply a 'totality of circumstances' test in determining whether content is child-directed'').

[153] *See, e.g.,* ANA, at 8 (noting that animated content is often adult-oriented rather than child-oriented); Pokémon, at 2 (noting that popular adult animated content such as ''Family Guy'' or ''South Park'' illustrates that the use of animation is no longer a clear indicator that the use of animated characters is targeted to children); ESA, at 6 (asserting that the use of animated characters should not be given weight in video game and similar media contexts because video games are computer-generated media and therefore inherently utilize animated characters).

[154] *See, e.g.,* Pokémon, at 2 (suggesting ''weighting'' the factors); TRUSTe, LLC (''TRUSTe''), at 2 (noting that, while not dispositive, audience composition and target market factors will have a higher likelihood of determining that the service is child-directed); SuperAwesome, at 11 (suggesting the establishment of a roadmap for the Rule's scope to evolve from ''content-based'' to ''user-based'' factors, noting that ''[t]oday, the best (and highly imperfect) method for determining whether a user is a child is by categori[z]ing the content being accessed, *e.g.* is it child-directed or not. In the near future, new technologies will make it possible to identify whether a user is a child on any website or app, and without collecting more personal information to verify age'').

[155] *See, e.g.,* ANA, at 8; J. Johnston (J House Vlogs), at 14; The Toy Association, at 10. *See also generally* Screen Actors Guild-American Federation of Television and Radio Artists (''SAG–AFTRA''), at 4–5 (asserting that, when applying the COPPA Rule to content creators who distribute their content on general audience platforms, the Commission should consider the content creators' knowledge and intent).

[156] TRUSTe, at 1–2.

[157] kidSAFE, at 7 (also recommending the addition of ''video content'' to the existing factor of ''music or other audio content'').

[158] CARU, at 6–7 (suggesting that such factors would be particularly relevant to sites or services that were not originally directed to children, but where the audience has reached a threshold level such that COPPA protections should apply).

[159] *See, e.g.,* ANA, at 8; ESRB, at 7.

[160] ANA, at 8 (stating that ''Section 230 of the Communications Decency Act explicitly states that no provider of an interactive computer service shall be held liable for 'any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' As such, considering content moderation actions taken by companies to oversee content on their platforms as a basis for liability may be impermissible pursuant to the Communications Decency Act'').

[161] ANA, at 8–9.

not hard to envision operators circumventing the Rule by claiming an ''intended'' adult audience despite the attributes and overall look and feel of the site or service appearing to be directed to children.[162] Additionally, a rigid approach that prioritizes specific factors is unlikely to be nimble enough to address a site or service that changes its characteristics over time.

The Commission does not propose eliminating any of the existing factors or modifying how it applies the multi-factor test.[163] However, the Commission proposes modifications to clarify the evidence the Commission will consider regarding audience composition and intended audience.

Specifically, the Commission proposes adding a non-exhaustive list of examples of evidence the Commission will consider in analyzing audience composition and intended audience. The Commission agrees with those commenters that argued that an operator's marketing materials and own representations about the nature of its site or service are relevant. Such materials and representations can provide insight into the operator's understanding of its intended or actual audience and are thus relevant to the Commission's analysis. Additionally, the Commission believes that other factors can help elucidate the intended or actual audience of a site or service, including user or third-party reviews and the age of users on similar websites or services. Therefore, the Commission proposes adding ''marketing or promotional materials or plans, representations to consumers or to third parties, reviews by users or third parties, and the age of users on similar websites or services'' as examples of evidence the Commission will consider. Because many of these examples can provide evidence as to both audience composition and intended audience, the Commission also proposes a technical fix to remove the comma between ''competent and reliable empirical evidence regarding audience composition'' and ''evidence regarding the intended audience.''

b. Operators Collecting Personal Information From Other Websites and Online Services Directed to Children

The second paragraph of the definition of ''website or online service directed to children'' states ''[a] website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another website or online service directed to children.'' [164] The Commission added this language in 2013, along with parallel changes to the definition of ''operator,'' in order ''to allocate and clarify the responsibilities under COPPA'' of third parties that collect information from users of child-directed sites and services.[165] The changes clarified that the child-directed content provider is strictly liable when a third party collects personal information through its site or service, while the third party is liable only if it had actual knowledge that the site or service from which it was collecting personal information was child-directed.[166]

Because the second paragraph of this definition specifies that the operator must have actual knowledge that it is collecting personal information ''directly'' from users of another site or service, the Commission is concerned that entities with actual knowledge that they receive large amounts of children's data from another site or service that is directed to children, without collecting it directly from the users of such site or service, may avoid COPPA's requirements. For example, the online advertising ecosystem involves ad exchanges that receive data from an ad network that has collected information from users of a child-directed site or service. In the same spirit of avoiding a loophole that led the Commission to amend the Rule in 2013, the Commission proposes modifying the current language by deleting the word ''directly.'' The Commission did not seek comment in the 2019 Rule Review Initiation on this aspect of the Rule's definition of ''website or online service directed to children'' and therefore welcomes comment on this proposed modification.

c. Mixed Audience

The 2013 Amendments established a distinction between child-directed sites and services that target children as a ''primary audience'' and those for which children are one of multiple audiences—so called ''mixed audience'' sites or services. Specifically, the Rule provides that a website or online service that meets the multi-factor test for being child-directed ''but that does not target children as its primary audience, shall not be deemed directed to children'' so long as the operator first collects age information and then prevents the collection, use, or disclosure of information from users who identify as younger than 13 before providing notice and obtaining verifiable parental consent.[167] This allows operators of mixed audience sites or services to use an age-screen and apply COPPA protections only to those users who are under 13.

Although there appears to be general support for the mixed audience classification, a number of commenters cited confusion regarding its application and called on the Commission to provide additional clarity on where to draw the line between general audience, primarily child-directed, and mixed audience categories of sites and services.[168] One commenter noted that the mixed audience definition is confusing and the language ''shall not be deemed directed to children''

[162] Indeed, the Commission has previously acknowledged that a website or online service with the attributes, look, and feel of a property targeted to children would be deemed directed to children even if an operator claims that was not the intent. 78 FR 3972 at 3983.

[163] With respect to animation as a factor, the Commission recognizes that a variety of adult content uses animated characters. By the same token, animation can be an important characteristic of child-directed sites and services. Accordingly, as with the other enumerated factors, animation continues to be one of several potentially relevant considerations the Commission will take into account in determining whether a specific site or service is directed to children.

[164] 16 CFR 312.2, definition of ''website or online service directed to children,'' paragraph 2.

[165] 78 FR 3972 at 3975. The 2013 Amendments added a proviso to the definition of ''operator'' discussing the circumstances under which personal information is collected or maintained on behalf of an operator. *See* 16 CFR 312.2, definition of ''operator.''

[166] The Commission stated that ''for purposes of the [COPPA] statute'' the third party ''has effectively adopted that child-directed content as its own and that portion of its service may appropriately be deemed to be directed to children.'' 78 FR 3972 at 3978.

[167] 16 CFR 312.2, definition of ''website or online service directed to children,'' paragraph 3.

[168] *See, e.g.,* ANA, at 9 (''Although the ability to age screen users has helped businesses ascertain those users to which COPPA applies, children could benefit from the FTC providing additional guidance on the threshold for determining whether a website or online service is *primarily* directed to children''); Google, at 13 (''We support the retention of the mixed audience category, which appropriately recognizes that it is reasonable to treat age screened users as adults when the underlying child-directed content is also directed to adult audiences . . . At the same time, we believe that the definition of mixed audience as currently drafted requires significant clarification, especially with respect to its distinction from primarily child-directed and general audience content''); Lego, at 7 (''[F]urther clarity on how content for mixed audience and adults could be interpreted by regulatory and self-regulatory authorities would increase our ability to provide clearer direction internally on content development''); The Toy Association, at 9 (suggesting the Commission amend the Rule ''to establish that a mixed audience site or service, including apps or platforms, is one that offers content directed to children, but whose target audience likely includes a significant number of tweens, teens or adults'') (bold typeface omitted); Internet Association, at 7 (''While it can be fairly straightforward to identify sites and services that are directed primarily to children, the concept of mixed audience sites is not clearly defined and the implications of this concept are unclear and unpredictable'').

suggests that such sites or services are not within the definition of child-directed websites or online services.[169] Others recommended the Commission use a specific threshold for making the determination or provide additional guidance based on the Rule's multi-factor test.[170]

Commenters also questioned the effectiveness of age screening, with some arguing that children have been conditioned to lie about their age in order to circumvent age gates.[171] Others expressed support for the current approach,[172] and some warned against specifying proscriptive methods for age screening, as it could prevent companies from innovating new methods.[173]

Through the 2013 Amendments, the Commission intended mixed audience sites and services to be a subset of the ''child-directed'' category of websites or online services to which COPPA applies. A website or online service falls under the mixed audience designation if it: (1) meets the Rule's multi-factor test for being child-directed; and (2) does not target children as its primary audience. Unlike other child-directed sites and services, mixed audience sites and services may collect age information and need only apply COPPA's protections to those users who identify as under 13. An operator falling under this mixed audience designation may not collect personal information from any visitor until it collects age information from the visitor. To the extent the visitor identifies themselves as under age 13, the operator must provide notice and obtain verifiable parental consent before collecting, using, and disclosing personal information from the visitor.[174]

To make its position clearer, the Commission proposes adding to the Rule a separate, stand-alone definition for ''mixed audience website or online service.'' This definition provides that a mixed audience site or service is one that meets the criteria of the Rule's multi-factor test but does not target children as the primary audience.[175]

The proposed definition also provides additional clarity on the means by which an operator of a mixed audience site or service can determine whether a user is a child. First, the Commission agrees with the comments that recommend it allow operators flexibility in determining whether a user is a child. To that end, the proposed definition allows operators to collect age information or use ''another means that is reasonably calculated, in light of available technology, to determine whether the visitor is a child,'' reflecting a standard used elsewhere in the Rule.[176] Although currently collecting age information may be the most practical means for determining that a user is a child, the proposed definition allows operators to innovate and develop additional mechanisms that do not rely on a user's self-declaration.[177]

Additionally, consistent with long-standing staff guidance,[178] the proposed mixed audience definition specifically requires that the means used for determining whether a visitor is a child ''be done in a neutral manner that does not default to a set age or encourage visitors to falsify age information.'' This, for instance, would prevent operators from suggesting to users that certain features will not be available for users who identify as younger than 13.

To further clarify the obligations of an operator of a mixed audience site or service, the Commission also proposes amending paragraph (3) of the definition of ''website or online service directed to children'' by stating that such operators shall not be deemed directed to children with regard to any visitor not identified as under 13.

B. Notice (16 CFR 312.4)

The Commission proposes a number of modifications to the Rule's direct notice and online notice provisions.

1. Direct Notice to the Parent (Paragraph (b))

Section 312.4(b) requires operators to make reasonable efforts to ensure that parents receive direct notice of an operator's practices with respect to the collection, use, or disclosure of children's information. The Commission proposes adding references to ''school'' in § 312.4(b) to cover the situation in which an operator relies on authorization from a school to collect information from a child and provides the direct notice to the school rather than to the child's parent. As discussed in Part IV.C.3.a., the Commission is proposing to add an exception to the Rule's parental consent requirement where an operator, in limited contexts, obtains authorization from a school to collect a child's personal information. For purposes of authorization, ''school'' includes individual schools as well as local educational agencies and State educational agencies, as those terms are defined under Federal law.[179]

Just as notice is necessary for a parent to provide informed and meaningful consent, a school must also obtain information about an operator's data

[169] kidSAFE, at 7–8 (''How can a site or service be 'directed to children' for purposes of the factors' test, yet not be 'deemed directed to children' for purposes of compliance?'').

[170] *See, e.g.,* The Toy Association, at 9 (''[The Toy Association] suggests that the FTC consider revising the Rule to establish that a mixed audience site or service, including apps or platforms, is one that offers content directed to children, but whose target audience likely includes a significant number of tweens, teens or adults, even if segments other than children do not comprise 50% or more of the audience'') (bold typeface omitted); CIPL, at 3–4 (''In its application of the COPPA Rule, the Commission has increasingly blurred the lines between services that are 'primarily directed to children,' services that target children as one but not the primary audience ('mixed audience'), and general audience sites that don't target children as an audience. The FTC should issue guidance based upon the multi-factor test in COPPA to ensure that content creators, app developers and platforms understand how the rules apply to their products and services''); SIIA, at 4 (''As the way people consume content online continues to evolve, additional guidance is needed on the line between child-directed and mixed audience services''); ESRB, at 6–7 (recommending the Commission provide clarity on the ''directed to children'' analysis through rulemaking or guidance); and J. Johnston (J House Vlogs), at 16 (requesting an ''[e]mergency [e]nforcement [s]tatement from the FTC providing . . . [c]larity on the lines between child-directed, mixed-audience, and general audience content'').

[171] *See, e.g.,* SuperAwesome, at 21; PRIVO, at 7–8; Joint Attorneys General, at 9; CARU, at 8.

[172] *See, e.g.,* CCIA, at 7–8; U.S. Chamber of Commerce, at 4–5; ANA, at 9; Internet Association, at 9.

[173] *See, e.g.,* CCIA, at 8; ANA, at 9.

[174] 16 CFR 312.2, definition of ''website or online service directed to children,'' paragraph 3.

[175] Current staff guidance notes that operators should carefully analyze the intended audience, actual audience, and, in many instances, the likely audience for the website or online service in determining whether children are the primary audience or not. *COPPA FAQ*s, FAQ D.5.

[176] *Compare* proposed definition of ''mixed audience website or online service'' (as quoted in the text accompanying this footnote) *with* 16 CFR 312.5(b)(1) (''Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'').

[177] Indeed, the Commission supports the development of other means and mechanisms to determine whether the user is a child. Other jurisdictions, such as the United Kingdom, have conducted research that indicates that mechanisms other than self-declaration may be a more effective means of age assurance. Specifically, the research states that parents found the self-declaration method ''easy to circumvent,'' with many parents ''open about themselves and their children lying about their ages.'' *Families' attitudes towards age assurance,* Research commissioned by the United Kingdom's Information Commissioner's Office and Ofcom (Oct. 11, 2022), at 19, available at *https://www.gov.uk/government/publications/families-attitudes-towards-age-assurance-research-commissioned-by-the-ico-and-ofcom.*

[178] *COPPA FAQs,* FAQ D.7.

[179] *See* Part IV.C.3.a. for further discussion on the proposed school authorization exception. This proposed definition is intended to preserve the ability of local and State educational agencies to contract on behalf of multiple schools and school districts. This definition aligns with current staff guidance providing that ''[a]s a best practice, we recommend that schools or school districts decide whether a particular site's or service's information practices are appropriate, rather than delegating that decision to the teacher.'' *COPPA FAQs,* FAQ N.3.

collection and use practices before authorizing collection. Therefore, as part of the proposed school authorization exception, an operator must make reasonable efforts to ensure that the school receives the notice that the operator would otherwise provide to a child's parent.

2. Content of the Direct Notice (Paragraph (c))

Section 312.4(c) details the content of the direct notice required where an operator avails itself of one of the Rule's exceptions to prior parental consent set forth in § 312.5(c)(1)–(8). The Commission proposes several modifications to § 312.4(c). The first is to delete the reference to ''parent'' in the § 312.4(c) heading. This modification is to accommodate the proposed new § 312.4(c)(5), which specifies the content of the direct notice where an operator relies on school authorization to collect personal information.

Next, the Commission proposes modifying language in § 312.4(c)(1) and a number of its paragraphs. As currently drafted, this section sets forth the required content of direct notice when an operator collects personal information in order to initiate parental consent under the parental consent exception listed in § 312.5(c)(1). The Commission proposes revising the heading of § 312.4(c)(1) by adding the phrase ''for purposes of obtaining consent, including . . .'' after ''[c]ontent of the direct notice to the parent'' and before ''under § 312.5(c)(1).'' This change would clarify that this direct notice requirement applies to all instances in which the operator provides direct notice to a parent for the purposes of obtaining consent, including under § 312.5(c)(1).

In its current form, § 312.4(c)(1) presumes that an operator has collected a parent's online contact information and, potentially, the name of the child or parent. However, operators are free to use other means to initiate parental consent, including those that do not require collecting online contact information. For example, an operator could use an in-app pop-up message that directs the child to hand a device to the parent and then instructs a parent to call a toll-free number. The modification is intended to clarify that even where the operator does not collect personal information to initiate consent under § 312.5(c)(1), it still must provide the relevant aspects of the § 312.4(c)(1) direct notice to the parent.

Because the Commission's proposed changes to § 312.4(c)(1) would expand the scope of when an operator must provide this direct notice, the Commission proposes modifications to indicate that §§ 312.4(c)(1)(i) and newly-numbered 312.4(c)(1)(vii) may not be applicable in all instances.[180] Additionally, because §§ 312.4(c)(1)(i) and newly-numbered 312.4(c)(1)(vii) apply to scenarios in which an operator is obtaining parental consent under the parental consent exception provided in § 312.5(c)(1), the Commission proposes making minor modifications to those sections to align language with that exception. Specifically, that exception permits operators to collect a child's name or online contact information prior to obtaining parental consent, and the proposed notice would require the operator to indicate when it has collected a child's name or online contact information.

The Commission also proposes adding a new paragraph (iv) to require that operators sharing personal information with third parties identify the third parties as well as the purposes for such sharing, should the parent provide consent. This new paragraph (iv) will also require the operator to state that the parent can consent to the collection and use of the child's information without consenting to the disclosure of such information, except where such disclosure is integral to the nature of the website or online service.[181] For example, such disclosure could be integral if the website or online service is an online messaging forum through which children necessarily have to disclose their personal information, such as online contact information, to other users on that forum. The Commission believes that this information will enhance parents' ability to make an informed decision about whether to consent to the collection of their child's personal information. In order to minimize the burden on operators, and to maintain the goal of providing parents with a clear and concise direct notice, the proposed modification allows operators to disclose the categories of third parties with which the operator shares data rather than identifying each individual entity. The Commission welcomes further comment on whether information regarding the identities or categories of third parties with which an operator shares information is most appropriately placed in the direct notice to parents required under § 312.4(c) or in the online notice required under § 312.4(d).

Additionally, the Commission proposes a number of clarifying changes. First, the Commission proposes clarifying that the information at issue in the first clause of § 312.4(c)(1)(ii) is ''personal information.'' [182] Second, in § 312.4(c)(1)(iii), the Commission proposes clarifying that the direct notice must include how the operator intends to use the personal information collected from the child. For example, to the extent an operator uses personal information collected from a child to encourage or prompt use of the operator's website or online service such as through a push notification, such use must be explicitly stated in the direct notice. Additionally, the Commission further proposes to change the current use of ''or'' to ''and'' to indicate that the operator must provide all information listed in § 312.4(c)(1)(iii). Lastly, the Commission also proposes removing the term ''additional'' from § 312.4(c)(1)(iii) because this paragraph no longer applies solely to instances in which the operator collects the parent's or child's name or online contact information.

In addition to the proposed modifications to § 312.4(c)(1), the Commission proposes adding § 312.4(c)(5) to identify the content of the direct notice an operator must provide when seeking to obtain school authorization to collect personal information.[183] While tailored to the school context, the requirements in this new provision generally track the proposed modifications to § 312.4(c)(1).[184]

[180] As discussed in Part IV.B.2., the Commission proposes expanding § 312.4(c)(1) to include instances in which operators collect information other than online contact information to obtain consent. The modifications to §§ 312.4(c)(1)(i) and newly-numbered 312.4(c)(1)(vii) address those instances in which an operator may not have collected a parent's or child's online contact information to obtain consent.

[181] This proposed modification effectuates current requirements under the Rule, namely § 312.5(a)(2), which states that ''[a]n operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.''

[182] This clause currently uses the term ''such information.'' 16 CFR 312.4(c)(1)(ii).

[183] The Commission is aware that ed tech operators may enter into standard contracts with schools, school districts, and other education organizations across the country. This direct notice requirement is not meant to interfere with such contractual arrangements. Operators may employ various methods to meet the proposed direct notice requirement without interfering with the standard contract, such as by appending the direct notice to the contract. *See* Part IV.C.3.a. for further discussion of the direct notice required under this exception.

[184] For instance, proposed § 312.4(c)(5)(iii) requires the operator to provide the information collected from the child, how the operator intends to use such information, and the potential opportunities for disclosure. Similarly, to the extent the operator discloses information to third parties, proposed § 312.4(c)(5)(iv) requires the operator to

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3. Notice on the Website or Online Service (Paragraph (d))

The Commission proposes two additions to the Rule's online notice requirement. These additions pertain to an operator's use of the exception for prior parental consent set forth in § 312.5(c)(7) and the proposed exception set forth in new proposed § 312.5(c)(9).[185] The Commission also proposes certain modifications to the Rule's existing online notice requirements.

First, the Commission proposes adding a new paragraph, § 312.4(d)(3), which would require operators that collect a persistent identifier under the support for the internal operations exception in § 312.5(c)(7) to specify the particular internal operation(s) for which the operator has collected the persistent identifier and describe the means it uses to ensure that it does not use or disclose the persistent identifier to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, in connection with processes that encourage or prompt use of a website or online service, or for any other purpose, except as permitted by the support for the internal operations exception.[186]

Currently, an operator that collects a persistent identifier pursuant to § 312.5(c)(7) is not required to provide notice of the collection. The Commission finds merit in the concerns expressed by some commenters about a lack of transparency in how operators implement the support for the internal operations exception and the extent to which they comply with the exception's restrictions.[187] The Commission believes that the proposed disclosure requirements will provide additional clarity into the use of § 312.5(c)(7), will enhance operator accountability, and will function as an important tool for monitoring COPPA compliance.

Second, as discussed in Part IV.C.3.b., the Commission proposes a new parental consent exception, codifying its law enforcement policy statement regarding the collection of audio files.[188] Consistent with this codification, the Commission also proposes a new § 312.4(d)(4) requiring that an operator that collects audio files pursuant to the new § 312.5(c)(9) exception describe how the operator uses the audio files and to represent that it deletes such files immediately after responding to the request for which the files were collected.

The Commission also proposes a number of other modifications to the Rule's online notice requirements. Specifically, the Commission proposes modifying § 312.4(d)(2) to require additional information regarding operators' disclosure practices and operators' retention policies.[189] As discussed earlier, the Commission believes that this information will enhance parents' ability to make an informed decision about whether to consent to the collection of their child's personal information. The Commission notes that the COPPA Rule's online notice provision requires that operators describe how they use personal information collected from children.[190] For example, to the extent an operator uses personal information collected from a child to encourage or prompt use of the operator's website or online service such as through a push notification, such use must be explicitly stated in the online notice. The Commission also proposes adding ''if applicable'' to current § 312.4(d)(3) (which would be redesignated as § 312.4(d)(5)) in order to acknowledge that there may be situations in which a parent cannot review or delete the child's personal information.[191]

Lastly, the Commission proposes to delete the reference to ''parent'' in the § 312.4(d) introductory text. This proposal is to align with the Commission's new proposed direct notice requirement to accommodate the proposed new school authorization exception found in § 312.5(c)(10).

4. Additional Notice on the Website or Online Service Where an Operator Has Collected Personal Information Under § 312.5(c)(10) (New Paragraph § 312.4(e))

The Commission also proposes adding a separate online notice provision applicable to operators that obtain school authorization to collect personal information from children pursuant to the proposed exception set forth in § 312.5(c)(10). These disclosures are in addition to the requirements of § 312.4(d). The Commission believes these proposed disclosures will convey important information to parents regarding the limitations on an operator's use and disclosure of personal information collected under the school authorization exception, and the school's ability to review that information and request the deletion of such information.[192]

C. Parental Consent (16 CFR 312.5)

The verifiable parental consent requirement, in combination with the notice provisions, is a fundamental component of the COPPA Rule's ability to protect children's privacy. The Rule requires operators to obtain verifiable parental consent before they collect, use, or disclose a child's personal information.[193] Operators must make ''reasonable efforts to obtain verifiable parental consent'' and any parental consent method ''must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'' [194] Although the Rule sets forth a non-exhaustive list of methods that the Commission has recognized as meeting this standard, the Commission encourages operators to develop their own consent mechanisms provided they meet the ''reasonably calculated standard'' required by § 312.5(b)(1). In addition to the enumerated consent mechanisms listed in § 312.5(b)(2), § 312.5(c) provides several exceptions pursuant to which an operator may collect limited personal information without first obtaining parental consent and, in some cases, without providing notice.

The Commission requested comment in its 2019 Rule Review Initiation on the efficacy of the Rule's consent requirements, including whether the Commission should add to the list of approved methods and whether there are ways to encourage the development of new consent methods. The Commission also requested comment on whether the Commission should consider additional exceptions to the consent requirement, including with respect to the collection of audio files

provide the identities or specific categories of such third parties and the purposes for such disclosures.

[185] Given that these proposed disclosures may be longer and somewhat technical in nature, the Commission believes their appropriate location is in the operator's online notice rather than the direct notice.

[186] The Commission also proposes requiring operators to implement a data retention policy as part of the requirements for § 312.10. *See* Part IV.G. for a discussion of this proposed change.

[187] *See* Part IV.A.4. for a discussion of these concerns.

[188] *See* Part IV.C.3.b.

[189] The Commission proposes requiring operators to implement a data retention policy as part of the requirements for § 312.10. *See* Part IV.G. for a discussion of this proposed change.

[190] 16 CFR 312.4(d)(2).

[191] As discussed in Part IV.D., operators utilizing the school authorization exception would not be required to provide parents the rights afforded under § 312.6(a) for information collected under that exception.

[192] The school's ability to review information and request the deletion of such information are addressed in Part IV.D. in connection with the proposed modification to § 312.6.

[193] Operators must also obtain such consent for ''any material change in the collection, use, or disclosure practices to which the parent has previously consented.'' 16 CFR 312.5(a)(1).

[194] 16 CFR 312.5(b)(1).

containing a child's voice and in the educational context where a school authorizes the operator to collect personal information.

The Commission proposes modifying the Rule's consent requirements in a number of ways. First, the Commission proposes requiring the operator to obtain separate verifiable parental consent before disclosing personal information collected from a child. The Commission also proposes modifying the consent method set forth in § 312.5(b)(2)(ii) and incorporating into the Rule two previously approved consent mechanisms submitted through the § 312.12(a) voluntary process. Lastly, the Commission proposes modifying the parental consent exceptions set forth in § 312.5(c)(4), (6), and (7) and adding exceptions for where an operator relies on school authorization and for the collection of audio files that contain a child's voice.

1. General Requirements (Paragraph (a))

Section 312.5(a)(1) provides that an operator must obtain verifiable parental consent before collecting, using, or disclosing personal information from a child. While the Commission does not propose modifications to this paragraph, it seeks to make a clarification. This requirement applies to any feature on a website or online service through which an operator collects personal information from a child. For example, if an operator institutes a feature that prompts or enables a child to communicate with a chatbot or other similar computer program that simulates conversation, the operator must obtain verifiable parental consent before collecting any personal information from a child through that feature. While the Commission is not proposing modifications to this paragraph, it welcomes comment on it.

Section 312.5(a)(2) currently states that ''[a]n operator must give the parent the option to consent to the collection and use of the child's information without consenting to disclosure of his or her personal information to third parties.'' The Commission proposes bolstering this requirement by adding that operators must obtain separate verifiable parental consent for disclosures of a child's personal information, unless such disclosures are integral to the nature of the website or online service.[195] Under the proposed language, operators required to obtain separate verifiable parental consent for disclosures may not condition access to the website or online service on such consent.

In the preamble of the 1999 initial COPPA Rule, the Commission noted that ''disclosures to third parties are among the most sensitive and potentially risky uses of children's personal information. This is especially true in light of the fact that children lose even the protections of [COPPA] once their information is disclosed to third parties.'' [196] The Commission remains concerned about the disclosure of personal information collected from children. Indeed, one commenter noted that ''[c]hildren today face surveillance unlike any other generation—their every movement online and off can be tracked by potentially dozens of different companies and organizations.'' [197]

The Commission believes that information sharing is a pervasive practice. Therefore, the Commission finds it appropriate to provide parents with greater control over the disclosure of their children's information by clarifying that § 312.5(a)(2) requires operators to obtain separate verifiable parental consent for disclosures. This includes disclosure of persistent identifiers for targeted advertising purposes, as well as disclosure of other personal information for marketing or other purposes. The Commission did not seek comment on this particular aspect of the Rule's verifiable parental consent requirements in the 2019 Rule Review Initiation and welcomes comment on this proposed modification.

2. Methods for Verifiable Parental Consent (Paragraph (b))

The Commission received numerous comments related to the methods by which operators can obtain parental consent. Many commenters criticized particular approved parental consent methods. Some characterized the methods as outdated or counterintuitive.[198] Others complained that the methods failed to serve unbanked or low-income families who may lack access to the means to provide consent, such as a credit card.[199] Some commenters suggested that the use of credit card data and government-issued IDs are too privacy-invasive,[200] while one advocate claimed that the current methods are better indicators of adulthood than parenthood.[201]

Commenters also expressed concern that the current methods include too much friction, resulting in significant drop-off during the consent process. Commenters noted that this friction discourages operators from creating services that target children or creates an incentive to limit their collection of personal information to avoid triggering COPPA.[202] Consistent with this view, the Network Advertising Initiative stated that ''[r]ecognizing that verifiable parental consent mechanisms are challenging and expensive to implement, and result in considerable drop-off, the practical reality is that most ad-tech companies simply seek to avoid advertising to children altogether.'' [203] Other commenters warned that cumbersome consent methods can drive children to general audience sites, which may have fewer digital safety and privacy protections in place.[204]

Some commenters suggested modifying existing consent methods or adding new ones. For example, several recommended that the Commission eliminate the need for a monetary transaction when an operator obtains consent through a credit or debit card or an online payment system where the system provides notification of transactions that do not involve a charge.[205] Some recommended

[195] This exception aligns with previous staff guidance, in which FTC staff has stated that operators are not required to provide parents with a separate option to consent to the disclosure of the child's personal information where such disclosures are integral to the site or service. The guidance requires the operators to make clear when such disclosures are integral. *See COPPA FAQs,* FAQ A.1. For example, such disclosure could be integral if the website or online service is an online messaging forum through which children necessarily have to disclose their personal information, such as online contact information, to other users on that forum.

[196] 64 FR 59888 at 59899.

[197] Common Sense Media, at 3.

[198] *See, e.g.,* FOSI, at 4–5 (describing current method of requiring submission by facsimile as outdated, staffing a toll-free number as expensive, and requiring a credit card number for a service that should be free as counter-intuitive); ESA, at 24 (''For example, the collection of a driver's license or credit card in connection with a transaction may appear particularly cumbersome in the context of a free mobile app that does not require registration and that collects and uses only limited types of information within the app'').

[199] *See, e.g.,* internet Association, at 13; CIPL, at 5; Net Safety Collaborative, at 2; Connected Camps, at 2.

[200] *See, e.g.,* P. Aftab, at 12–13; *see also* ESRB, at 8 (noting that parents may be disinclined to provide credit card information unless the operator is a name the parents know and trust).

[201] P. Aftab, at 13.

[202] *See, e.g.,* ESRB, at 8; CIPL, at 4–5; Internet Association, at 13; Connected Camps, at 2–3.

[203] *See* NAI, at 2; s*ee also* Attorney General of Arizona, at 2 (noting that ''. . . the cost of obtaining verifiable parental consent can be unduly burdensome on small businesses, and the consent process can be frustrating for both businesses and parents alike'').

[204] *See, e.g.,* Lego, at 4–5; Net Safety Collaborative, at 2.

[205] *See, e.g.,* ANA, at 12 (''. . . companies should be able to obtain verifiable parental consent by requesting a valid credit card from a parent even if the consent is not obtained in connection with a monetary transaction''); kidSAFE, at 10 (''The FTC

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modifying the Rule to allow for the use of text messages to obtain consent. Those commenters noted that text messages are a common alternative to email for verification purposes and argued that text message-based consent is no weaker than consent initiated through the collection of an email address.[206]

Other commenters called for the Commission to add to the list of approved consent methods. They recommended allowing the use of fingerprint or facial recognition technologies that already exist in parents' mobile devices,[207] voice recognition technology currently used in the online banking context,[208] and a variety of other technologies and tools.[209]

Several commenters recommended that the Commission encourage platforms to participate in the parental consent process.[210] One suggested that platforms could provide notifications to the consenting parent about the intended collection, use, or disclosure of the child's personal information.[211] Another suggested that parents would be more likely to engage with platforms than to provide consent on a service-by-service basis.[212]

Commenters also recommended different procedural steps the Commission could undertake. These include such things as the Commission using its authority to conduct studies on the costs and benefits of different consent methods,[213] streamlining the Rule's current 120-day comment period on applications for new parental consent methods,[214] and convening stakeholder meetings to explore effective solutions.[215]

After reviewing these comments, the Commission continues to believe that the Rule's current approach to verifiable parental consent is appropriate and sound. With respect to the more general concerns that COPPA's consent methods create ''friction,'' the Commission stresses that COPPA requires a balance between facilitating consent mechanisms that are not prohibitively difficult for operators or parents, while also ensuring that it is a parent granting informed consent, rather than a child circumventing the process. In response to commenters indicating that this friction has discouraged operators from creating services or caused operators to change their practices, the Commission welcomes the development of methods that prove less cumbersome for operators while still meeting COPPA's statutory requirements.

As to the more specific criticisms of the approved consent mechanisms set forth in the Rule, the Commission notes that operators are not obligated to use any of those methods.[216] Rather, operators are free to develop and use any method that meets the standard contained in § 312.5(b)(1) and to tailor their approach to their own individual situation.

While it is possible that some of the suggested methods could meet the § 312.5(b)(1) requirement, the Commission does not believe the comments contain sufficient detail or context for it to propose adding these additional consent methods at this time. The Commission welcomes further explanation detailing the necessity and practicality of any recommended new consent method, including how it would satisfy the Rule's requirements. This could come in the form of additional comments or through the voluntary approval process provided in § 312.12(a) of the Rule.

At the same time, the Commission agrees that platforms could play an important role in the consent process, and the Commission has long recognized the potential of a platform-based common consent mechanism.[217] The Commission would also welcome further information on the role that platforms could play in facilitating the obtaining of parental consent. In particular, the Commission would be interested in any potential benefits platform-based consent mechanisms would create for operators and parents and what specific steps the Commission could take to encourage development of such mechanisms.

The Commission also agrees with the recommendation that it modify the Rule to eliminate the monetary transaction requirement when an operator obtains consent through a parent's use of a credit card, debit card, or an online payment system. As one commenter noted, many of these payment mechanisms provide a means for the account holder to receive notification of every transaction, even those that cost no money, such as a free mobile app download.[218] In addition, many operators offer their apps or other online services at no charge. Requiring such operators to charge the parent a fee when seeking consent undercuts their ability to offer the service at no cost. Further, the Commission understands that some consumers might be hesitant to complete consent processes when they will incur even a nominal monetary charge.

In proposing this modification, the Commission notes that it had previously determined that a monetary transaction was necessary for this form of consent.[219] At that time, the Commission reasoned that requiring a monetary transaction would increase the method's reliability because the parent would receive a record of the transaction. This would provide the parent notice of purported consent, which, if improperly given, the parent could then withdraw. Because § 312.5(b)(2)(ii), as proposed to be modified, would still require notice of a discrete transaction, even where there is no monetary charge, the Commission believes this indicia of reliability is preserved. Where a payment system cannot provide notice absent a monetary charge, an operator will not be able to obtain consent through this method.

The Commission also agrees with the recommendation to modify the Rule to allow the use of text messages to obtain consent. As discussed in Part IV.A.1., the Commission believes this is achieved through its proposed modification to the ''online contact information'' definition.[220] Therefore, the Commission does not propose

should consider eliminating the need for a 'monetary' transaction when consent is obtained using a credit card, debit card, or other online payment system that provides notification of each discreet [*sic*] transaction'').

[206] *See* ANA, at 12; The Toy Association, at 4; kidSAFE, at 11.

[207] *See* ESRB, at 8.

[208] *See* Net Safety Collaborative, at 2.

[209] *See, e.g.,* Net Choice, at 12 (recommending the use of a digital certificate that uses public key technology coupled with additional steps to demonstrate that consent is from the parent); Internet Association, at 14 (recommending that the Commission add a mechanism whereby parents log into a preexisting parental account); CTIA, at 2–3 (recommending obtaining consent through the set-up process for services, such as wearables, that collect personal information from children at parents' direction); Yoti, at 12 (recommending the use of age estimation and age verification tools instead of parental consent).

[210] *See, e.g.,* Princeton University, at 9 (noting that mobile operating systems offer linked parent and child accounts and could provide an interface for child accounts to submit consent permission requests to parent accounts).

[211] *See* ACT: The App Association, at 4–5.

[212] *See* ESRB, at 8.

[213] *See* Pokémon, at 3.

[214] *See* CCIA, at 10; SIIA, at 3–4.

[215] *See* Lego, at 5; The Toy Association, at 20; Yoti, at 13.

[216] Indeed, the Commission is aware that many operators will choose not to utilize certain enumerated methods. However, the Commission retains these methods in the Rule in case any operator would like to use these methods.

[217] 78 FR 3972 at 3989–90 (noting that platform-based common consent mechanism could simplify operators' and parents' abilities to protect children's privacy).

[218] kidSAFE, at 10.

[219] *See* 76 FR 59804 at 59819; *see also* 78 FR 3972 at 3987.

[220] *See* Part IV.A.1.

modifying § 312.5(b)(2)(ii) to address this recommendation.

In addition to the modification to § 312.5(b)(2)(ii), the Commission also proposes adding two parental consent methods to § 312.5(b). These methods are knowledge-based authentication and the use of facial recognition technology. The Commission approved both methods pursuant to the § 312.12(a) process created from the 2013 Amendments.[221]

3. Exceptions to Prior Parental Consent (Paragraph (c))

The Commission also received numerous comments regarding possible additional exceptions to the Rule's parental consent requirement. The majority of the commenters addressing this issue focused on whether the Commission should allow schools to authorize data collection, use, and disclosure in certain circumstances rather than requiring ed tech operators to obtain parental consent. A smaller number of commenters addressed whether the Commission should codify in the Rule its existing enforcement policy statement regarding the collection of audio files. In addition, several commenters recommended that the Commission expand the Rule's current one-time use exception.

The Commission proposes creating exceptions for where an operator relies on school authorization and for the collection of audio files that contain a child's voice. The Commission also proposes a modification to § 312.5(c)(7), which relates to the support for the internal operations exception, to align with proposed new requirements.[222] Additionally, Commission proposes a modification to § 312.5(c)(4) to exclude from this exception the use of push notifications to encourage or prompt use of a website or online service. Finally, the Commission proposes technical modifications to § 312.5(c)(6). At this time, the Commission does not propose expanding the Rule's current one-time use exception.

a. School Authorization Exception

In response to the Commission's initial proposed COPPA Rule in 1999, stakeholders expressed concern about how the Rule would apply to the use of websites and online services in schools. Some of these commenters claimed that requiring parental consent to collect students' information could interfere with classroom activities.[223] In response, the Commission noted in the final Rule's preamble ''that the Rule does not preclude schools from acting as intermediaries between operators and parents in the notice and consent process, or from serving as the parents' agent in the process.'' [224] It further stated, ''where an operator is authorized by a school to collect personal information from children, after providing notice to the school of the operator's collection, use, and disclosure practices, the operator can presume that the school's authorization is based on the school's having obtained the parent's consent.'' [225] Since that time, Commission staff has provided additional guidance on this issue through its ''Complying with COPPA: Frequently Asked Questions'' document (''COPPA FAQs''), which specifies that an operator may rely on school consent when it collects a child's personal information provided the operator uses the information for an educational purpose and for ''no other commercial purpose.'' [226] The Commission has since issued a policy statement on COPPA's application to ed tech providers, similarly noting that operators of ed tech that collect personal information pursuant to school authorization are prohibited from using such information for any commercial purpose, including marketing, advertising, or other commercial purposes unrelated to the provision of the school-requested online service.[227]

In recent years there has been a significant expansion of ed tech used in both classrooms and in the home.[228] This expansion, in the form of students' increased access to school-issued computers and online learning curricula, raised questions about ed tech providers' compliance with the Rule as well as calls for additional guidance on how COPPA applies in the school context. Stakeholders also questioned how COPPA obligations relate to those operators subject to FERPA, the federal law that protects the privacy of ''education records,'' and its implementing regulations.[229]

In 2017, the FTC and the Department of Education hosted a workshop on student privacy and ed tech to explore these questions.[230] Through the discussions at the workshop, the Commission gathered information that helped inform the questions posed in the 2019 Rule Review Initiation regarding the application of the COPPA Rule to the education context. The Commission asked whether it should modify the Rule to add an exception to the parental consent requirement where the school provides authorization and, if so, whether the exception should mirror the requirements of FERPA's ''school official exception.'' [231] The Commission also asked for comment on various aspects of a school authorization exception, including how student data could be used, who at the school should be able to provide consent, and notice to parents.[232]

[221] *See Letter to Imperium, LLC* (Dec. 23, 2013) (approval of knowledge-based authentication), available at *https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-grants-approval-new-coppa-verifiable-parental-consent-method/131223imperiumcoppa-app.pdf; Letter to Jest8 Limited (Trading as Riyo)* (Nov. 18, 2015) (approval of facial recognition technology), *available at https://www.ftc.gov/system/files/documents/public_statements/881633/151119riyocoppaletter.pdf.*

[222] *See* Part IV.B.3. for discussion of the Commission's proposed notice requirement under 16 CFR 312.4(d)(3).

[223] *See* 64 FR 59888 at 59903.

[224] *Id.*

[225] *Id.*

[226] *COPPA FAQs,* FAQ N.1.

[227] *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act,* Federal Trade Commission (May 19, 2022), available at *https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection.*

[228] The closure of schools and in-person learning due to the global COVID–19 pandemic added to this expansion as students shifted to remote education.

[229] FERPA applies to all schools receiving funds from any applicable program of the Department of Education. 34 CFR 99.1. In general, unless an exception applies, parents (or students over 18 years of age) must provide consent for the disclosure of personal information from an education record. 34 CFR 99.30. FERPA provides an exception to its parental consent requirement for ''school officials.'' 34 CFR 99.31. Under this exception, schools do not need to obtain consent to disclose personal information where there is a ''legitimate educational interest.'' In addition, the school must maintain direct control over the information.

[230] *Student Privacy and Ed Tech* (Dec. 1, 2017), available at *https://www.ftc.gov/news-events/events/2017/12/student-privacy-ed-tech.*

[231] The FERPA school official exception allows schools to outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties, provided that the outside party: ''(1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; (3) Is subject to the requirements in 34 CFR 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, *e.g.,* to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and (4) Meets the criteria specified in the school or local educational agency's (LEA's) annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.'' *Who is a ''School Official'' Under FERPA?,* Department of Education, available at *https://studentprivacy.ed.gov/faq/who-%E2%80%9Cschool-official%E2%80%9D-under-ferpa.*

[232] The Commission also asked for comment on deletion rights in the educational context. The issue of the deletion of information collected when a school has provided authorization is discussed in Part IV.D.

i. Whether To Include a School Authorization Exception in the Rule

Numerous commenters representing industry and schools, along with some consumer groups, expressed support for codifying a school authorization exception in the Rule so long as such exception is consistent with FERPA and its implementing regulations. That is, where there is a legitimate educational interest to collect the child's data, the school maintains direct control of the data, and the operator uses the data only as permitted by the school and complies with disclosure limits.[233]

In supporting such an exception, several of these commenters raised concerns that requiring schools to obtain consent from parents would be burdensome and costly for schools.[234] These commenters claimed that the burden would include obtaining parental consent as well as providing curriculum to students whose parents did not consent to the use of the ed tech program.[235]

Commenters also raised concerns about requiring ed tech providers to obtain verifiable parental consent from parents. For example, commenters expressed concern that requiring operators to obtain parental consent would require operators to collect additional personal information from parents, much of which is not necessary to provide the educational service, which contradicts data minimization principles.[236] One commenter argued that requiring parents to consent would lead to ''consent fatigue,'' [237] while another commenter explained that operators often do not have a direct touchpoint with parents that could facilitate the consent process.[238]

The Illinois Council of School Attorneys argued that schools are often in a better position than parents to evaluate ed tech products.[239] They also pointed to privacy protections in the FERPA school official exception including the requirement that the school maintain direct control of the data and the operator use the data for only limited, authorized purposes.[240] Finally, in supporting a school authorization exception, some commenters stated that numerous operators have built up their consent process in reliance on the Commission's existing guidance indicating that COPPA permits schools to provide consent for educational purposes.[241]

However, not all commenters supported a school authorization exception, with several consumer groups, parent organizations, and government representatives raising various concerns.[242] For example, a coalition of consumer groups argued that a COPPA exception aligned with FERPA would not adequately protect children because FERPA fails to provide a clear standard for when a party has a ''legitimate educational interest'' as required by the school official exception. The coalition also claimed that schools fail to adequately inform parents about the use of FERPA's school official exception and that most schools are ill-equipped to properly vet the privacy and security practices of ed tech services.[243] Another advocacy organization cited statistics purportedly showing that schools do not comply with the school official exception.[244]

A number of individual parents also opposed the exception. These individuals emphasized that parents should retain the ability afforded to them under COPPA to provide consent to collect, use, and share their children's data.[245] One parent noted that over 400 ed tech providers had access to her

[233] *See, e.g.,* CIPL, at 6; Net Safety Collaborative, at 3; Illinois Council of School Attorneys, at 1–2; Association of American Publishers, at 5; CCIA, at 11; internet Association, at 14–17; SIIA, at 3; Joint comment of the Consortium for School Networking, Knowledge Alliance, National Association of State Boards of Education, and the State Educational Technology Directors Association (''CoSN''), at 2; National School Boards Association, at 4–5; National Parent Teacher Association, at 2; Joint comment of the AASA, the School Superintendents Association, and the Association of Education Service Agencies, at 1–3; CDT, at 5; Khan Academy, at 2; Google, at 18; Future of Privacy Forum, at 10–12; Lego, at 5–6. Some commenters supported the Commission implementing a school authorization exception within the Rule but did not call for alignment with FERPA's school official exception. *See, e.g.,* ANA, at 13–14; Lightspeed, at 1–2; The Toy Association, at 5, 19–20; 5Rights, at 6.

[234] *See* CDT, at 4 (noting that ''[s]ome schools do not have the resources or the time to ask for consent from parents every time they rely on an educational technology product''); CCIA, at 11 (noting that ''[a]s Ed Tech becomes increasingly prevalent in the classroom, requiring parental consent for every online service used in the classroom would quickly become administratively and practically unwieldy for parents and schools alike, with the resulting consent fatigue decreasing the availability of beneficial technologies and services to all students''); Lightspeed, at 2 (''Seeking explicit, written parental approval for every single use of technology by a student at present is impracticable. Requiring parents to affirmatively approve each student's use of every application would lead to an avalanche of paperwork for parents and school administrators, one that would push schools to shy away from utilizing EdTech solutions in the classroom''); National PTA, at 3 (noting that ''[w]hen student data is collected in support of core curricular functions, National PTA believes that schools should be able to act as parents' agents and consent on parents' behalf. However, not all student data collection meets that standard. Schools use education technology for a broad range of extracurricular, non-essential or optional activities . . . We ask that the FTC clarify when schools may act on behalf of parents, differentiating between technology used in support of schools' essential academic and administrative needs and other, optional uses''); Net Safety, at 3 (urging the Commission to ensure that schools' burden and cost of obtaining parental consent under COPPA not be increased); Illinois Council of School Attorneys, at 2 (noting that ''requiring school districts to obtain verifiable parental consent from all parents/guardians for potentially hundreds of education applications in use in a district would be an enormous and unworkable administrative burden, even for those districts that have more resources available to them'').

[235] *See, e.g.,* National School Boards Association, at 3 (''If school districts are required to get actual parent consent, many districts would be unable to deliver the curriculum to students whose parents have not responded, creating inequities in addition to administrative burdens''); CIPL, at 5 (noting that ''[i]t could also result in administrative burden and classroom disruption for teachers to manage different lesson plans for students whose parents have provided consent and those whose parents have not'').

[236] *See* CIPL, at 5; ANA, at 14; CCIA, at 11.

[237] CCIA, at 11.

[238] ANA, at 13.

[239] Illinois Council of School Attorneys, at 1.

[240] The organization also noted that schools consenting on behalf of parents is consistent with their *in loco parentis* role. Illinois Council of School Attorneys, at 1–2.

[241] *See* ANA, at 13; Association of American Publishers, at 3.

[242] *See, e.g.,* EPIC, at 8–9 (asserting that ''[i]nstead of putting the burden on schools to obtain and provide consent on behalf of parents, which they are unauthorized to do under the Act, the burden should be shifted to operators, who are in a better position to do so given advancements in technology and greater availability of resources, to obtain verifiable parental consent''); Joint Consumer Groups, at 20–30; Unidos, at 6 (noting that ''cash-strapped districts could be preyed upon by bad actors targeting these districts by offering free or low-cost programs to gain a foothold in schools and start collecting children's data. Many of these companies have opaque privacy policies. Inadequately funded school administrators and/or teachers will not likely have the resources to advocate for better protections or do a sufficient review to understand policies, especially in an environment where schools are using countless apps and programs''); Illinois Families for Public Schools, at 2 (noting that ''[p]arental consent is especially important in the case of extremely sensitive student data regarding children's behavior, biometrics, geolocation, disabilities, or health conditions. As such, we disagree firmly with the idea of amending COPPA rules to have a Family Educational Rights and Privacy Act (FERPA)-type exception for school officials to grant consent for the collection and use of a child's data in an educational setting in place of a parent. The school-official exception in FERPA has weakened its protections for disclosure of student data, and this should not be a precedent for modifying or weakening the COPPA Rule''); Joint Attorneys General, at 10–11; Parent Coalition for Student Privacy, at 8 (noting that ''[p]arents' existing rights under COPPA to be informed and provide prior consent to any program collecting data directly from their children under the age of 13 should not be erased or limited simply because their children's use of a commercial operator's service occurs inside the school building or at the direction of a teacher or school administrator''); Senator Markey, et al., at 2 (noting that this type of exception could be ''fundamentally inconsistent with the congressional intent behind COPPA'').

[243] *See* Joint Consumer Groups, at 25–29.

[244] *See* Surveillance Technology Oversight Project (''STOP''), at 3–4.

[245] *See, e.g.,* A. Segur, at 1; F. Bocquet, at 1; M. Murphy, at 1; N. Williams, at 1.

child's data, and that she is unable to understand what information was shared with each provider.[246] These parents noted that school districts should not be able to provide consent to ed tech providers on their behalf,[247] and further noted that including such an exception would weaken COPPA rather than strengthen it.[248]

Another concern raised was that such an exception could ultimately swallow the Rule.[249] For instance, in a joint comment of multiple State Attorneys General, the Attorneys General cited the incredible growth in ed tech and noted the technologies are not cabined to the classroom but are often encouraged to be used by students at home, and sometimes for non-educational purposes. The Attorneys General argued that, because the use of ed tech is often mandatory for students, an exception to COPPA's parental consent requirement would force parents to choose between education and their children's online privacy.[250]

While opposing a school authorization exception, the Parent Coalition for Student Privacy argued that if the Commission decides to create one, its applicability should be limited in scope. Specifically, the Coalition argued that schools should not be able to consent to the collection of particularly sensitive data, such as medical or geolocation information.[251]

After careful consideration of the comments, the Commission proposes codifying in the Rule its long-standing guidance that schools, State educational agencies, and local educational agencies may authorize the collection of personal information from students younger than 13 in very limited circumstances; specifically, where the data is used for a school-authorized education purpose and no other commercial purpose.[252]

When a child goes to school, schools have the ability to act *in loco parentis* under certain circumstances. This is particularly the case when schools are selecting the means through which the schools and school districts can achieve their educational purposes, such as when deciding which educational technologies to use in their classrooms. The Commission finds compelling the concern that requiring parental consent in the educational context would impose an undue burden on ed tech providers and educators alike. As an initial matter, many ed tech providers have relied upon and structured their consent mechanisms based on the Commission's existing guidance. Requiring providers to reconfigure their systems to obtain parental consent directly from parents would undoubtedly create logistical problems that could increase costs and potentially dissuade some ed tech providers from offering their services to schools.[253]

The need for parental consent is also likely to interfere with educators' curriculum decisions. As a practical matter, obtaining consent from the parents of every student in a class often will be challenging, in many cases for reasons unrelated to privacy concerns. In situations where some number of parents in a class decline to consent to their children's use of ed tech, schools would face the prospect of foregoing particular services for the entire class or developing a separate mechanism for those students whose parents do not consent. Because the proposed school authorization exception restricts an operator's use of children's data to a school-authorized education purpose and precludes use for commercial purposes such as targeted advertising, it may ultimately be more privacy-protective than requiring ed tech providers to obtain consent from parents.

Finally, the proposed school authorization exception requires that the ed tech provider and the school have in place a written agreement setting forth the exception's requirements.[254] This includes identifying who from the school may provide consent and attesting that such individual has the authority to provide consent; the limitations on the use and disclosure of student data; the school's control over the use, disclosure, and maintenance of the data; and the operator's data retention policy. Accordingly, the proposed exception incorporates the privacy protections contained in the FERPA school official exception. This exception also builds on FERPA's protections by incorporating the Commission's existing prohibition on the use of student data for non-educational commercial purposes.

ii. Permitted Use of Data Collected Through the School Authorization Exception

Existing staff guidance indicates that, where the school authorizes data collection, an operator may only use children's data for an educational purpose and for no other commercial purpose.[255] However, there has been confusion around the parameters of what constitutes an ''educational purpose'' as opposed to a ''commercial purpose.'' [256] Many of the commenters that support a school authorization exception to parental consent called on the Commission to clarify the permissible uses of data collected under such an exception.[257] In an effort to seek further clarity, commenters suggested specific uses that the Commission should explicitly allow or exclude under the exception.[258]

Among these commenters, there was general agreement that the exception should not permit ed tech providers to use student data for marketing purposes, such as serving personalized advertisements.[259] The comments

[246] A. Segur, at 1.

[247] *See* A. Segur, at 1; F. Bocquet, at 1; M. Murphy, at 1; N. Williams, at 1.

[248] *See, e.g.,* A. Segur, at 1; F. Bocquet, at 1; N. Williams, at 1.

[249] *See* Senator Markey, et al., at 2 (noting that such an exception ''risks opening the door to invasive tracking of children for advertising purposes''); Joint Attorneys General, at 10–11.

[250] Joint Attorneys General, at 10–11.

[251] Parent Coalition for Student Privacy, at 11–12.

[252] The definition for ''school-authorized education purpose'' is discussed in Part IV.A.3. *See* Part IV.B.1. for further discussion about the proposed inclusion of State and local educational agencies within the definition of ''school.''

[253] The Commission also agrees with commenters that noted that obtaining parental consent could require providers to collect additional personal information from parents that they would not collect if the school provides consent.

[254] As noted in Part IV.B.2., the Commission is aware that operators may enter into standard contracts to provide ed tech services. So long as the standard contract meets the elements required under proposed § 312.5(c)(10), operators may continue to utilize such contracts.

[255] *See COPPA FAQs,* FAQ N.1; *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act,* Federal Trade Commission (May 19, 2022), available at *https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection.*

[256] Additionally, FERPA does not define what a ''legitimate educational interest'' is for purposes of the school official exception. Thus, even if the Commission aligned a COPPA school consent exception with FERPA, the scope of the exception would be unclear.

[257] *See, e.g.,* CCIA, at 11–12; Joint comment of the AASA, the School Superintendents Association, and the Association of Education Service Agencies, at 3–4; Parent Coalition for Student Privacy, at 4–5; Google, at 18.

[258] *See, e.g.,* Joint comment of the AASA, the School Superintendents Association, and the Association of Education Service Agencies, at 4 (advocating for the inclusion of product research and development); Parent Coalition for Student Privacy, at 3 (opposing the use of children's information to advertise, improve a service, or develop a new service); Google, at 18 (noting that a ''commercial purpose'' under COPPA could be aligned with FERPA such that ''. . . certain types of processing are impermissible, such as personalized ads or product placements, but other important activities to support educational services are permitted, like the maintenance, development and improvement of the product, analytics, and personalization of content within the service'').

[259] *See, e.g.,* Princeton University, at 10; 5Rights Foundation, at 5 (''FTC could usefully clarify both the definition of 'educational purposes' for which consent can be sought, and the scope of purposes that are proscribed (including, but not limited to,

Continued

reflected less consensus on the question of whether to allow operators to engage in product improvement or development. Some commenters favored allowing product improvement or development under limited circumstances. For example, Lego recommended that the exception allow operators to use aggregated or anonymized data to improve existing products or develop new products that would benefit students.[260] The 5Rights Foundation similarly noted that, if the Commission were to allow operators to use student data to improve products, the student information must be ''de-identified and de-identifiable,'' cannot be shared with third parties, and must be limited to use for improving educational products only.[261]

In contrast, some commenters strongly opposed allowing product improvement absent verifiable parental consent. For example, EPIC argued that product improvement would allow ed tech vendors ''to create virtual laboratories in schools to study child behavior and further develop commercial products for profit, unbeknownst to parents.'' [262] Others raised similar objections,[263] including parents who stated that the Commission should prohibit the use of student data to improve or develop new products or services.[264]

In discussing the appropriate use of student data, several commenters suggested that the Commission adopt an approach similar to the treatment of activities that fall under the COPPA Rule's definition of ''support for the internal operations of the website or online service.'' This approach would allow ed tech providers to use student data for ''analytics, content personalization, and product development, maintenance, and improvement uses that benefit students and schools'' but not for activities such as personalized marketing.[265]

The Commission believes that it should tailor the proposed school exception narrowly while ensuring its practicality for schools and operators. The Commission agrees with the commenters asserting that the use or disclosure of student data for marketing purposes should fall outside the school authorization exception. Indeed, this view is consistent with staff's guidance that schools can consent to the collection of student data for educational purposes but not for other commercial purposes, such as marketing and advertising.[266]

The Commission also agrees with those commenters recommending that the school authorization exception should allow operators to engage in limited product improvement and development, provided certain safeguards are in place. The Commission believes that allowing providers to make ongoing improvements to the educational services the school has authorized benefits students and educators, and that user data may be necessary to identify and remedy a problem or ''bug'' in a product or service. Therefore, in contrast to general marketing, product improvement and development can be viewed as part of providing an educational purpose rather than engaging in an unrelated commercial practice.

That said, the Commission is mindful of the concerns that allowing such uses, particularly product development, could open the door to ed tech providers exploiting the exception. To address these concerns, the Commission proposes that the Rule's definition of a ''school-authorized education purpose'' include product improvement and development (as well as other uses related to the operation of the product, including maintaining, supporting, or diagnosing the service), provided the use is directly related to the service the school authorized. This would permit operators to improve the service, for example by fixing bugs or adding new features, or develop a new version of the service. An operator may not use the information it collected from one educational service to develop or improve a different service.

The Commission believes that limiting product improvement and development in this way will allow ed tech providers to provide better services while helping to safeguard against the use of student data for non-educational purposes. We also believe that this proposed approach is consistent with the requirement under FERPA's school official exception that a school have a ''legitimate educational interest'' to share personal information without parental consent.

The Commission does not agree with the commenters that recommended aligning the permissible uses of data collected under the school authorization exception with the Rule's support for the internal operations exception. The two exceptions serve different purposes, and the activities within the support for the internal operations definition are generally unnecessary for and unrelated to the provision of an educational purpose.[267]

As an additional protection, the proposed school authorization exception would require operators to

direct marketing, behavioural advertising, and any profiling not necessary to the functioning of the service in question)''); Consumer Reports, at 18 (noting that ''. . . operators seeking consent in the school setting should be prohibited from using the information for marketing''); internet Association, at 16 (''IA strongly supports appropriate limits on online service operators' use of students' personal information and does not believe that online services should be able to rely on school official consent in order to use personal information for marketing purposes''); STOP, at 5 (noting that the Rule '' . . . must also prohibit operators from using students' personal information for marketing or product-improvement purposes''); Google, at 18 (recognizing the need to exclude commercial activities like advertising, including personalized ads and product placement).

[260] Lego, at 6.

[261] 5Rights Foundation, at 6. *See also* Khan Academy, at 3 (noting the distinction between internal use of data for educational product development and disclosure of that data to third parties for commercial purposes); Yoti, at 14 (recommending allowing operators to use student data where the school has provided consent for research and development, broadly defined, so long as protections are in place); Oregon Attorney General, at 3 (if operators are allowed to use data for product improvement, Commission should consider ''whether operators are able to de-identify the personal information, and are able to prevent re-identification of the data'').

[262] EPIC, at 11.

[263] *See, e.g.,* Parent Coalition for Student Privacy, at 11 (''The Commission should ban operators of education technology from using or processing de-identified or identifiable student information to improve existing or to develop or improve new educational or non-educational products and services''); Illinois Families for Public Schools, at 2 (opposing use of student data ''for advertising purposes or to improve or develop new products or services'').

[264] *See, e.g.,* F. Bocquet, at 1; N. Williams, at 1.

[265] *See, e.g.,* CCIA, at 12. *See also* CIPL, at 3 (suggesting that companies be allowed to engage in profiling in the education context in order to provide '''personalized'' curricula); School Superintendents, at 3 (recommending that FTC clarify that ''commercial purposes'' for purposes of school consent exception does not include activities that would fall under the Rule's support for internal operations exception); Google, at 18 (''. . . certain types of processing are impermissible, such as personalized ads or product placements, but other important activities to support educational services are permitted, like the maintenance, development and improvement of the product, analytics, and personalization of content within the service'').

[266] *See COPPA FAQs,* FAQ N.1; *Policy Statement of the Federal Trade Commission on Education Technology and the Children's Online Privacy Protection Act,* Federal Trade Commission (May 19, 2022), available at *https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-education-technology-childrens-online-privacy-protection.*

[267] The Commission notes that one potential area of overlap between these exceptions is that the support for the internal operations exception allows an operator to personalize content on a website or online service. The Commission recognizes that some degree of personalization will be inherent in providing the ed tech service for which the student data is collected. For example, this can include personalizing curricula or advancing a student who has completed an assignment to the next level or unit in a lesson plan. While such personalization would be a permissible part of providing the service, personalization could not include the marketing of services even if those services were educational in nature.

have a written agreement with the school setting forth the exception's requirements. This written agreement must specify that the ed tech provider's use and disclosure of the data collected under the exception is limited to a school-authorized education purpose as defined in the Rule and for no other purpose. As an extra safeguard to help ensure that ed tech providers are using student data appropriately and to align the exception with FERPA, the required written agreement must specify that the school will have direct control over the provider's use, disclosure, and maintenance of the personal information under the exception. The agreement must also include the operator's data retention policy with respect to personal information collected from children under the school authorization exception.

iii. Who at the school should provide authorization?

In response to the question of who should be able to provide authorization for data collection under the school authorization exception, a wide variety of commenters, including industry, FTC-approved COPPA Safe Harbor programs, school personnel, and the Oregon Attorney General, called for flexibility.[268] For example, while the Illinois Council of School Attorneys recommended against specifying who can provide authorization, it stated that if the Commission decides to do so, it should use general, flexible terminology such as ''employees designated by the school's administration or governing board'' to describe individuals who may provide authorization.[269] The Oregon Attorney General called for flexibility and urged the Commission to be mindful that schools and districts obtain and implement ed tech in different ways.[270] Another commenter, kidSAFE, recommended the Commission permit consent from an adult outside the school environment, including coaches or tutors.[271]

Other commenters supported a more prescriptive approach,[272] with some recommending that the Rule not allow teachers to provide consent.[273] One commenter stated that few teachers are in a position to evaluate which ed tech services are trustworthy, adding that allowing individual teachers to make these decisions prevents school administrators from knowing what products are being used in the classroom.[274] Another recommended requiring that, if schools are allowed to provide consent on behalf of parents, the school or district must have clear and uniform policies for adopting ed tech led by a team of qualified education research, curriculum, and privacy, and technology experts.[275] Similarly, Lego recommended that only duly authorized individuals, such as IT administrators, data protection officers, or chief IT officers, provide consent through a contract with the ed tech provider.[276]

Because the Commission believes it is important to accommodate the different ways schools obtain and implement ed tech, the Commission agrees with the commenters that called for flexibility rather than a ''one size fits all'' approach. At the same time, the Commission recognizes the need for measures to prevent the situation in which a school is unaware of the ed tech services their teachers have consented to on an ad hoc basis. Indeed, staff guidance has previously recommended that consent for ed tech to collect personal information comes from the schools or school districts rather than from individual teachers.[277] To balance the need for flexibility with the need for oversight and accountability, the Commission proposes that the written agreement between the ed tech provider and the school, which the new § 312.5(c)(10) exception would require, identify the name and title of the person providing consent and specify that the school has authorized the person to provide such consent.

iv. Notice to Parents

Many of the commenters supporting a school consent exception recommended that parents receive notice of the ed tech providers the school authorized to collect children's data.[278] Some commenters suggested that the notice to parents come from schools, recommending that the notice be similar to the FERPA annual notification requirement[279] or that schools make information about ed tech providers' information practices available to parents in a public place such as the school district's website.[280]

Other commenters raised concerns about the Commission imposing obligations on schools through the Rule. For example, the Oregon Attorney General expressed concern that allowing an operator to shift notice obligations to schools would potentially shield operators from liability.[281] Instead, the Oregon Attorney General recommended that the Commission require the operator to ''provide notice of its information practices in a manner that is easily accessible to all parents . . . and to inform the school on where parents may find such notice of information practices.''[282] Similarly, the Parent Coalition for Student Privacy recommended that, if the Commission creates an exception for school authorization, it require ed tech providers to dedicate space on their website for notices about the exception and explain how the data will be strictly used for educational purposes and state which third parties can access the data.[283]

The Commission agrees that notice is an important aspect of the proposed school authorization exception. At the same time the Commission agrees with commenters who raised concerns about imposing burdens on schools that may not have sufficient resources to undertake an additional administrative responsibility.[284] To promote transparency without burdening schools, the Commission proposes requiring operators to provide notice. Namely, the Commission's proposed addition of § 312.4(e), discussed earlier in Part IV.B.4., would require an operator that collects personal information from a child under the school authorization exception to include an additional notice on its website or online service noting that: (1) the operator has obtained authorization from a school to collect a child's personal information; (2) that the

[268] *See* internet Association, at 15; ANA, at 13; SIIA, at 3; FOSI, at 5; kidSAFE, at 4; Illinois Council of School Attorneys, at 2; Oregon Attorney General, at 2.

[269] Illinois Council of School Attorneys, at 2.

[270] Oregon Attorney General, at 2 (noting that, in Oregon, some schools contract with educational technology companies through an intragovernmental technology alliance while others do so independently).

[271] kidSAFE, at 4.

[272] *See* P. Aftab, at 8; Common Sense Media, at 8; Parent Coalition for Student Privacy, at 14; Lego, at 6; Privo, at 6; STOP, at 4.

[273] *See* P. Aftab, at 8; Common Sense Media, at 8; Lego, at 6; Privo, at 6; STOP, at 4.

[274] P. Aftab, at 8.

[275] Parent Coalition for Student Privacy, at 14.

[276] Lego, at 7.

[277] *COPPA FAQs,* FAQ N.3.

[278] *See, e.g.,* CDT, at 8; Common Sense, at 11; Consumer Reports, at 17; FPF, at 12; The National PTA, at 3; Lego, at 6.

[279] CDT, at 8.

[280] FPF, at 12.

[281] Oregon Attorney General, at 3.

[282] *Id.*

[283] Parent Coalition for Student Privacy, at 8–9 (also recommending that schools should also be required to link to and post this information as it applies to the specific education technology services the schools choose to utilize).

[284] Moreover, the Commission cannot impose COPPA obligations on schools. COPPA applies to an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child. 15 U.S.C 6502(a)(1); 16 CFR 312.3.

operator will use and disclose the information for a school-authorized education purpose and no other purpose; and (3) that the school may review information collected from a child and request deletion of such information.[285]

b. Audio File Exception

In 2013, the Commission expanded the Rule's definition of ''personal information'' to include ''[a] photograph, video, or audio file where such file contains a child's image or voice.'' [286] Since that time there has been a dramatic increase in the popularity of internet-connected ''home assistants'' and other devices that are voice activated and controlled. This led to inquiries from stakeholders about the Rule's applicability to the collection of audio files containing a child's voice where an operator converts the audio to text and then deletes the audio file. While the Commission determined that the Rule applies to such collection, it recognized the value of using verbal commands to perform search and other functions on internet-connected devices, especially for children who have not yet learned to write or those with disabilities. Accordingly, in 2017, the Commission issued an enforcement policy statement indicating that it would not take action against an operator who, without obtaining parental consent, collects a child's voice recording, provided the operator only uses the audio file as a replacement for written words, such as to effectuate an instruction or request, and the operator retains the recording only for a brief period.[287]

In the 2019 Rule Review Initiation, the Commission asked whether it should modify the Rule to include a parental consent exception based on the enforcement policy statement. The Commission also asked whether such an exception should allow an operator to use de-identified audio files for product improvement and, if so, how long an operator could retain such data. Additionally, the Commission asked whether de-identification of audio files is effective at preventing re-identification.

The vast majority of commenters that addressed the issue recommended the Commission modify the Rule to include a parental consent exception for audio files based on the existing enforcement policy statement.[288] Some of these commenters supported the narrow confines of the current enforcement statement, which requires the collected audio file to serve solely as a replacement for written words and be maintained only until completion of that purpose.[289] A number of other commenters, however, recommended that the Commission adopt a more expansive audio exception. For example, Google noted that many voice actions for internet-connected devices are not a replacement for written words. Because of this, Google recommended that the Commission include an expanded exception that ''covers voice data used to perform a task or engage with a device, as well as to replace written words.'' [290] Others made similar recommendations.[291]

Several commenters argued that where an operator de-identifies the audio file, the exception should allow it to engage in product improvement as well as internal operations such as improving functionality and personalization.[292] Only a few of these commenters discussed the means by which an operator could effectively de-identify audio files. One suggested using the approach set forth in a White House draft privacy law, which would require the operator to alter the data to prevent it from being linked to a specific individual, to commit not to re-identify the data, and to require third-party recipients to similarly commit not to re-identify the data.[293] Another commenter suggested the operator could de-link the audio file from a user's account or device identifier.[294]

The Commission received a small number of comments that opposed adding a consent exception for audio files to the Rule. Arguing against an exception, a group of State Attorneys General characterized recordings of children's voices as biometric data and stated that, as such, they are ''individually-identifying and immutable.'' [295] These commenters also questioned whether operators could effectively and consistently de-identify audio files, pointing to numerous instances in which anonymized data had been re-identified.[296] A coalition of consumer groups argued that the Commission's existing enforcement statement, as structured, effectively protects children's privacy and there is no need to amend the Rule to add an exception.[297] The commenters also stated that if the Commission does add an exception to the Rule, the exception should not permit operators to retain or use collected audio files for product improvement even if the files are de-identified.[298]

Based on the comments overall, the Commission proposes codifying the audio file enforcement statement as an exception to the Rule's parental consent requirement, with one modification. The Commission believes the calls to expand the exception to also include audio files used to perform a task or to

[285] *See* Part IV.B.4. for discussion on this proposed change.

[286] 16 CFR 312.2, definition of ''personal information.''

[287] *Enforcement Policy Statement Regarding the Applicability of the COPPA Rule to the Collection and Use of Voice Recordings,* 82 FR 58076 (Dec. 8, 2017), available at *https://www.ftc.gov/system/files/documents/public_statements/1266473/coppa_policy_statement_audiorecordings.pdf.* The enforcement statement also specified that the operator must provide the notice required by the COPPA Rule and sets forth a number of important limitations on the policy's application.

[288] *See, e.g.,* CIPL, at 6; TechFreedom, at 22; ANA, at 14; CCIA, at 13; CTIA, at 5–6; ESA, at 22–23; Google, at 19; internet Association, at 17–18; NCTA, at 11; U.S. Chamber of Commerce, at 5–7.

[289] FOSI, at 6; FPF, at 5–6; The Toy Association, at 17.

[290] Google, at 19 (noting that a written command is not typically used to play a video or turn on an appliance and that collection of this type of voice data would pose no additional risk as it would still be briefly retained only to complete the requested action).

[291] *Id.; see also, e.g.,* CCIA, at 13 (noting that the exception should apply to voice data generally as emerging technologies may not necessarily use verbal commands as a ''replacement'' for written words); U.S. Chamber of Commerce, at 6 (noting that voice-activated commands may not constitute a replacement for written words).

[292] *See* internet Association, at 17–18 (asserting that the exception should allow use of audio recordings to train and improve voice recognition and understanding systems); ANA, at 15 (noting that the exception should allow operators to use de-identified audio files to improve current products and future products); TechFreedom, at 23 (noting that the exception should allow de-identified audio files to train automatic speech recognition systems); NCTA, at 11 (recommending the Commission allow product improvement as well as improved functionality, personalization or analytics, and customer service). *See also* CTIA, at 6 (recommending that even if data is not de-identified, the exception should allow an operator to retain the data for product improvement, provided it is not combined with other personal information and appropriate safeguards are in place).

[293] See TechFreedom, at 25–26, citing White House, Administration Discussion Draft: Consumer Privacy Bill of Rights Act of 2015 (Feb. 27, 2015), available at *https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/letters/cpbr-actof-2015-discussion-draft.pdf.* This approach is based on the Commission's own data de-identification standard. *See Protecting Consumer Privacy in an Era of Rapid Change,* Federal Trade Commission (March 2012), page 22, available at *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf.*

[294] NCTA, at 11.

[295] Joint Attorneys General, at 11–12. *See also* A. Wang, at 2–4 (arguing that parental consent should be required for the collection of children's voice recordings because of the risks of an insecure transfer of data and noting that de-identification is not effective at preventing re-identification).

[296] Joint Attorneys General, at 11–12; A. Wang, at 2–4.

[297] Joint Consumer Groups, at 36–41.

[298] *Id.*

engage with a device have merit. Limiting the proposed exception to circumstances in which the voice data replaces written words would be overly restrictive and unnecessarily prevent its application to a variety of internet-connected services that do not involve written commands. Further, because the proposed exception requires the operator to delete the collected audio file as soon as the command or engagement is completed, this expansion will not create additional risk to children's privacy. Additionally, to the extent an operator collects personal information beyond the audio file—such as a transcript of the audio file in combination with other personal information—the operator could not utilize the audio file exception and would have to afford COPPA's protections to that information.

The Commission, however, does not agree that the exception should allow operators to retain the audio files or to use them for other purposes such as product improvement and internal operations, even if the operator has taken steps to de-identify the data. The Commission agrees that a recording of a child's voice is particularly sensitive given that, like other biometric data, it is personal and unique. Consequently, the privacy risk created by such data potentially falling into the wrong hands and being re-identified exceeds the benefit of allowing broader use. This is especially the case where parents are not provided direct notice or provided the opportunity to consent to such practices.

c. Other Exceptions

The Commission also proposes adding language to the support for the internal operations exception, § 312.5(c)(7), to address the new online notice requirement the Commission proposes.[299] This proposal indicates that an operator that collects information under the support for the internal operations exception must provide information in its online notice regarding its use of the exception. The Commission also proposes technical fixes to § 312.5(c)(6) for clarity purposes. Namely, the Commission proposes changing § 312.5(c)(6)(i) from ''protect the security or integrity of its website or online service'' to ''protect the security or integrity of *the* website or online service'' (emphasis added). The Commission also proposes removing ''be'' in § 312.5(c)(6)(iv) to fix a typographical issue.

In addition, the Commission proposes to modify § 312.5(c)(4) to prohibit operators from utilizing this exception to encourage or prompt use of a website or online service. This proposed addition prohibits operators from using online contact information to optimize user attention or maximize user engagement with the website or online service, including by sending push notifications, without first obtaining verifiable parental consent.[300]

Additionally, several commenters recommended that the Commission expand the Rule's current one-time use exception, § 312.5(c)(3).[301] Specifically, multiple commenters noted that the Commission should expand the types of information collected under this exception to include telephone numbers.[302] A commenter also requested the Commission expand this exception to permit multiple contacts with a child without providing notice and an opportunity to opt out, as required by the multiple contact exception.[303]

As explained earlier in the discussion regarding the definition of ''online contact information,'' the Commission proposes modifying this definition to include a mobile telephone number, provided the operator uses it only to send a text message and not for voice communication, unless and until the operator has obtained the parent's verifiable parental consent.[304] The Commission believes that the proposed revision to the definition of ''online contact information'' addresses commenters' recommendations to permit the use of mobile telephone numbers to contact children under the one-time use exception. However, the Commission stresses that under the proposed definition of ''online contact information,'' operators using a child's mobile telephone number under this exception may only text the child and may not call the child.

Further, the Commission is not persuaded by commenters suggesting that it should expand this exception to permit multiple contacts with a child without offering parents notice and the opportunity to opt out. The COPPA statute envisioned the scenario in which an operator would have to contact a child more than once to respond to a specific request, and Congress included notice and opt-out requirements in association with such scenario.[305] This scenario was codified in the COPPA Rule under the multiple contact exception, § 312.5(c)(4). Commenters' recommendation essentially asks the Commission to remove the multiple contact exception's notice and consent requirements. However, the Commission believes these elements are required by the COPPA statute, and therefore it does not propose such modifications.

D. Right To Review Personal Information Provided by a Child (16 CFR 312.6)

The Commission proposes a new paragraph related to the Commission's proposed school authorization exception.[306] Specifically, the Commission proposes requiring operators utilizing such exception to provide schools with the rights operators currently provide parents under § 312.6(a), namely the right to review personal information collected from a child, refuse to permit operators' further use or future online collection of personal information, and to direct operators to delete such information. Under this proposal, operators utilizing the school authorization exception would not be required to provide such rights to parents for information collected under the exception.

Requiring operators to fulfill requests, such as deletion requests, from each parent could result in schools having to provide different services to different children or forego particular services for the entire class based on the request of an individual parent. To reduce this burden, the Commission proposes this modification. The Commission also proposes deleting the reference to ''parent'' in the § 312.6 heading to account for this modification.

E. Prohibition Against Conditioning a Child's Participation on Collection of Personal Information (16 CFR 312.7)

Section 312.7 of the Rule provides that an operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more

[299] This proposal is discussed in Part IV.B.3.

[300] The Commission acknowledges that the *COPPA FAQs* currently indicate that operators may rely on the multiple contact exception to send push notifications to children without first obtaining verifiable parental consent. *COPPA FAQs,* FAQ J.9. The Commission is aware of recent media reports indicating that children may be overusing online services due to engagement-enhancing techniques. The Commission is concerned about the potential harm from such overuse and therefore deems it important to ensure parents are notified and provide verifiable parental consent before operators use such techniques to further children's engagement with websites and online services.

[301] *See, e.g.,* kidSAFE, at 13; Consumer Technology Association (''CTA''), at 6–7; ESA, at 24–25; NCTA, at 17.

[302] kidSAFE, at 13; CTA, at 6–7; ESA, at 24–25; NCTA, at 17.

[303] kidSAFE, at 13.

[304] This discussion can be found in Part IV.A.1.

[305] 15 U.S.C. 6502(b)(2)(C); 64 FR 59888 at 59902.

[306] *See* Part IV.C.3.a. for further discussion of the proposed school authorization exception.

personal information than is reasonably necessary to participate in such activity.

The Commission notes that this provision serves as an outright prohibition on collecting more personal information than is reasonably necessary for a child to participate in a game, offering of a prize, or another activity. Therefore, operators may not collect more information than is reasonably necessary for such participation, even if the operator obtains consent for the collection of information that goes beyond what is reasonably necessary.

With respect to the scope of § 312.7, the Commission is considering adding new language to address the meaning of ''activity,'' as that term is used in § 312.7. Specifically, the Commission is considering including language in § 312.7 to provide that an ''activity'' means ''any activity offered by a website or online service, whether that activity is a subset or component of the website or online service or is the entirety of the website or online service.'' It welcomes comment on whether this language is consistent with the COPPA statute's text and purpose, and it also welcomes comment on whether this change is necessary given the breadth of the plain meaning of the term ''activity.''

F. Confidentiality, Security, and Integrity of Personal Information Collected From Children (16 CFR 312.8)

Section 312.8 of the Rule provides:

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security, and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

In the 2019 Rule Review Initiation, the Commission asked whether operators have implemented sufficient safeguards to protect the personal information they collect from children. The Commission also asked whether the requirements of § 312.8 are adequate and whether the Rule should include more specific data security requirements.

Many commenters asked the Commission to clarify or strengthen operators' obligations under this section. For example, a coalition of consumer groups criticized the Commission for not promulgating clear data security regulations as directed by the COPPA statute.[307] These commenters recommended that the Commission elaborate on the meaning of ''reasonable procedures to protect the confidentiality, security, and integrity'' of children's information.[308] Similarly, an FTC-approved COPPA Safe Harbor program recommended that the Commission provide detailed guidance about minimum standards for what constitutes ''reasonable procedures,'' to help guide operators and FTC-approved COPPA Safe Harbor programs tasked with ensuring that companies are compliant with the Rule.[309]

Some commenters argued that recent data breaches in all industries demonstrate the need for stricter data security requirements for children's personal information.[310] Other commenters expressed a more narrow concern that the evolving online landscape in schools, combined with an increase in data breaches and ransomware attacks, suggests the need for stricter data security requirements for children's personal information generally.[311] In contrast, a small number of commenters opined that operators are adequately protecting children's personal information. For example, the Internet Association stated that the increase in well-publicized breaches has heightened operators' awareness of their obligations and encouraged them to safeguard personal data.[312]

Commenters on both sides—those who believe operators are adequately protecting children's personal information and those who believe operators need to do more—recommended against adding prescriptive data security requirements or risk management controls in the Rule. These commenters expressed concern that such measures could become quickly outdated. For example, the Internet Association and The Toy Association expressed concerns that specific, detailed security requirements and risk management controls might prevent operators from keeping pace with evolving technology and security threats.[313] The internet Association opined that the Rule's flexibility permits operators to develop privacy and security risk management frameworks that are tailored to their activities and users, and that also keep pace with technology, evolving security threats, and varying security risks.[314] FTC-approved COPPA Safe Harbor program kidSAFE and a technology trade association recommended that the Commission keep the ''broad and flexible'' standard in § 312.8 for similar reasons.[315] A group of State Attorneys General also supported a flexible approach.[316] These commenters urged the Commission to proceed cautiously and make clear that any additional data security requirements within the Rule are simply illustrative examples of what constitutes ''reasonable procedures'' rather than an exhaustive list.[317] Such an approach, they argued, would encourage operators to consistently monitor and update security protocols that evolve with ''rapid advances in technology and the enterprising nature of cybercriminals.'' [318]

kidSAFE also encouraged the Commission to consider the varying

[307] *See* Joint Consumer Groups, at 54–56 (criticizing the Commission for neglecting to promulgate regulations that ''require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children,'' but only adding ''small sections'' about releasing data to third parties in § 312.8 and about data retention and deletion in § 312.10).

[308] *Id.* at 56 (requesting the Commission, in particular, clarify operators' obligations to protect the ''confidentiality'' of children's personal information).

[309] CARU, at 10 (noting that, in its experience, companies make good-faith efforts to establish and maintain reasonable procedures but could use additional guidance about ''minimum standards,'' such as encryption).

[310] *See e.g.,* Consumer Reports, at 24 (listing examples of data breaches and suggesting that the Commission provide ''sufficient enforcement'' to incentivize companies to better steward children's personal information).

[311] Parent Coalition for Student Privacy, at 4 (recommending that the Commission strengthen the Rule's data security requirements generally, in light of the increase in data breaches of schools, school districts, and their vendors); *see also* CoSN, at 2, 4–5 (asking the Commission to strengthen the Rule's security requirements generally, considering the increase of cyberattacks on school districts and citing CoSN's 2019 leadership survey report identifying cybersecurity as the first priority for school system technology administrators).

[312] Internet Association, at 20 (''With the emergence of other privacy and security requirements and fall-out from well-publicized breaches, operators are increasingly aware of their obligations to safeguard personal data about users of any age by maintaining physical, technical, and administrative security procedures that are reasonable and appropriate in light of the nature of the data to be protected'') (footnote omitted). *See also* P. Aftab, at 10 (stating that the ''over-arching principles'' of COPPA's data security guidelines are ''working well,'' although they may require updating and closer examination).

[313] Internet Association, at 20; The Toy Association, at 22 (expressing concerns that specific data security requirements could become quickly outdated and might add costs to operators who must also comply with security requirements in other laws, such as the GDPR and State data security laws).

[314] Internet Association, at 20.

[315] kidSAFE, at 16; *see also* Consumer Technology Association, at 19 (opining that ''[f]lexible, dynamic approaches to security are the best answer to solving the security challenges of both today and tomorrow'').

[316] Joint Attorneys General, at 14–15.

[317] *Id.*

[318] *Id.* at 14.

levels of resources and bargaining power that different operators hold. kidSAFE claimed that smaller companies often lack the resources to invest in their own data security measures or the bargaining power to obtain security assurances from the third-party service providers they use.[319] An individual commenter expressed similar concerns that additional data security requirements might further burden small businesses, which already may not be in a position to determine whether service providers are capable of the Rule's existing security requirements.[320]

In enacting COPPA, Congress recognized the need for heightened protections for children's personal information, and the Commission has long recognized a similar need.[321] The Commission agrees that the proliferation of data breaches in all industries, including schools, supports strong and effective data security requirements, especially for particularly sensitive information like children's data. The Commission also agrees that operators would benefit from additional clarity and detail regarding the Rule's security requirements set forth in § 312.8.

For these reasons, the Commission proposes modifications to the Rule's security requirements. Specifically, the Commission proposes to split the operator's requirements in § 312.8 into discrete paragraphs and provide further guidance as to steps operators can take to comply with each requirement. The second paragraph will provide more guidance on the ''reasonable procedures'' that an operator must establish and maintain under newly-numbered § 312.8(a) to protect the confidentiality, security, and integrity of personal information from children. The third paragraph will address the ''reasonable steps'' an operator should take to release children's personal information only to those capable of protecting such and who provide written assurances to protect the information.

First, the Commission proposes modifying § 312.8 to specify that operators must, at minimum, establish, implement, and maintain a written comprehensive security program that contains safeguards that are appropriate to the sensitivity of children's information and to the operator's size, complexity, and nature and scope of activities. This requirement is modeled on the Commission's original Safeguards Rule implemented under the Gramm-Leach-Bliley Act (''GLBA''), which provides heightened protections for financial institutions' customer data.[322]

To provide additional guidance, the proposed § 312.8 security program must contain a number of specific elements including designating an employee to coordinate the information security program; identifying and, at least annually, performing additional assessments to identify risks to the confidentiality, security, and integrity of personal information collected from children; designing, implementing, and maintaining safeguards to control any identified risks, as well as testing and monitoring the effectiveness of such safeguards; and, at least annually, evaluating and modifying the information security program.

The Commission believes that these modifications are appropriate for several reasons. First, this approach provides additional guidance to operators and FTC-approved COPPA Safe Harbor programs, while also maintaining the Rule's flexibility by allowing for technological advancements and taking into account an operator's size, complexity, and the nature and scope of its activities. It is also consistent with prior Commission COPPA and data security decisions and guidance.[323]

In addition to the proposed written data security program, the Commission also proposes adding language to § 312.8 to clarify that operators that release personal information to third parties or other operators must obtain written assurances that the recipients will employ reasonable measures to maintain the confidentiality, security, and integrity of the information. In 2013, when the Commission amended § 312.8 to require operators to ''take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner,'' the Commission envisioned that operators would obtain assurances ''by contract or otherwise.'' [324] The Commission based this requirement on a similar obligation of financial institutions under the GLBA, which requires entities to ''requir[e] your service providers *by contract* to implement and maintain such safeguards'' (emphasis added).[325] While the Commission expanded on the GLBA's provision to allow operators to obtain assurances by contract ''or otherwise,'' the Commission did not intend to allow operators to rely on verbal assurances alone. Rather, the Commission envisioned other written assurances for which there is tangible evidence, such as a written email or a service provider's written terms and conditions.

Accordingly, the Commission proposes inserting ''written'' to clarify that the assurances operators must obtain from other operators, service providers, and third parties to whom the operator releases children's personal information, or who collect such on the operator's behalf, must be in writing. As similarly noted in the Rule review that led to the 2013 Amendments,[326] this provision is intended to address security issues surrounding business-to-business releases of data. The Commission did not seek specific comment on this aspect of the Rule's security requirements and therefore welcomes comment on this proposed modification.

G. Data Retention and Deletion Requirements (16 CFR 312.10)

Section 312.10 of the Rule currently states that ''an operator of a website or online service shall retain personal information collected online from a child for only as long as is reasonably

[319] kidSAFE, at 15 (opining that it believes operators are implementing sufficient security safeguards considering their varying sizes).

[320] K. O'Connell, at 2.

[321] *See, e.g.,* then-FTC Chairman Robert Pitofsky, FTC Testimony before Senate Committee on Commerce, Science & Transportation, U.S. Senate ''Protection of Children's Privacy on the World Wide Web,'' Sept. 23, 1998, at 4 (testifying in support of enacting COPPA and describing safety concerns that the disclosure of children's personal information may lead to, as pedophiles and other sexual predators use online services to identify and contact children), *available at https://www.ftc.gov/public-statements/1998/09/prepared-statement-federal-trade-commission-protection-childrens-privacy; see also* then-FTC Chairman Jon Leibowitz, ''Updated FTC COPPA Rule,'' Dec. 19, 2012, at 6 (explaining that while COPPA covers only ''a small sliver of the internet'' it is ''an important sliver, a small, Congressionally-mandated oasis sheltering personal privacy, one in which websites must respect the privacy of the most vulnerable and precious among us''), *available at https://www.ftc.gov/public-statements/2012/12/statement-ftc-chairman-jon-leibowitz-updated-coppa-rule-prepared-delivery.*

[322] Safeguards Rule, Final Rule, 67 FR 36484 (May 23, 2002), *available at https://www.ftc.gov/sites/default/files/documents/federal_register_notices/standards-safeguarding-customer-information-16-cfr-part-314/020523standardsforsafeguardingcustomerinformation.pdf.*

[323] *See, e.g., In re Retina-X Studios, LLC,* File No. 172 3118 (2020), *available at https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3118-retina-x-studios-llc-matter; United States* vs. *Unixiz, Inc., et al.,* No. 5:19–cv–2222 (N.D. Cal. 2019), *available at https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3002-unixiz-inc-doing-business-i-dressupcom.*

[324] 78 FR 3972 at 3995.

[325] 16 CFR 314.4(f)(2) (requiring financial institutions to obtain contracts with service providers to implement and maintain safeguards).

[326] 76 FR 59804 at 59821.

necessary to fulfill the purpose for which the information was collected.'' This section further states that ''the operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.''

In 2013, the Commission amended the Rule to add the data retention and deletion requirements of § 312.10 pursuant to its 15 U.S.C. 6502(b)(1)(D) authority to establish regulations requiring operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. At that time, the Commission explained that timely deletion of data is an integral part of a reasonable data security strategy, referencing the Institute for Public Representation's comment that without such ''operators have no incentive to eliminate children's personal information and may retain it indefinitely.'' [327] The Commission, however, rejected requests to specify a finite timeframe in which companies must delete data, instead deciding to choose ''the phrases 'for only as long as is reasonably necessary' and 'reasonable measures' to avoid the very rigidity about which commenters opposing this provision complain.'' [328]

Although the Commission did not specifically seek comment on data deletion in its 2019 Rule Review Initiation, many of the commenters that recommended the Commission provide more guidance on the § 312.8 requirements also suggested that the Commission clarify operators' obligations under § 312.10. These commenters expressed concern that, without specific time limits on data retention, operators could read the Rule to allow indefinite retention of children's personal information. For example, a group of State Attorneys General asked the Commission to modify the Rule to require operators or others maintaining children's data to serve contextual ads to delete such information immediately at the end of a user's session.[329] Many consumer groups and individual commenters also opined that an increase in school data breaches and ransomware attacks indicates a need for stronger data deletion requirements within the Rule generally.[330] A few commenters asked specifically for data retention limits for personal information stored within the education system or by ed tech providers.[331] Similarly, a non-profit privacy organization requested that the Commission make it clear that operators cannot retain student data indefinitely.[332]

Section 312.10 prohibits operators from retaining children's personal information indefinitely. The Commission framed the prohibition on data retention to permit enough flexibility to allow operators to retain data only for specified, necessary business needs.

Given the misunderstanding identified by the consumer groups, the Commission now proposes to modify this section to state more explicitly operators' duties with regard to the retention of personal information collected from children. Specifically, the Commission proposes clarifying that operators may retain personal information for only as long as is reasonably necessary for the specific purpose for which it was collected, and not for any secondary purpose. For example, if an operator collects an email address from a child for account creation purposes, the operator could not then use that email address for marketing purposes without first obtaining verifiable parental consent to use that information for that specific purpose. Additionally, the operator must delete the information when such information is no longer reasonably necessary for the purpose for which it was collected.[333] In any event, personal information collected from a child may not be retained indefinitely.

The Commission also proposes requiring an operator to, at least, establish and maintain a written data retention policy specifying its business need for retaining children's personal information and its timeframe for deleting it, precluding indefinite retention.

These proposed modifications are intended to reinforce section 312.7's data minimization requirements, which prohibit an operator from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.[334] Namely, these proposed modifications require that an operator must have a specific business need for retaining information collected from children, and may retain such information for only so long as is reasonably necessary for the specific purpose for which it was collected, and not for any secondary purpose. The modifications also preclude operators from retaining such information indefinitely. The Commission welcomes comment on its proposed modification to this section.

H. Safe Harbor (16 CFR 312.11)

The 2019 Rule Review Initiation posed a number of questions related to the Rule's safe harbor program provision, including: whether it has been effective in enhancing compliance with the Rule; whether the Commission should modify the criteria currently enumerated in § 312.11(b) for approval of FTC-approved COPPA Safe Harbor programs; whether the Commission should clarify or modify § 312.11(g) with respect to the Commission's discretion to initiate an investigation or bring an enforcement action against an operator participating in an FTC-approved COPPA Safe Harbor program; whether the Commission should consider changes to the safe harbor monitoring process, including to promote greater transparency; and whether the Rule should include factors for the Commission to consider in revoking approval for an FTC-approved COPPA Safe Harbor program.

A number of commenters expressed support for the Rule's safe harbor program.[335] At the same time, however,

[327] 78 FR 3972 at 3995.

[328] 78 FR 3972 at 3995, note 302 (rejecting the Institute for Public Representation's request to require companies to delete children's personal information within three months).

[329] Joint Attorneys General, at 8.

[330] Parent Coalition for Student Privacy, at 4 (recommending that the Commission incorporate stronger security standards in the Rule generally, considering the increase in data breaches of schools, school districts, and their vendors, including strengthening COPPA's requirements for data minimization and deletion); CoSN, at 4–5 (recommending that, in light of the growing number of cyberattacks on school districts, the Commission strengthen the Rule's security requirements generally and citing CoSN's 2019 leadership survey report identifying cybersecurity as the first priority for school system technology administrators, including ''efforts to promote transparency, and strengthen data retention and deletion policies'').

[331] *See, e.g.,* Illinois Families for Public Schools, at 2 (asking the Commission to have COPPA adopt Illinois' State law approach that retention of student data must be purpose driven and minimized); D. Derigiotis Burns Wilcox, at 2 (requesting the Commission adopt mandatory limits on the period for retaining personal information stored within the educational system and affiliated vendors).

[332] FPF, at 12.

[333] *See* Compl., *United States* v. *Amazon.com, Inc., et al.,* Case No. 2:23-cv-00811 (W.D. Wash. May 31. 2023), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/Amazon-Complaint-%28Dkt.1%29.pdf* (alleging that Amazon.com. Inc. and Amazon.com Services LLC violated § 312.10 by retaining children's personal information longer than was reasonably necessary to fulfill the purposes for collecting the information).

[334] 16 CFR 312.7.

[335] *See, e.g.,* CARU, at 11; SuperAwesome, at 31; PRIVO, at 8; FOSI, at 6; CIPL, at 7. *But see, e.g.,* S. Egelman, at 4–5 (stating the belief that FTC-approved COPPA Safe Harbor programs certify

multiple commenters recommended that the Commission enhance oversight of, and transparency regarding, the safe harbor program by modifying the criteria for the Commission's approval of FTC-approved COPPA Safe Harbor programs' guidelines and the Rule's requirements for FTC-approved COPPA Safe Harbor programs to submit reports to the Commission and retain records.[336] While the Commission continues to believe that FTC-approved COPPA Safe Harbor programs serve an important function in helping companies comply with COPPA, it finds merit in the recommendations for enhanced oversight and transparency. Accordingly, the Commission proposes revisions to § 312.11 of the Rule as set forth in this part of the preamble, which it believes will further strengthen the COPPA Rule's safe harbor program.

1. Criteria for Approval of Self-Regulatory Program Guidelines (§ 312.11(b))

Paragraph 312.11(b) of the Rule requires that FTC-approved COPPA Safe Harbor programs demonstrate that they meet certain performance standards, specifically: (1) requirements to ensure operators subject to the self-regulatory program guidelines (''subject operators'') provide substantially the same or greater protections for children as those contained in §§ 312.2 through 312.8 and 312.10; (2) an effective, mandatory mechanism for the independent assessment of subject operators' compliance with the FTC-approved COPPA Safe Harbor program's guidelines; and (3) disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines.

Several commenters recommended that the Commission provide additional clarity regarding the criteria the Commission applies when determining whether to approve an FTC-approved COPPA Safe Harbor program's self-regulatory guidelines. One FTC-approved COPPA Safe Harbor program suggested that the Commission consider publishing a standard set of program requirements, assessment questionnaires, and technical tests for all FTC-approved COPPA Safe Harbor programs to utilize with their subject operators.[337] Another recommended that the FTC consider enumerating minimum operating standards for FTC-approved COPPA Safe Harbor programs, including how often they monitor subject operators' sites and communicate with subject operators.[338] Another commenter recommended that the Commission should require FTC-approved COPPA Safe Harbor programs to apply a duty of care to promote principles behind COPPA when they conduct safe harbor program audits and certifications.[339]

The Commission finds merit in the overall call for additional clarity regarding its criteria for approving FTC-approved COPPA Safe Harbor programs' self-regulatory guidelines. As discussed previously, the Commission proposes changes to the Rule's security requirements.[340] These proposed modifications provide additional guidance on the ''reasonable procedures'' that an operator must establish and maintain to protect the confidentiality, security, and integrity of personal information from children. FTC-approved COPPA Safe Harbor programs can utilize that guidance in determining whether subject operators meet the Rule's § 312.8 requirements.

Further, in parallel with the proposed changes to § 312.8 discussed in Part IV.F., the Commission proposes to revise § 312.11(b)(2) to state explicitly that an FTC-approved COPPA Safe Harbor program's assessments of subject operators must include comprehensive reviews of both the subject operators' *privacy and security* policies, practices, and representations. The Commission does not propose any revisions to § 312.11(b)(1).

2. Reporting and Recordkeeping Requirements (§ 312.11(d) and § 312.11(f))

Section 312.11(d) of the Rule sets forth requirements for FTC-approved COPPA Safe Harbor programs to, among other things, submit annual reports to the Commission and maintain for not less than three years, and make available to the Commission upon request, consumer complaints alleging that subject operators violated an FTC-approved COPPA Safe Harbor program's guidelines, records of disciplinary actions taken against subject operators, and results of the FTC-approved COPPA Safe Harbor program's § 312.11(b)(2) assessments.

Several commenters recommended that the Commission modify the reporting and recordkeeping requirements in order to strengthen the Commission's oversight of FTC-approved COPPA Safe Harbor programs and to make that oversight more transparent. One commenter recommended that the Commission require FTC-approved COPPA Safe Harbor programs to submit more detailed and frequent reports.[341] Another suggested that the Rule should require such programs to demonstrate on a periodic basis that they are regularly assessing and updating their programs to comply with COPPA.[342]

The Commission agrees with commenters' general recommendation to enhance FTC-approved COPPA Safe Harbor programs' reporting requirements in order to strengthen oversight. Accordingly, the Commission proposes revising § 312.11(d)(1) to require the following additions to the FTC-approved COPPA Safe Harbor programs' annual reports.

First, the Commission proposes requiring FTC-approved COPPA Safe Harbor programs to identify each subject operator and all approved websites or online services in the program, as well as all subject operators that have left the program.[343] The proposed revision further requires an FTC-approved COPPA Safe Harbor program to provide: a narrative description of the program's business model, including whether it provides additional services to subject operators, such as training; copies of each consumer complaint related to each subject operator's violation of an FTC-approved COPPA Safe Harbor program's guidelines; and a description of the process for determining whether a subject operator is subject to discipline (in addition to the existing requirement to describe any disciplinary action that the FTC-approved COPPA Safe Harbor program took against any

online services that do not comply with the Rule and that, if the COPPA statute permitted the Commission to do so, it would be better for the Commission to eliminate the safe harbor program); Joint Consumer Groups, at 15–20 (arguing that the safe harbor program does not effectively protect children's privacy because of online services' low participation rates, a lack of sufficiently strict requirements for approval of safe harbor programs, and a lack of safe harbor programs' enforcement of their guidelines).

[336] *See, e.g.,* CARU, at 11; SuperAwesome, at 31; CIPL, at 7.

[337] TRUSTe, at 3.

[338] CARU, at 11.

[339] SuperAwesome, at 31.

[340] *See* Part IV.F.

[341] SuperAwesome, at 31.

[342] CIPL, at 7.

[343] This requirement will additionally allow the Commission to monitor whether subject operators are switching FTC-approved COPPA Safe Harbor programs for forum shopping purposes as one commenter noted. *See* Representative Kathy Castor, at 2. This concern was also raised during the COPPA Workshop, in which an employee of an FTC-approved COPPA Safe Harbor program noted that ''one of the issues that we have with safe harbor right now is the shopping around . . . we've lost a few, actually, where we've refused to allow standards that we don't think are meeting the requirements of COPPA and our program and they've gone elsewhere.'' *See* C. Quinn, Remarks from the *State of the World in Children's Privacy Panel* at *The Future of the COPPA Rule: An FTC Workshop* 37–38 (Oct. 7, 2019), *available at https://www.ftc.gov/system/files/documents/public_events/1535372/transcript_of_coppa_workshop_part_1_1.pdf.*

subject operator). These proposed changes will enhance the Commission's ability to oversee FTC-approved COPPA Safe Harbor programs.

Additionally, one FTC-approved COPPA Safe Harbor program recommended that the Commission consider conducting audits of each FTC-approved COPPA Safe Harbor program and publishing an audit checklist after completing each audit.[344] Relatedly, another commenter suggested that the Rule should require FTC-approved COPPA Safe Harbor programs to demonstrate on a periodic basis that they are regularly assessing and updating their programs to comply with COPPA.[345]

The Commission agrees that, in addition to its current oversight of FTC-approved COPPA Safe Harbor programs, including review of the FTC-approved COPPA Safe Harbor programs' annual reports discussed in this part of the preamble, regular audits of FTC-approved COPPA Safe Harbor programs' technological capabilities and mechanisms for assessing subject operators' fitness for maintaining membership could further strengthen oversight. To that end, the Commission proposes to add a new § 312.11(f) requiring FTC-approved COPPA Safe Harbor programs to submit triennial reports that provide details about those issues.[346]

In terms of transparency, several commenters recommended that the Commission require programs to publish lists of their certified members.[347] One FTC-approved COPPA Safe Harbor program, however, posited that public disclosure of membership lists would lead to the ''poaching'' of safe harbor members and recommended that the Rule require safe harbors instead to provide service-level certification information to the FTC confidentially.[348] Another disagreed that public disclosure of membership lists would lead to the stealing of members, stating that it has always publicly disclosed the products it has certified.[349] A coalition of consumer groups supported greater transparency and argued that FTC-approved COPPA Safe Harbor programs' current practices with respect to whether and where subject operators display membership seals makes it difficult for parents and others to determine whether websites or online services are participants of an FTC-approved COPPA Safe Harbor program.[350]

The Commission proposes requiring that FTC-approved COPPA Safe Harbor programs publish lists of their subject operators. While the Commission understands certain commenters' concerns that the publication of such a list could result in the loss of subject operators to other FTC-approved COPPA Safe Harbor programs, the Commission believes that such concerns are outweighed by the benefits created by increasing transparency around FTC-approved COPPA Safe Harbor programs. Therefore, the Commission proposes adding this requirement as new paragraph § 312.11(d)(4).

3. Revocation of Approval of Self-Regulatory Program Guidelines (Current § 312.11(f), Proposed To Be Renumbered as § 312.11(g))

Current § 312.11(f), which the Commission proposes to renumber as § 312.11(g) in light of the new proposed § 312.11(f), reserves the Commission's right to revoke the approval of any FTC-approved COPPA Safe Harbor program whose guidelines or implementation of guidelines do not meet the requirements set forth in the Rule. In addition, current § 312.11(f) requires FTC-approved COPPA Safe Harbor programs that the Commission had approved before the Commission amended the Rule in 2013 to submit by March 1, 2013 proposed modifications to bring their guidelines into compliance with the 2013 Rule amendments.

Because the March 1, 2013 deadline has passed and is no longer relevant, the Commission proposes to strike from renumbered § 312.11(g) the requirement that FTC-approved COPPA Safe Harbor programs submit proposed modifications to their guidelines. If the Commission proceeds to modify the Rule as discussed in this notice, the Commission will provide an appropriate deadline for safe harbor programs to submit proposed modifications to bring their guidelines into compliance with such amendments.

I. Voluntary Commission Approval Processes (16 CFR 312.12)

The Commission also proposes making a few technical edits in § 312.12(b) to ensure that each reference to the support for the internal operations of the website or online service is consistent with the COPPA statute's use of the phrase ''support for the internal operations of the [website] or online service.'' [351]

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 11, 2024. Write ''COPPA Rule Review, Project No. P195404'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov,* by following the instructions on the web-based form.

If you file your comment on paper, write ''COPPA Rule Review, Project No. P195404'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex E), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

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

[344] ESRB, at 5. This commenter suggested biennial audits, however on balance, the Commission believes that conducting such reviews every three years is appropriate.

[345] CIPL, at 7.

[346] Because the Commission proposes to add a new § 312.11(f), the Commission also proposes to renumber existing §§ 312.11(f) and 312.11(g) as 312.11(g) and 312.11(h), respectively.

[347] SuperAwesome, at 31; S. Egelman, at 5; kidSAFE, at 17.

[348] ESRB, at 5 (also asserting that there is a lack of evidence showing that consumers want access to such lists).

[349] kidSAFE, at 17.

[350] Joint Consumer Groups, at 19–20.

[351] 15 U.S.C. 6501(4).

sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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

Visit the FTC website to read this publication and the news release describing it, and visit *https://www.regulations.gov/docket/FTC-2023-0076* to read a plain-language summary of the proposed Rule. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 11, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. chapter 35, requires federal agencies to seek and obtain approval from the Office of Management and Budget (''OMB'') before undertaking a collection of information directed to ten or more persons.[352] Under the PRA, a rule creates a ''collection of information'' when ten or more persons are asked to report, provide, disclose, or record information in response to ''identical questions.'' [353] The existing COPPA Rule contains recordkeeping, disclosure, and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the PRA. OMB has approved the Rule's existing information collection requirements through March 31, 2025 (OMB Control No. 3084–0117).

The proposed amendments to the COPPA Rule would amend the definition of ''website or online service directed to children,'' potentially increasing the number of operators subject to the Rule, albeit likely not to a significant degree. The proposed Rule would also increase disclosure obligations for operators and FTC-approved COPPA Safe Harbor programs, and FTC-approved COPPA Safe Harbor programs would also face additional reporting obligations under the proposed Rule. Commission staff does not believe that the proposed Rule would increase operators' recordkeeping obligations.

The Commission invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who respond. Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this document to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration. Under PRA requirements, OMB's Office of Information and Regulatory Affairs reviews federal information collections.

Estimated Additional Annual Hours Burden

A. Number of Respondents

As noted in the Regulatory Flexibility section of this NPRM, Commission staff estimates that there are currently approximately 5,710 operators subject to the Rule. Commission staff believes that the changes that are most likely to affect the number of operators subject to the Rule are the Commission's proposed changes to the Rule's definition of ''website or online service directed to children.'' Of most relevance to this discussion, the Commission proposes to modify paragraph 2 of this definition to account for third parties with actual knowledge that they collect children's information from users of a child-directed site or service, even if such third parties do not collect the information *directly* from such users. While Commission staff contemplates that this modification could increase the number of operators subject to the Rule's requirements, staff does not have sufficient evidence to estimate the amount of increase, and therefore the Commission welcomes comment on this issue. Commission staff does not expect that the other proposed modifications to this definition, such as the additional exemplar factors the Commission will consider in determining whether a site or service is child-directed, will alter the number of operators subject to the Rule.

Commission staff does not believe that other proposed modifications to the Rule's definitions will affect the number of operators subject to the Rule. For example, Commission staff does not expect that the Commission's proposed addition of ''biometric identifiers'' to the Rule's definition of ''personal information'' will significantly alter the number of operators subject to the Rule. Commission staff believes that all or nearly all operators of websites or online services that collect ''biometric identifiers'' from children are already subject to the Rule.

In total, to the extent that any of the Commission's proposed revisions to the Rule's definitions might result in minor additional numbers of operators being subject to the Rule, Commission staff believes that any such increase will be offset by other operators of websites or online services adjusting their information collection practices so that they will not be subject to the Rule.

For this burden analysis, Commission staff retains its recently published estimate of 280 new operators per year.[354] Commission staff also retains its estimate that no more than one additional FTC-approved COPPA Safe Harbor program applicant is likely to submit a request within the next three years of PRA clearance.

B. Recordkeeping Hours

While the proposed Rule requires operators to establish, implement, and maintain a written comprehensive security program and data retention policy, such requirements do not constitute a ''collection of information'' under the PRA. Namely, under the proposed Rule, each operator's security

[352] 44 U.S.C. 3502(3)(A)(i).

[353] *See* 44 U.S.C. 3502(3)(A).

[354] *See* 2022 COPPA PRA Supporting Statement, available at *https://omb.report/icr/202112-3084-002/doc/119087900* (hereinafter, ''2022 COPPA PRA Supporting Statement'').

program and the safeguards instituted under such program will vary according to the operator's size and complexity, the nature and scope of its activities, and the sensitivity of the information involved. Similarly, the instituted data retention policy will differ depending on the operator's business practices. Thus, although each operator must summarize its compliance efforts in one or more written documents, the discretionary balancing of factors and circumstances that the proposed Rule allows does not require entities to answer ''identical questions'' and therefore does not trigger the PRA's requirements.

Separately, the proposed Rule imposes minimal recordkeeping requirements for FTC-approved COPPA Safe Harbor programs. However, FTC staff understands that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that covered entities retain in the ordinary course of business irrespective of the COPPA Rule. OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business.[355] In staff's view, any incremental burden posed by the proposed Rule—such as that to include additional content in annual reports, submit a report to the Commission every three years detailing technological capabilities and mechanisms, and publicly post membership lists—would be marginal.

C. Disclosure Hours

1. New Operators' Disclosure Burden

FTC staff estimates that the Rule affects approximately 280 new operators per year.[356] Staff maintains its longstanding estimate that new operators of websites and online services will require, on average, approximately 60 hours to draft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.[357] In addition, the proposed Rule includes a new requirement that operators establish, implement, maintain, and disclose a data retention policy. Staff estimates it will require, on average, approximately 10 hours to meet the data retention policy requirement. In combining these figures, Commission staff estimates that these disclosure requirements will require 70 hours of burden per operator. This yields an estimated annual hours burden of 19,600 hours (280 respondents × 70 hours).

2. Existing Operators' Disclosure Burden

The proposed Rule imposes various new disclosure requirements on operators. Specifically, the proposed amendments require operators to update existing disclosures, namely to update the direct and online notices with additional information about the operators' information practices. Additionally, some operators may have to provide disclosures that were not previously required under the Rule. For operators utilizing the support for the internal operations exception, 16 CFR 312.5(c)(7), the proposed Rule will now require such operators to provide an online notice. Similarly, the proposed Rule will require operators utilizing the proposed school authorization exception, which is newly numbered as 16 CFR 312.5(c)(10), to provide an online notice, a direct notice to the school, and enter into a written agreement with the school. Additionally, the proposed Rule requires operators to disclose a data retention policy.

Commission staff believes that an existing operator's time to make these changes to its online and direct notices would be no more than that estimated for a new entrant to craft an online notice and direct notice for the first time, *i.e.,* 60 hours. Regarding the written agreement, FTC staff understands that many ed tech operators enter into standard contracts with schools, school districts, and other education organizations across the country, and this requirement is not intended to interfere with such contractual arrangements. Therefore, this agreement likely consists of documentation that covered entities retain in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business.[358] Additionally, as discussed previously, Commission staff believes the time necessary to develop, draft, and publish a data retention policy is approximately 10 hours. Therefore, these disclosure requirements will amount to approximately 70 hours of burden. Annualized over three years of PRA clearance, this amounts to approximately 23 hours (70 hours ÷ 3 years) per operator each year. Aggregated for the 5,710 existing operators, the annualized disclosure burden for these requirements would be approximately 131,330 hours per year (5,710 respondents × 23 hours).

The proposed Rule will also require each FTC-approved COPPA Safe Harbor program to provide a list of all current subject operators on each of the FTC-approved COPPA Safe Harbor program's websites and online services, and the proposed Rule further requires that such list be updated every six months thereafter. Because FTC-approved COPPA Safe Harbor programs likely already keep up-to-date lists of their subject operators, Commission staff does not anticipate this requirement will significantly burden FTC-approved COPPA Safe Harbor programs. To account for time necessary to prepare the list for publication and to ensure that the list is updated every 6 months, Commission staff estimates 10 hours per year. Aggregated for one new FTC-approved COPPA Safe Harbor program and six existing FTC-approved COPPA Safe Harbor programs, this amounts to an estimated cumulative disclosure burden of 70 hours per year (7 respondents × 10 hours).

D. Reporting Hours

The proposed amendments will require FTC-approved COPPA Safe Harbor programs to include additional content in their annual reports. The proposed amendments will also require each FTC-approved COPPA Safe Harbor program to submit a report to the Commission every three years detailing the program's technological capabilities and mechanisms for assessing subject operators' fitness for membership in the program.

The burden of conducting subject operator audits and preparing the annual reports likely varies by FTC-approved COPPA Safe Harbor program, depending on the number of subject operators. Commission staff estimates that the additional reporting requirements for the annual report will require approximately 50 hours per program per year. Aggregated for one new FTC-approved COPPA Safe Harbor program (50 hours) and six existing (300 hours) FTC-approved COPPA Safe Harbor programs, this amounts to an estimated cumulative reporting burden of 350 hours per year (7 respondents × 50 hours).

Regarding the reports that the proposed Rule will require FTC-approved Safe Harbor programs to

[355] *See* 5 CFR 1320.3(b)(2).

[356] This consists of certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

[357] *See, e.g.,* Children's Online Privacy Protection Rule, Notice, 86 FR 55609 (Oct. 6, 2021), available at *https://www.govinfo.gov/content/pkg/FR-2021-10-06/pdf/2021-21753.pdf;* 2022 COPPA PRA Supporting Statement.

[358] *See* 5 CFR 1320.3(b)(2).

submit to the Commission every three years, § 312.11(c)(1) of the Rule already requires FTC-approved COPPA Safe Harbor programs to include similar information in their initial application to the Commission. Specifically, § 312.11(c)(1) requires that the application address FTC-approved COPPA Safe Harbor programs' business models and the technological capabilities and mechanisms they will use for initial and continuing assessment of operators' fitness for membership in their programs. Consequently, the three-year reports should merely require reviewing and potentially updating an already-existing report. Staff estimates that reviewing and updating existing information to comply with proposed § 312.11(f) will require approximately 10 hours per FTC-approved COPPA Safe Harbor program. Divided over the three-year period, FTC staff estimates that annualized burden attributable to this requirement would be approximately 3.33 hours per year (10 hours ÷ 3 years) per FTC-approved COPPA Safe Harbor program, which staff will round up to 4 hours per year per FTC-approved COPPA Safe Harbor program. Given that several FTC-approved COPPA Safe Harbor programs are already available to website and online service operators, FTC staff anticipates that no more than one additional FTC-approved COPPA Safe Harbor program applicant is likely to submit a request within the next three years of PRA clearance. Aggregated for one new FTC-approved COPPA Safe Harbor program and six existing FTC-approved COPPA Safe Harbor programs, this amounts to an estimated cumulative reporting burden of 28 hours per year (7 respondents × 4 hours).

E. Labor Costs

1. Disclosure

a. New Operators

As previously noted, Commission staff estimates a total annual burden of 19,600 hours (280 respondents × 70 hours). Consistent with its past estimates and based on its 2013 rulemaking record,[359] FTC staff estimates that the time spent on compliance for new operators covered by the COPPA Rule would be apportioned five to one between legal (outside counsel lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel. Therefore, Commission staff estimates that approximately 16,333 of the estimated 19,600 hours required will be completed by legal staff.

Regarding legal personnel, Commission staff anticipates that the workload among law firm partners and associates for assisting with COPPA compliance would be distributed among attorneys at varying levels of seniority. Assuming two-thirds of such work is done by junior associates at a rate of approximately $300 per hour, and one-third by senior partners at approximately $600 per hour, the weighted average of outside counsel costs would be approximately $400 per hour.[360]

FTC staff anticipates that computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms would account for the remaining approximately 3,267 hours. FTC staff estimates an hourly wage of $57 (rounded to the nearest dollar) for technical assistance, based on Bureau of Labor Statistics (''BLS'') data.[361] Accordingly, associated annual labor costs would be $6,719,419 [(16,333 hours × $400/hour) + (3,267 hours × $57/hour)] for the estimated 280 new operators.

b. Existing Operators

As previously discussed, Commission staff estimates that the annualized disclosure burden for these requirements for the 5,710 existing operators would be 131,330 hours per year. Thus, apportioned five to one, this amounts to 109,442 hours of legal and 21,888 hours of technical assistance. Applying hourly rates of $400 and $57, respectively, for these personnel categories, associated labor costs would total approximately $45,024,416 ($43,776,800 + $1,247,616).

As noted, Commission staff estimates a cumulative disclosure burden of 10 hours per year for FTC-approved COPPA Safe Harbor programs. Aggregated for one new FTC-approved COPPA Safe Harbor program and six existing FTC-approved COPPA Safe Harbor programs, this amounts to an estimated cumulative reporting burden of 70 hours per year (7 respondents × 10 hours).

Industry sources have advised that the labor to comply with requirements from FTC-approved COPPA Safe Harbor programs would be attributable to the efforts of in-house lawyers. To determine in-house legal costs, FTC staff applied an approximate average between the BLS reported mean hourly wage for lawyers ($78.74),[362] and estimated in-house hourly attorney rates ($300) that are likely to reflect the costs associated with the proposed Rule's safe harbor requirements. This yields an approximate hourly rate of $190. Applying this hourly labor cost estimate to the hours burden associated with the cumulative disclosure burden for FTC-approved COPPA Safe Harbor programs yields an estimated annual burden of $13,300 (70 hours × $190).

2. Reporting

As previously noted, Commission staff estimates an estimated cumulative reporting burden of 378 hours per year for FTC-approved COPPA Safe Harbor programs. The approximate hourly rate for labor to comply with requirements from FTC-approved COPPA Safe Harbor programs is $190, as previously calculated. Applying this hourly labor cost estimate to the hours burden associated with the cumulative reporting burden for FTC-approved COPPA Safe Harbor programs yields an estimated annual labor cost burden of $71,820 (378 hours × $190).

F. Non-Labor/Capital Costs

Because both operators and FTC-approved COPPA Safe Harbor programs will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the proposed Rule should not impose any additional capital or other non-labor costs.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory

[359] *See, e.g.,* 78 FR 3972 at 4007; 2022 COPPA PRA Supporting Statement.

[360] These estimates are drawn from the ''Laffey Matrix.'' The Laffey Matrix is a fee schedule used by many United States courts for determining the reasonable hourly rates in the District of Columbia for attorneys' fee awards under federal fee-shifting statutes. It is used here as a proxy for market rates for litigation counsel in the Washington, DC area. For 2020–2021, rates in the table range from $333 per hour for most junior associates to $665 per hour for the most senior partners. *See* Laffey Matrix, Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2015–2021, *available at https://www.justice.gov/usao-dc/page/file/1305941/download.*

[361] The estimated mean hourly wage for technical labor support ($57) is based on an average of the mean hourly wage for computer programmers, software developers, and information security analysts as reported by the Bureau of Labor Statistics. *See Occupational Employment and Wages—May 2022,* Table 1 (National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2022), *available at https://www.bls.gov/news.release/ocwage.t01.htm* (hereinafter, ''BLS Table 1'').

[362] *See* BLS Table 1 (lawyers).

Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed Rule will not have a significant impact on a substantial number of small entities.[363]

The Commission does not expect that the proposed Rule, if adopted, would have a significant impact on a substantial number of small entities. Among other things, as discussed further below, many of the proposed amendments reflect modest changes to the Rule, including to clarify definitions, increase content requirements for existing notices, increase specificity for existing security requirements, increase clarity on existing retention and deletion requirements, and increase specificity on certain reporting requirements. While the proposed amendments may require some entities to implement notices they were not required to provide before, obtain consent they previously were not required to obtain, and implement new retention policies, the Commission does not anticipate this will require significant additional costs to entities covered by the Rule. Instead, some of the proposed amendments, such as amendments to create exceptions for the Rule's verifiable parental consent requirements, may even reduce costs for many entities covered by the Rule.

Although the Commission certifies under the RFA that the proposed rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis.

A. Reasons for the Proposed Rule

As discussed in Part I, the Commission commenced a review of the COPPA Rule on July 25, 2019, noting that questions had arisen about the Rule's application to the ed tech sector, voice-enabled connected devices, and general audience platforms that host third-party child-directed content. After review of the comments received, the Commission concludes that there is a need to update certain Rule provisions to account for changes in technology and online practices, and where appropriate, to clarify and streamline the Rule. Accordingly, the Commission proposes modifications to the Rule in the following areas: Scope of Regulations; Definitions; Notice; Parental Consent; Parental Right to Review; Confidentiality and Security of Children's Personal Information; Data Retention and Deletion; Safe Harbor Programs; and Voluntary Commission Approval Processes.

B. Statement of Objectives and Legal Basis

The objectives of the Proposed Rule are to update the Rule to ensure that children's online privacy continues to be protected, as directed by Congress, even as new online technologies emerge and existing online technologies evolve, and to clarify existing obligations for operators under the Rule. The legal basis for the proposed Rule is the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*

C. Description and Estimated Number of Small Entities to Which the Rule Will Apply

The COPPA Rule applies to operators of commercial websites or online services directed to children that collect personal information through such websites or online services, and operators of any commercial website or online service with actual knowledge that it is collecting personal information from children. The Rule also applies to operators of websites or online services that have actual knowledge that they are collecting personal information directly from users of another website or online service directed to children.

The Commission staff is unaware of any empirical evidence concerning the number of operators subject to the Rule. However, based on the previous estimates [364] and the Commission's compliance monitoring efforts in the areas of children's privacy, Commission staff estimates that approximately 5,710 operators may be subject to the Rule's requirements, with approximately 280 new operators per year.

Under the Small Business Size Standards issued by the Small Business Administration, ''web search portals and all other information services'' qualify as small businesses if they have 1,000 or fewer employees.[365] Commission staff estimates that approximately 80% of operators potentially subject to the Rule qualify as small entities. The Commission staff bases this estimate on its experience in this area, which includes its law enforcement activities, oversight of FTC-approved COPPA Safe Harbor programs, conducting relevant workshops, and discussions with industry and privacy professionals. The Commission seeks comment and information with regard to the estimated number or nature of small business entities on which the proposed Rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amended Rule would impose reporting, recordkeeping, and other compliance requirements within the meaning of the PRA, as set forth in Part VI of this NPRM. Therefore, the Commission is submitting the proposed requirements to OMB for review before issuing a final rule.

For example, while not constituting a ''collection of information'' under the PRA, the proposed Rule would require operators to establish, implement, and maintain a written comprehensive security program. The proposed Rule would also likely increase the disclosure requirements for covered operators, and it would likely increase the disclosure and reporting requirements for FTC-approved COPPA Safe Harbor programs. Specifically, the proposed amendments require operators to update existing disclosures with additional content requirements, namely to update the direct and online notices with additional information about the operators' information practices. Some operators may have to provide disclosures that were not previously required under the Rule. Additionally, the proposed Rule requires operators to disclose a data retention policy.

The proposed Rule will also require each FTC-approved COPPA Safe Harbor program to provide a list of all current subject operators on each of the FTC-approved COPPA Safe Harbor program's websites and online services, and the proposed Rule further requires that such list be updated every six months thereafter. The proposed amendments will also require FTC-approved COPPA Safe Harbor programs to include additional content in their annual reports, and submit a new report to the Commission every three years detailing the program's technological capabilities and mechanisms for assessing subject operators' fitness for membership in the program.

The estimated burden imposed by these proposed amendments is discussed in the PRA section of this document, and there should be no

[363] 5 U.S.C. 603–605.

[364] *See, e.g.,* 78 FR 3972 at 4000.

[365] *See* U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%281%29%20%281%29_0.pdf.*

difference in that burden as applied to small businesses. While the Rule's compliance obligations apply equally to all entities subject to the Rule, it is unclear whether the economic burden on small entities will be the same as or greater than the burden on other entities. That determination would depend upon a particular entity's compliance costs, some of which may be largely fixed for all entities (*e.g.,* website programming) and others variable (*e.g.,* participation in an FTC-approved COPPA Safe Harbor program), and the entity's income or profit from operation of the website or online service itself (*e.g.,* membership fees) or related sources. As explained in the PRA section, in order to comply with the proposed Rule's requirements, website or online service operators will require the professional skills of legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel.

As explained in the PRA section, Commission staff estimates that there are approximately 5,710 websites or online services that qualify as operators under the proposed Rule, and that approximately 80% of such operators qualify as small entities under the SBA's Small Business Size standards. The Commission invites comment and information on these issues.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. While the proposed Rule includes amendments related to schools, the Commission believes it has drafted the proposed Rule to ensure it does not duplicate, overlap, or conflict with the Family Educational Rights and Privacy Act. The Commission invites comment and information on this issue.

F. Discussion of Significant Alternatives

In drafting the proposed Rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. The Commission believes that the proposed amendments are necessary to continue to protect children's online privacy in accordance with the purposes of COPPA. For each of the proposed amendments, the Commission has attempted to tailor the provision to any concerns evidenced by the record to date. On balance, the Commission believes that the benefits to children and their parents outweigh any potential increased costs of implementation to industry.

For example, some commenters called for the Commission to implement specific time limits on data retention, noting that operators could read the Rule as currently written to allow indefinite retention of personal information. Rather than impose specific limitations that would apply to operators that collect different types of personal information for varying types of activities, the Commission alternatively proposes to require operators to establish a written data retention policy that sets forth a timeframe for deletion and explicitly prohibits indefinite retention.

Additionally, the Commission has taken care in developing the proposed amendments to set performance standards that will establish the objective results that must be achieved by regulated entities, but do not mandate a particular technology that must be employed in achieving these objectives. For example, the proposed Rule does not mandate the technology that must be used to establish, implement, and maintain the children's written information security program and related safeguards required under newly-numbered § 312.8(b).

The Commission seeks comments on ways in which the proposed Rule could be modified to reduce any costs or benefits for small entities.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Questions for the Proposed Revisions to the Rule

The Commission is seeking comment on various aspects of the proposed Rule and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsections of the questions being answered. For all comments submitted, please submit any relevant data, statistics, or any other evidence, upon which those comments are based.

General Question

1. Please provide comment on any or all of the provisions in the proposed Rule. For each provision commented on, please describe: (1) the impact of the provision(s) (including any benefits and costs), if any; and (2) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives.

Definitions

2. As part of the Rule review that led to the 2013 Amendments, the Commission determined that an operator will not be deemed to have ''collected'' (as that term is defined in the Rule) personal information from a child when it employs technologies reasonably designed to delete all or virtually all personal information input by children before making information publicly available.[366] The Commission is concerned that, if automatic moderation or filtering technologies can be circumvented, reliance on such technologies may not be appropriate in a context where a child is communicating one to one with another person privately, as opposed to posting information online publicly. Should the Commission retain its position that an operator will not be deemed to have ''collected'' personal information, and therefore does not have to comply with the Rule's requirements, if it employs automated means to delete all or virtually all personal information from one-to-one communications?

3. The Commission proposes to include mobile telephone numbers within the definition of ''online contact information'' so long as such information is used only to send text messages. This proposed modification would permit operators to send text messages to parents to initiate obtaining verifiable parental consent. Does allowing operators to contact parents through a text message to obtain verifiable parental consent present security risks to the recipient of the text message, particularly if the parent would need to click on a link provided in the text message?

4. In conjunction with the 2013 Amendments, the Commission acknowledged that screen and user names have increasingly become portable across multiple websites or online services, and that such identifiers permit the direct contact of a specific individual online.[367] Through the 2013 Amendments, the Commission defined personal information to include screen or user names only to the extent these

[366] 76 FR 59804 at 59808.

[367] 76 FR 59804 at 59810.

identifiers function in the same way as ''online contact information'' as the Rule defines that term. Since 2013, the use of screen and user names has proliferated across websites and online services, including on online gaming platforms that allow users to directly engage with each other. The Commission is concerned that children may use the same screen or user name on different sites and services, potentially allowing other users to contact and engage in direct communications with children on another online service.

a. Should screen or user names be treated as online contact information, even if the screen or user name does not allow one user to contact another user through the operator's website or online service, when the screen or user name could enable one user to contact another by assuming that the user to be contacted is using the same screen or user name on another website or online service that does allow such contact?

b. Are there measures an operator can take to ensure that a screen or user name cannot be used to permit the direct contact of a person online?

5. The Commission proposes adding biometric identifiers such as fingerprints, retina and iris patterns, a DNA sequence, and data derived from voice data, gait data, or facial data to the definition of ''personal information.'' Should the Commission consider including any additional biometric identifier examples to this definition? Are there exceptions to the Rule's requirements that the Commission should consider applying to biometric data, such as exceptions for biometric data that has been promptly deleted?

6. The use of avatars generated from a child's image has become popular in online services, such as video games. Should an avatar generated from a child's image constitute ''personal information'' under the COPPA Rule even if the photograph of the child is not itself uploaded to the site or service and no other personal information is collected from the child? If so, are these avatars sufficiently covered under the current COPPA Rule, or are further modifications to the definition required to cover avatars generated from a child's image?

7. The definition of ''personal information'' includes a Social Security number. Should the Commission revise this definition to list other government-issued identifiers specifically? If so, what type of identifiers should be included?

8. The definition of ''personal information'' includes ''information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in [the Rule's definition of 'personal information'].'' Does the phrase ''concerning the child or parents of that child'' require further clarification?

9. Certain commenters recommended modifications to the ''support for the internal operations of the website or online service'' definition, including to limit personalization to ''user-driven'' actions and to exclude methods designed to maximize user engagement. Under what circumstances would personalization be considered ''user-driven'' versus personalization driven by an operator? How do operators use persistent identifiers, as defined by the COPPA Rule, to maximize user engagement with a website or online service?

10. Operators can collect persistent identifiers for contextual advertising purposes without parental consent so long as they do not also collect other personal information. Given the sophistication of contextual advertising today, including that personal information collected from users may be used to enable companies to target even contextual advertising to some extent, should the Commission consider changes to the Rule's treatment of contextual advertising?

11. With regard to the definition of ''website or online service directed to children,'' the Commission would like to obtain additional comment on whether it should provide an exemption for operators from being deemed a child-directed website or online service if such operators undertake an analysis of their audience composition and determine no more than a specific percentage of its users are likely to be children under 13.

a. Should the COPPA Rule offer an exemption or other incentive to encourage operators to conduct an analysis of their user bases?

b. If the COPPA Rule should include such an exemption or other incentive, what are the reliable means by which operators can determine the likely ages of their sites' or services' users?

c. As part of this exemption or incentive, should the COPPA Rule identify which means operators must utilize to determine the likely ages of their users? If so, how should the COPPA Rule identify such means?

d. If the COPPA Rule should include such an exemption or other incentive, what should be the appropriate percentage of users to qualify for this exemption or incentive?

e. Would such an exemption be inconsistent with the COPPA Rule's multi-factor test for determining whether a website or online service, or a portion thereof, is directed to children?

Notice

12. The Commission proposes requiring operators that share personal information with third parties to identify those third parties or specific categories of those third parties in the direct notice to the parent. Is this information better positioned in the direct notice required under § 312.4(c), or should it be placed in the online notice required under § 312.4(d)?

Parental Consent

13. Can platforms play a role in establishing consent mechanisms to enable app developers or other websites or online services to obtain verifiable parental consent? If so, what benefits would a platform-based common consent mechanism offer operators and parents? What steps can the Commission take to encourage the development of platform-based consent mechanisms?

14. To effectuate § 312.5(a)(2), which requires operators to give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of the child's personal information to third parties, the Commission proposes requiring operators to obtain separate verifiable parental consent prior to disclosing a child's personal information, unless such disclosure is integral to the nature of the website or online service. Should the Commission implement such a requirement? Should the consent mechanism for disclosure be offered at a different time and/or place than the mechanism for the underlying collection and use? Is the exception for disclosures that are integral to the nature of the website or online service clear, or should the Commission clarify which disclosures are integral? Should the Rule require operators to state which disclosures are integral to the nature of website or online service?

15. As noted in Part IV.C.3.c., the Commission proposes to modify § 312.5(c)(4) to prohibit operators from utilizing this exception to encourage or prompt use of a website or online service. Are there other engagement techniques the Rule should address? If so, what section of the Rule should address them? What types of personal information do operators use when utilizing engagement techniques? Additionally, should the Rule differentiate between techniques used solely to promote a child's engagement

with the website or online service and those techniques that provide other functions, such as to personalize the child's experience on the website or online service? If so, how should the Rule differentiate between those techniques?

16. The Commission proposes to include a parental consent exception to permit schools, State educational agencies, and local educational agencies to authorize the collection, use, and disclosure of personal information from students younger than 13 where the data is used for a school-authorized education purpose and no other commercial purpose. What types of services should be covered under a ''school-authorized education purpose''? For example, should this include services used to conduct activities not directly related to teaching, such as services used to ensure the safety of students or schools?

Prohibition Against Conditioning a Child's Participation on Collection of Personal Information

17. COPPA and § 312.7 of the Rule prohibit operators from conditioning a child's participation in an activity on disclosing more personal information than is reasonably necessary to participate in such activity.

a. What efforts are operators taking to comply with § 312.7? Are these efforts taken on a website-wide or online service-wide basis, or are operators imposing efforts on a more granular level?

b. Should the Commission specify whether disclosures for particular purposes are reasonably necessary or not reasonably necessary in a particular context? If so, for which purposes and in which contexts?

c. Given that operators must provide notice and seek verifiable parental consent before collecting personal information, to what extent should the Commission consider the information practices disclosed to the parent in assessing whether information collection is reasonably necessary?

18. The Commission is considering adding new language to address the meaning of ''activity,'' as that term is used in § 312.7. Specifically, the Commission is considering including language in § 312.7 to provide that an ''activity'' means ''any activity offered by a website or online service, whether that activity is a subset or component of the website or online service or is the entirety of the website or online service.'' Should the Commission make this modification to the Rule? Is this modification necessary in light of the breadth of the plain meaning of the term ''activity''?

Safe Harbor

19. What types of conflicts would affect an FTC-approved COPPA Safe Harbor program from effectively assessing a subject operator's fitness for membership in the FTC-approved COPPA Safe Harbor program? What policies do FTC-approved COPPA Safe Harbor programs have in place to prevent such conflicts?

Effective Date

20. As part of the issuance of the initial Rule and the 2013 Amendments, the Commission stated that the Rule and amended Rule, respectively, would become effective approximately six months after issuance of the Commission's final rule in the **Federal Register**. The Commission requests comment on whether such timeframe is appropriate for the modifications set forth during this Rule review that do not specify an effective date.

List of Subjects in 16 CFR Part 312

Communications, Computer technology, Consumer protection, Infants and children, internet, Privacy, Reporting and recordkeeping requirements, Safety, Science and technology, Trade practices, Youth.

Accordingly, the Federal Trade Commission proposes to amend 16 CFR 312 as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

■ 1. The authority for part 312 continues to read:

Authority: 15 U.S.C. 6501 through 6508.

■ 2. Revise § 312.1 to read as follows:

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6501, *et seq.*), which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the internet.

■ 3. In § 312.2:

■ a. Revise the definition of *Disclose or disclosure;*

■ b. Add in alphabetical order a definition for *Mixed audience website or online service;*

■ c. Revise the definition of *Online contact information;*

■ d. Revise the introductory text and paragraph (2) of the definition of *Operator;*

■ e. Republish the introductory text, revise paragraphs (7) and (9), redesignate paragraph (10) as paragraph (11), and add a new paragraph (10) to the definition of *Personal information;*

■ f. Add in alphabetical order definitions for *School* and *School-authorized education purpose;*

■ g. Remove the words ''Web Site'' and add in their place the word ''Web site'' in the term *Support for the internal operations of the website or online service* and in the definition, republish paragraph (1) introductory text and revise paragraphs (1)(i), (iii), (iv), (v), and (vii) and (2);

■ h. Revise the definition of *Third party; and*

■ i. Remove the definition of *Web site or online service directed to children* and add inits place in alphabetical order a definition for *Website or online service directed to children.*

The additions, republications, and revisions read as follows:

§ 312.2 Definitions.

* * * * *

Disclose or disclosure means, with respect to personal information:

(1) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the website or online service; and

(2) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the internet, or through a personal home page or screen posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

* * * * *

Mixed audience website or online service means a website or online service that is directed to children under the criteria set forth in paragraph (1) of the definition of website or online service directed to children, but that does not target children as its primary audience, and does not collect personal information from any visitor prior to collecting age information or using another means that is reasonably calculated, in light of available technology, to determine whether the visitor is a child. Any collection of age information, or other means of determining whether a visitor is a child, must be done in a neutral manner that does not default to a set age or encourage visitors to falsify age information.

* * * * *

Online contact information means an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, a video chat user identifier, or an identifier such as a mobile telephone number provided the operator uses it only to send a text message.

Operator means any person who operates a website located on the internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that website or online service, where such website or online service is operated for commercial purposes involving commerce among the several States or with one or more foreign nations; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State or foreign nation; or between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Personal information is collected or maintained on behalf of an operator when:

* * * * *

(2) The operator benefits by allowing another person to collect personal information directly from users of such website or online service.

* * * * *

Personal information means individually identifiable information about an individual collected online, including:

* * * * *

(7) A persistent identifier that can be used to recognize a user over time and across different websites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

* * * * *

(9) Geolocation information sufficient to identify street name and name of a city or town;

(10) A biometric identifier that can be used for the automated or semi-automated recognition of an individual, including fingerprints or handprints; retina and iris patterns; genetic data, including a DNA sequence; or data derived from voice data, gait data, or facial data; or

(11) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

* * * * *

School means a State educational agency or local educational agency as defined under Federal law, as well as an institutional day or residential school, including a public school, charter school, or private school, that provides elementary or secondary education, as determined under State law.

School-authorized education purpose means any school-authorized use related to a child's education. Such use shall be limited to operating the specific educational service that the school has authorized, including maintaining, developing, supporting, improving, or diagnosing the service, provided such uses are directly related to the service the school authorized. School-authorized education purpose does not include commercial purposes unrelated to a child's education, such as advertising.

Support for the internal operations of the website or online service means:

(1) Those activities necessary to:

(i) Maintain or analyze the functioning of the website or online service;

* * * * *

(iii) Authenticate users of, or personalize the content on, the website or online service;

(iv) Serve contextual advertising on the website or online service or cap the frequency of advertising;

(v) Protect the security or integrity of the user, website, or online service;

* * * * *

(vii) Fulfill a request of a child as permitted by § 312.5(c)(3) and (4).

(2) Provided, however, that, except as specifically permitted by paragraphs 1(i) through(vii) of this definition, the information collected for the activities listed in paragraphs (1)(i) through (vii) of this definition cannot be used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, in connection with processes that encourage or prompt use of a website or online service, or for any other purpose.

Third party means any person who is not:

(1) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(2) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children.

(1) In determining whether a website or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition and evidence regarding the intended audience, including marketing or promotional materials or plans, representations to consumers or to third parties, reviews by users or third parties, and the age of users on similar websites or services.

(2) A website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information from users of another website or online service directed to children.

(3) A mixed audience website or online service shall not be deemed directed to children with regard to any visitor not identified as under 13.

(4) A website or online service shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

■ 4. Revise § 312.3 introductory text and paragraph (a) to read as follows:

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part.

Generally, under this part, an operator must:

(a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));

* * * * *

■ 5. In § 312.4:

■ a. Revise paragraphs (b), (c) introductory text, (c)(1), (c)(2) introductory text, and (c)(2)(i) and (iii);

■ b. Add paragraph (c)(5);

■ c. Revise paragraph (d); and

■ d. Add paragraph (e);

The revisions and additions read as follows:

§ 312.4 Notice.

* * * * *

(b) *Direct notice to the parent or school.* An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child or, if applicable, the child's school receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented or the school has previously authorized.

(c) *Content of the direct notice*—(1) *Content of the direct notice to the parent for purposes of obtaining consent, including under § 312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information).* This direct notice shall set forth:

(i) If applicable, that the operator has collected the parent's or child's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;

(ii) That the parent's consent is required for the collection, use, or disclosure of personal information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

(iii) The items of personal information the operator intends to collect from the child, how the operator intends to use such information, and the potential opportunities for the disclosure of personal information, should the parent provide consent;

(iv) Where the operator discloses personal information to one or more third parties, the identities or specific categories of such third parties (including the public if making it publicly available) and the purposes for such disclosure, should the parent provide consent, and that the parent can consent to the collection and use of the child's personal information without consenting to the disclosure of such personal information to third parties except to the extent such disclosure is integral to the nature of the website or online service;

(v) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section;

(vi) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and

(vii) If the operator has collected the name or online contact information of the parent or child to provide notice and obtain parental consent, that if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's or child's online contact information and the parent's or child's name from its records.

(2) *Content of the direct notice to the parent under § 312.5(c)(2) (Voluntary Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information).* Where an operator chooses to notify a parent of a child's participation in a website or online service, and where such site or service does not collect any personal information other than the parent's online contact information, the direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information;

* * * * *

(iii) That the parent may refuse to permit the child's participation in the website or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and

* * * * *

(5) *Content of the direct notice to the school under § 312.5(c)(10) (Notice to a School for Educational Services).* This direct notice shall set forth:

(i) That a school's authorization is required for the collection, use, or disclosure of personal information, and that the operator will not collect, use, or disclose any personal information from the child if the school does not provide such authorization;

(ii) That the operator's use and disclosure of personal information collected from the child is limited to a school-authorized education purpose;

(iii) The items of personal information the operator intends to collect from the child, how the operator intends to use such information, and the potential opportunities for the disclosure of personal information, should the school provide authorization;

(iv) Where the operator discloses the personal information to third parties, the identities or specific categories of such third parties and the specific school-authorized education purposes for such disclosure, should the school provide authorization;

(v) A hyperlink to the operator's online notice of its information practices required under paragraphs (d) and (e) of this section; and

(vi) The means by which the school can authorize the collection, use, and disclosure of the information.

(d) *Notice on the website or online service.* In addition to the direct notice, an operator must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its website or online service, *and,* at each area of the website or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience website or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the website or online service's information practices must state the following:

(1) The name, address, telephone number, and email address of all operators collecting or maintaining personal information from children through the website or online service. *Provided that:* The operators of a website or online service may list the name, address, phone number, and email address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;

(2) A description of what information the operator collects from children, including whether the website or online service enables a child to make personal information publicly available; how the operator uses such information; the operator's disclosure practices for such

information, including the identities or specific categories of any third parties to which the operator discloses personal information and the purposes for such disclosures; and the operator's data retention policy as required under § 312.10;

(3) If applicable, the specific internal operations for which the operator has collected a persistent identifier pursuant to § 312.5(c)(7); and the means the operator uses to ensure that such identifier is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, in connection with processes that encourage or prompt use of a website or online service, or for any other purpose (except as specifically permitted to provide support for the internal operations of the website or online service);

(4) Where the operator collects audio files containing a child's voice pursuant to § 312.5(c)(9), a description of how the operator uses such audio files and that the operator deletes such audio files immediately after responding to the request for which they were collected; and

(5) If applicable, that the parent can review or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

(e) *Additional notice on the website or online service where an operator has collected personal information under § 312.5(c)(10).* In addition to the applicable requirements in paragraph (d) of this section, where an operator has collected personal information under § 312.5(c)(10), an operator's online notice of its information practices with regard to children must state that the operator has obtained authorization from a school to collect a child's personal information; that the operator will use and disclose the information for a school-authorized education purpose and no other purpose; that the school may review the information; and that the school may request deletion of the child's personal information, and the procedures for doing so.

■ 6. In § 312.5:

■ a. Revise paragraph (a)(2) and paragraph (b)(2)(ii);

■ b. Redesignate paragraph (b)(2)(vi) as (b)(2)(viii);

■ c. Republish newly designated paragraphs (b)(2)(viii);

■ d. Add new paragraphs (b)(2)(vi) and (vii);

■ e. Revise paragraphs (c)(2) and (4), (c)(6)(i) and (iv), (c)(7) and (8); and

■ f. Add paragraphs (c)(9) and (10);

The revisions, republication, and additions read as follows:

§ 312.5 Parental consent.

(a) * * *

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties, unless such disclosure is integral to the nature of the website or online service. An operator required to give the parent this option must obtain separate verifiable parental consent to such disclosure, and the operator may not condition access to the website or online service on such consent.

(b) * * *

(2) * * *

(ii) Requiring a parent, in connection with a transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;

* * * * *

(vi) Verifying a parent's identity using knowledge-based authentication, provided:

(A) the verification process uses dynamic, multiple-choice questions, where there are a reasonable number of questions with an adequate number of possible answers such that the probability of correctly guessing the answers is low; and

(B) the questions are of sufficient difficulty that a child age 12 or younger in the parent's household could not reasonably ascertain the answers;

(vii) Having a parent submit a government-issued photographic identification that is verified to be authentic and is compared against an image of the parent's face taken with a phone camera or webcam using facial recognition technology and confirmed by personnel trained to confirm that the photos match; provided that the parent's identification and images are deleted by the operator from its records after the match is confirmed; or

(viii) Provided that an operator that does not ''disclose'' (as defined by § 312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.

* * * * *

(c) * * *

(2) Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

* * * * *

(4) Where the purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. Provided, however, that an operator may not utilize this exception to encourage or prompt use of a website or online service. An operator utilizing this exception for permissible purposes must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

* * * * *

(6) * * *

(i) Protect the security or integrity of the website or online service;

* * * * *

(iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and where such information is not used for any other purpose;

* * * * *

(7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service. In such case, the operator shall provide notice under § 312.4(d)(3);

(8) Where an operator covered under paragraph (2) of the definition of website or online service directed to children in § 312.2 collects a persistent identifier and no other personal information from a user who

affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice under § 312.4;

(9) Where an operator collects an audio file containing a child's voice, and no other personal information, for use in responding to a child's specific request and where the operator does not use such information for any other purpose, does not disclose it, and deletes it immediately after responding to the child's request. In such case, there also shall be no obligation to provide a direct notice, but notice shall be required under § 312.4(d); or

(10) Where the operator obtains school authorization for the collection of the child's personal information for a school-authorized education purpose. In such a case, the operator must ensure that the school receives notice as described in § 312.4(c)(5) and must have a written agreement with the school that:

(i) Indicates the name and title of the person providing authorization and attests that the person has the authority to do so;

(ii) Limits the operator's use and disclosure of the personal information to a school-authorized education purpose only and no other purpose;

(iii) Provides that the operator is under the school's direct control with regard to the use, disclosure, and maintenance of the personal information collected from the child pursuant to school authorization; and

(iv) Sets forth the operator's data retention policy with respect to such information in accordance with § 312.10.

■ 7. In § 312.6:

■ a. Revise the section heading and paragraph (a) introductory text;

■ b. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d);

■ c. Add new paragraph (b); and

■ d. Republish newly redesignated paragraphs (c) and (d).

The revisions, addition, and republications read as follows:

§ 312.6 Right to review personal information provided by a child.

(a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:

* * * * *

(b) Where personal information is collected from the child pursuant to § 312.5(c)(10), the operator of the website or online service is required to provide the rights under paragraph (a) of this section to the school and is not required to provide such rights to a parent whose child has provided personal information to the website or online service.

(c) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(d) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

* * * * *

■ 8. Revise § 312.8 to read as follows:

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

(a) The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(b) At a minimum, the operator must establish, implement, and maintain a written children's personal information security program that contains safeguards that are appropriate to the sensitivity of the personal information collected from children and the operator's size, complexity, and nature and scope of activities. To establish, implement, and maintain a children's personal information security program, the operator must:

(1) Designate one or more employees to coordinate the operator's children's personal information security program;

(2) Identify and, at least annually, perform additional assessments to identify internal and external risks to the confidentiality, security, and integrity of personal information collected from children and the sufficiency of any safeguards in place to control such risks;

(3) Design, implement, and maintain safeguards to control risks identified through the risk assessments required under paragraph (b)(2) of this section. Each safeguard must be based on the volume and sensitivity of the children's personal information that is at risk, and the likelihood that the risk could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information;

(4) Regularly test and monitor the effectiveness of the safeguards in place to control risks identified through the risk assessments required under paragraph (b)(2) of this section; and

(5) At least annually, evaluate and modify the children's personal information security program to address identified risks, results of required testing and monitoring, new or more efficient technological or operational methods to control for identified risks, or any other circumstances that an operator knows or has reason to know may have a material impact on its children's personal information security program or any safeguards in place.

(c) Before allowing other operators, service providers, or third parties to collect or maintain personal information from children on the operator's behalf, or before releasing children's personal information to such entities, the operator must take reasonable steps to determine that such entities are capable of maintaining the confidentiality, security, and integrity of the information and must obtain written assurances that such entities will employ reasonable measures to maintain the confidentiality, security, and integrity of the information.

■ 9. Revise § 312.10 to read as follows:

§ 312.10 Data retention and deletion requirements.

An operator of a website or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the specific purpose(s) for which the information was collected and not for a secondary purpose. When such information is no longer reasonably necessary for the purpose for which it was collected, the operator must delete the information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion. Personal information collected online from a child may not be retained indefinitely. At a minimum, the operator must establish, implement, and maintain a written children's data retention policy that sets forth the purposes for which children's personal information is collected, the business need for retaining such information, and a timeframe for deletion of such information that precludes indefinite retention. The operator must provide its written children's data retention policy in the notice on the website or online service provided in accordance with § 312.4(d).

■ 10. In § 312.11:

■ a. Republish (b) introductory text;

■ b. Revise paragraphs (b)(2), (d)(1) and (2), and (d)(3)(iii);

■ c. Add paragraph (d)(4);

■ d. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h);
■ e. Add paragraph (f);
■ f. Revise newly redesignated paragraph (g); and
■ g. Republish newly redesignated paragraph (h).

The republications, revisions, and additions read as follows:

§ 312.11 Safe harbor programs.

* * * * *

(b) *Criteria for approval of self-regulatory program guidelines.* Proposed safe harbor programs must demonstrate that they meet the following performance standards:

* * * * *

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information privacy and security policies, practices, and representations.

* * * * *

(d) * * *

(1) By [DATE SIX MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and annually thereafter, submit a report to the Commission that identifies each subject operator and all approved websites or online services, as well as any subject operators that have left the safe harbor program. The report must also contain, at a minimum:

(i) A narrative description of the safe harbor program's business model, including whether it provides additional services such as training to subject operators;

(ii) Copies of each consumer complaint related to each subject operator's violation of a safe harbor program's guidelines;

(iii) An aggregated summary of the results of the independent assessments conducted under paragraph (b)(2) of this section;

(iv) A description of each disciplinary action taken against any subject operator under paragraph (b)(3) of this section, as well as a description of the process for determining whether a subject operator is subject to discipline; and

(v) A description of any approvals of member operators' use of a parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to Commission requests for additional information; and

(3) * * *

(iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section; and

(4) No later than [DATE 90 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], publicly post a list of all current subject operators on each of the approved safe harbor program's websites and online services. Approved safe harbor programs shall update this list every six months thereafter to reflect any changes to the approved safe harbor programs' subject operators or their applicable websites and online services.

* * * * *

(f) *Review of self-regulatory program guidelines.* Every three years approved safe harbor programs shall submit to the Commission a report detailing the safe harbor program's technological capabilities and mechanisms for assessing subject operators' fitness for membership in the safe harbor program.

(g) *Revocation of approval of self-regulatory program guidelines.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part.

(h) *Operators' participation in a safe harbor program.* An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8 and 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3) of this section.

■ 11. In § 312.12, revise paragraph (b) to read as follows:

§ 312.12 Voluntary Commission approval processes.

* * * * *

(b) *Support for the internal operations of the website or online service.* An interested party may file a written request for Commission approval of additional activities to be included within the definition of support for the internal operations of the website or online service. To be considered for approval, a party must provide a detailed justification why such activities should be deemed support for the internal operations of the website or online service, and an analysis of their potential effects on children's online privacy. The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request.

By direction of the Commission.

Joel Christie,

Acting Secretary.

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Part IV

Department of Health and Human Services

45 CFR Part 88

Safeguarding the Rights of Conscience as Protected by Federal Statutes; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 88

RIN 0945–AA18

Safeguarding the Rights of Conscience as Protected by Federal Statutes

AGENCY: Office for Civil Rights (OCR), Office of the Secretary, HHS.

ACTION: Final rule

SUMMARY: The Department of Health and Human Services (HHS or the Department) is issuing this final rule to partially rescind the May 21, 2019, final rule entitled, ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority'' (''2019 Final Rule''), while leaving in effect the framework created by the February 23, 2011, final rule entitled, ''Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws'' (''2011 Final Rule''), which has been in effect continuously since March 25, 2011. Though the 2019 Final Rule never took effect, the Department also retains, with some modifications, certain provisions of the 2019 Final Rule regarding federal conscience protections, but eliminates others that are redundant or confusing, that undermine the clarity of the statutes Congress enacted to both safeguard conscience rights and protect access to health care, or because significant questions have been raised as to their legality.

DATES: This rule is effective March 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Office for Civil Rights: David Christensen, Supervisory Policy Advisor, and Gabriela Weigel, Policy Advisor, HHS Office for Civil Rights, (202) 795–7830 or (800) 537–7697 (TDD), or via email at *conscienceрule@hhs.gov.*

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the final rule. To schedule an appointment for this type of accommodation or auxiliary aid, please call (202) 795–7830 or (800) 537–7697 (TDD) for assistance or email *conscienceрule@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *http://www.govinfo.gov,* a service of the U.S. Government Publishing Office.

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I. Background

A. Statutory Background

Several provisions of Federal law protect the conscience rights of certain federally funded health care entities and prohibit recipients of certain Federal funds from requiring individuals and entities to participate in actions they find religiously or morally objectionable. They include the following provisions:

The Church Amendments [42 U.S.C. 300a–7]

The conscience provisions contained in 42 U.S.C. 300a–7 (collectively known as the ''Church Amendments'') were enacted in the 1970s in response to debates over whether receipt of Federal funds required those recipients to perform abortion or sterilization procedures. The Church Amendments consist of five conscience provisions. The first provision, 42 U.S.C. 300a–7(b), provides that ''[t]he receipt of any grant, contract, loan, or loan guarantee under [certain statutes implemented by the Department of Health and Human Services] by any individual or entity does not authorize any court or any public official or other public authority to require'' (1) the individual to perform or assist in a sterilization procedure or an abortion, if it would be contrary to their religious beliefs or moral convictions; (2) the entity to make its facilities available for sterilization procedures or abortions, if the performance of sterilization procedures or abortions in the facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or (3) the entity to provide personnel for the performance or assistance in the performance of sterilization procedures or abortions, if it would be contrary to the religious beliefs or moral convictions of such personnel.

The second provision, 42 U.S.C. 300a–7(c)(1), prohibits any entity that receives a grant, contract, loan, or loan guarantee under certain Department-implemented statutes from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or the extension of staff or other privileges because the individual ''performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his

religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.''

The third provision, 42 U.S.C. 300a–7(c)(2), prohibits any entity that receives a grant or contract for biomedical or behavioral research under any program administered by the Department from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or extension of staff or other privileges ''because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.''

The fourth provision, 42 U.S.C. 300a–7(d), provides that ''[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [the Department] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.''

The fifth provision, 42 U.S.C. 300a–7(e), prohibits any entity that receives a grant, contract, loan, loan guarantee, or interest subsidy under certain Departmentally implemented statutes from denying admission to, or otherwise discriminating against ''any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.''

Public Health Service Act Sec. 245, The Coats-Snowe Amendment [42 U.S.C. 238n]

Enacted in 1996, section 245 of the Public Health Service Act (PHS Act) prohibits the Federal Government and any State or local governments receiving Federal financial assistance from discriminating against any health care entity on the basis that the entity (1) ''refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;'' (2) refuses to make arrangements for such activities; or (3) ''attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.'' For the purposes of this protection, the statute defines ''financial assistance'' as including ''with respect to a government program,'' ''governmental payments provided as reimbursement for carrying out health-related activities.'' In addition, PHS Act Sec. 245 requires that, in determining whether to grant legal status to a health care entity (including a State's determination of whether to issue a license or certificate), the federal government and any State or local governments receiving Federal financial assistance shall deem accredited any post-graduate physician training program that would be accredited, but for the reliance on an accrediting standard that, regardless of whether such standard provides exceptions or exemptions, requires an entity: (1) to perform induced abortions; or (2) to require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training.

Medicaid and Medicare

The Medicaid and Medicare statutes also include certain conscience provisions. The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997), provides that Medicaid managed care-managed organizations and Medicare Advantage plans are not required to provide, reimburse for, or cover a counseling or referral service if the organization or plan objects to the service on moral or religious grounds. *See id.* 40011852(j)(3)(B), 111 Stat. at 295 (codified at 42 U.S.C. 1395w–22(j)(3)(B)) (Medicare Advantage); *id.* § 4704(b)(3)(B), 111 Stat. at 496–97 (codified at 42 U.S.C. 1396u–2(b)(3)(B)) (Medicaid). The organization or plan must, however, provide sufficient notice of its moral or religious objections to prospective enrollees. 42 U.S.C. 1395w–22(j)(3)(B)(ii) (Medicare Advantage), 1396u–2(b)(3)(B)(ii) (Medicaid managed care).

These Medicare and Medicaid statutes also contain conscience provisions related to the performance of advanced directives. *See* 42 U.S.C. 1395cc(f), 1396a(w)(3), and 14406(2). Additionally, they contain provisions related to religious nonmedical health care providers and their patients. *See* 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395x(e), 1395x(y)(1), 1396a(a) and 1397j–1(b). For example, Congress prohibited States from excluding Religious Nonmedical Health Care Institutions (RNHCIs) from licensure through implementation of State definitions of ''nursing home'' and ''nursing home administrator,'' 42 U.S.C. 1396g(e), and Congress exempted RNHCIs from certain Medicaid requirements for medical criteria and standards. 42 U.S.C. 1396a(a) (exempting RNHCIs from 42 U.S.C. 1396a(a)(9)(A), 1396a(a)(31), 1396a(a)(33), and 1396b(i)(4)). Additionally, section 6703(a) of the Elder Justice Act of 2009 (Pub. L. 111–148, 124 Stat. 119) provides that Elder Justice and Social Services Block Grant programs may not interfere with or abridge an elder person's ''right to practice his or her religion through reliance on prayer alone for healing,'' when the preference for such reliance is contemporaneously expressed, previously set forth in a living will or similar document, or unambiguously deduced from such person's life history. 42 U.S.C. 1397j–1(b).

The Weldon Amendment

The Weldon Amendment, originally adopted as section 508(d) of the Labor-HHS Division (Division F) of the 2005 Consolidated Appropriations Act, Public Law 108–447, 118 Stat. 2809, 3163 (Dec. 8, 2004), has been readopted (or incorporated) in each subsequent legislative measure appropriating funds to HHS. *See, e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. H, title V General Provisions, section 507(d)(1) (Dec 29, 2022).

The Weldon Amendment provides that ''[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.'' It also defines ''health care entity'' to include ''an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.''

The Affordable Care Act

Passed in 2010, the Patient Protection and Affordable Care Act (ACA), Public Law 111–148, 124 Stat. 119 (2010) (codified at 42 U.S.C. 18001, *et seq.*), includes certain conscience provisions in sections 1553, 1303(b)(1)(A), (b)(4), and (c)(2)(A), and 1411(b)(5)(A).

Section 1553 prohibits the Federal government, any state or local government, and any health care provider that receives Federal funding under the ACA, or any health plan created under the ACA, from subjecting an individual or health care entity to discrimination on the ground that the individual or entity does not provide services for the purpose of causing or assisting in the death of any individual, including through assisted suicide, euthanasia, and mercy killing. *See* 42 U.S.C. 18113(a). Section 1553 provides that the Department's Office for Civil Rights (''OCR'') will receive complaints of discrimination related to that section. *Id.* 18113(d).

Section 1303(b)(1)(A) provides that issuers of qualified health plans shall determine whether or not the plan provides coverage of abortion services. *Id.* 18023(b)(1)(A)(ii). Additionally, Section 1303(b)(4) states that ''[n]o qualified health plan offered through an Exchange may discriminate against any health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.'' *Id.* 18023(b)(4). Additionally, Section 1303(c) states that nothing in the ACA will be understood to preempt or otherwise effect State laws ''regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor,'' 42 U.S.C. 18023(c)(1). Section 1303(c) also states that nothing in the ACA will be understood to have any effect on Federal laws that protect conscience; that regard the willingness or refusal to provide abortion; and that regard ''discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.'' *Id.* 18023(c)(2). Section 1303(d) further states that ''Nothing in this Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law,'' including the Emergency Medical Treatment and Labor Act. *Id.* 18023(d).

Section 1411(b)(5)(A) addresses exemptions to the ACA's ''individual responsibility requirement.'' 42 U.S.C. 18081(b)(5)(A).[1] Under this section, the Department may grant exemptions based on hardship (which the Department has stated includes an individual's inability to secure affordable coverage that does not provide for abortions (84 FR 23172), membership in a particular religious organization, or membership in a ''health care sharing ministry'').

Federal Conscience and Anti-Discrimination Protections Applying to Global Health Programs

The Department administers certain programs under the President's Emergency Plan for AIDS Relief (PEPFAR), to which additional conscience protections apply. Specifically, recipients of foreign assistance funds for HIV/AIDS prevention, treatment, or care authorized by section 104A of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b–2), 22 U.S.C. 7601–7682, or under any amendment made by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293), cannot be required, as a condition of receiving such funds, (1) to ''endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS,'' or (2) to ''endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.'' 22 U.S.C. 7631(d)(1)(B). The government cannot discriminate against such recipients in the solicitation or issuance of grants, contracts, or cooperative agreements for the recipients' refusal to do any such actions. 22 U.S.C. 7631(d)(2). In addition, recipients of foreign assistance funds under the Foreign Assistance Act of 1961 are prohibited from using those funds for performance or research respecting abortions or involuntary sterilization or to motivate or coerce any person to practice abortions or to coerce or provide any financial incentive to any person to undergo sterilization. 22 U.S.C. 2151b(f).

Exemptions From Compulsory Medical Screening, Examination, Diagnosis, or Treatment

Additional provisions relating to conscience have also been the subject of previous HHS rulemaking. These include provisions related to mental health treatment, hearing screening programs, vaccination programs, occupational illness testing, and compulsory health care services generally. First, under the Public Health Service Act, certain suicide prevention programs are not to be construed to require ''suicide assessment, early intervention, or treatment services for youth'' if their parents or legal guardians have religious or moral objections to such services. 42 U.S.C. 290bb–36(f); section 3(c) of the Garrett Lee Smith Memorial Act (Pub. L. 108–355, 118 Stat. 1404, reauthorized by Pub. L. 114–255 at sec. 9008). Second, authority to issue certain grants through the Health Resources and Services Administration (HRSA), Centers for Disease Control and Prevention (CDC), and the National Institutes of Health (NIH) may not be construed to preempt or prohibit State laws which do not require hearing loss screening for newborn, infants or young children whose parents object to such screening based on religious beliefs. 42 U.S.C. 280g–1(d). Third, in providing pediatric vaccines funded by Federal medical assistance programs, providers must comply with any State laws relating to any religious or other exemptions. 42 U.S.C. 1396s(c)(2)(B)(ii). Fourth, the provisions of the Occupational Safety and Health Act of 1970 are not to be construed to ''authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others.'' 29 U.S.C. 669(a)(5). Fifth, certain State and local child abuse prevention and treatment programs funded by HHS are not to be construed as creating a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of that parent or legal guardian, 42 U.S.C. 5106i(a), and Medicaid and CHIP programs are not to be construed to require a State to compel a person to undergo medical screenings, examination, diagnosis, treatment, health care or services if a person objects on religious grounds, with limited exceptions, 42 U.S.C. 1396(f). Additionally, the Child Abuse Prevention and Treatment Act (CAPTA) specifies that it does not require (though it also does not prevent) a State finding of child abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with religious beliefs. 42 U.S.C. 5106i(a)(2).

[1] In 2017 Congress effectively eliminated the penalty for noncompliance by reducing it to zero. *See* Tax Cuts and Jobs Act of 2017, Public Law 115–97, 11081, 131 Stat. 2092 (codified in 26 U.S.C. 5000A(c)).

B. Regulatory Background

No statute requires the promulgation of rules to implement the conscience provisions outlined above. On August 26, 2008, however, the Department exercised its discretion and issued a proposed rule entitled ''Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law'' (73 FR 50274) (2008 Final Rule) to address the conscience provisions in effect at that time. In the preamble to the 2008 Final Rule, the Department concluded that regulations were necessary in order to:

1. Educate the public and health care providers on the obligations imposed, and protections afforded, by Federal law;
2. Work with state and local governments and other recipients of funds from the Department to ensure compliance with the nondiscrimination requirements embodied in the Federal health care provider conscience protection statutes;
3. When such compliance efforts prove unsuccessful, enforce these nondiscrimination laws through the various Department mechanisms, to ensure that Department funds do not support coercive or discriminatory practices, or policies in violation of Federal law; and
4. Otherwise take an active role in promoting open communication within the health care industry, and between providers and patients, fostering a more inclusive, tolerant environment in the health care industry than may currently exist.

''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law,'' 73 FR 78072, 78074.

The rule went into effect on January 20, 2009, except for a certification requirement that never took effect, as it was subject to the information collection approval process under the Paperwork Reduction Act, which was never completed.

On March 10, 2009, the Department proposed rescinding, in its entirety, the 2008 Final Rule, and sought public comment to determine whether or not to rescind the 2008 Final Rule in part or in its entirety (74 FR 10207). On February 23, 2011, the Department issued a final rule entitled ''Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws'' (2011 Final Rule) (76 FR 9968). Concluding that parts of the 2008 Final Rule were unclear and potentially overbroad in scope, the 2011 Final Rule rescinded much of the 2008 Final Rule, including provisions defining certain terms used in one or more of the conscience provisions and requiring entities that received Department funds, both as recipients and subrecipients, to provide a written certificate of compliance with the 2008 Final Rule. The 2011 Final Rule retained a provision designating OCR to receive and coordinate the handling of complaints of violations of the three conscience provisions that were the subject of the 2008 Final Rule: the Church Amendments, the Weldon Amendment, and the Coats-Snowe Amendment.

On January 26, 2018, the Department issued a new proposed rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority'' (83 FR 3880) (2018 proposed rule). Citing a desire to ''enhance the awareness and enforcement of Federal health care conscience and associated nondiscrimination laws, to further conscience and religious freedom, and to protect the rights of individuals and entities to abstain from certain activities related to health care services without discrimination or retaliation,'' the 2018 proposed rule proposed reinstating several rescinded provisions of the 2008 Final Rule, while also expanding upon that rule in a number of respects. Among other things, the 2018 proposed rule added a number of additional statutes and a detailed provision that would apply to alleged violations of any of the statutes covered by the rule.

In response to the 2018 proposed rule, the Department received over 242,000 comments from a wide variety of individuals and organizations, health care providers, faith-based organizations, patient advocacy groups, professional organizations, universities and research institutions, consumer organizations, and State and Federal agencies and representatives. Comments dealt with a range of issues surrounding the proposed rule, including the Department's authority to issue the rule, the need for the rule, what kinds of workers would be protected by the proposed rule, the rule's relationship to Title VII of the Civil Rights Act and other statutes and protections, what services are covered by the rule, whether the regulation might be used to discriminate against patients, how the rule would affect access to care, legal arguments, and the cost impacts and public health consequences of the rule.

On May 21, 2019, the Department issued a final rule (84 FR 23170) (2019 Final Rule). The Department concluded that the withdrawal of the 2008 Final Rule had created confusion about the various conscience provisions, citing what the Department determined was a significant increase in complaints alleging violations of a conscience provision that it had received since November 2016. The Department consequently reinstated the 2008 Final Rule while revising and expanding on its provisions, including by (1) adding additional statutory provisions to the rule's enforcement scheme; (2) adopting definitions of various statutory terms; (3) imposing assurance and certification requirements; (4) reaffirming OCR's enforcement authority; (5) imposing record-keeping and cooperation requirements; (6) establishing enforcement provisions and penalties; and (7) adopting a voluntary notice provision.

C. Litigation

Following issuance of the 2019 Final Rule, a number of States, localities, and non-governmental parties filed lawsuits challenging the rule in the Southern District of New York, the Northern District of California, the Eastern District of Washington, and the District of Maryland. Before the rule took effect, the New York, California, and Washington district courts granted summary judgment to the respective plaintiffs and vacated the rule in its entirety nationwide. *See Washington* v. *Azar,* 426 F. Supp. 3d 704 (E.D. Wash. 2019), *appeal pending,* No. 20–35044 (9th Cir.); *San Francisco* v. *Azar,* 411 F. Supp. 3d 1001 (N.D. Cal. 2019), *appeal pending,* Nos. 20–15398 et al. (9th Cir.); *New York* v. *HHS,* 414 F. Supp. 3d 475 (S.D.N.Y. 2019), *appeal dismissed without prejudice,* Nos. 19–4254 et al. (2d Cir.).

The courts' rationales for vacating the 2019 Final Rule were not identical, but each concluded that the rule was defective in a number of respects. One or more courts held that the 2019 Final Rule: (i) exceeded the Department's authority; (ii) was inconsistent in certain respects with the conscience statutes or other statutes, including the Emergency Medical Treatment & Labor Act (EMTALA) and Title VII of the Civil Rights Act; (iii) was arbitrary and capricious in its evaluation of the record, its treatment of the Department's conclusions underlying the 2011 Final Rule and reliance interests of funding recipients, and its consideration of certain issues relating to access to care and medical ethics raised by commenters; (iv) contained a particular definitional provision that was not promulgated in compliance with the notice-and-comment requirements of the Administrative Procedure Act (APA); and (v) had penalties for non-compliance with conscience provisions that violated the separation of powers and the Spending Clause.

Because the 2019 Final Rule never took effect: (1) HHS has been

continuously operating under the 2011 Final Rule; (2) HHS currently accepts, investigates, and processes complaints under the framework created by the 2011 Final Rule; (3) There are no significant reliance interests stemming from the 2019 Final Rule; (4) No person or entity could have therefore reasonably relied on the 2019 Final Rule's provisions; and (5) Health care providers or individuals have continuously and reasonably relied on the 2011 Final Rule because it has remained operational throughout.

D. The Proposed Rule

On January 5, 2023, the Department issued a notice of proposed rulemaking entitled, ''Safeguarding the Rights of Conscience as Protected by Federal Statutes.'' 88 FR 820 (2023 proposed rule). The Department proposed to partially rescind the 2019 Final Rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' 84 FR 23170 (May 21, 2019) by: (1) leaving in effect the framework created by the 2011 Final Rule (76 FR 9968) and (2) retaining, with some modifications, certain provisions of the 2019 Final Rule. The Department solicited public comment to aid in its proposed rulemaking, specifically seeking comments addressing the following:

1. Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for rulemaking, and whether those problems could be addressed by different regulations than those adopted in 2019 or by sub-regulatory guidance;

2. Information, including specific examples where feasible, supporting or refuting allegations that the 2019 Final Rule hindered, or would hinder, access to information and health care services, particularly sexual and reproductive health care and other preventive services;

3. Information, including specific examples where feasible, regarding complaints of discrimination on the basis that an individual or health care entity did not provide services for the purpose of causing or assisting in the death of any individual, including through assisted suicide, euthanasia, and mercy killing, as described in section 1553 of the ACA, and comments on whether additional regulations under this authority are necessary;

4. Information, including specific examples where feasible, regarding complaints of discrimination by a qualified health plan under the ACA on the basis that a health care provider or facility refused to provide, pay for, cover, or refer for abortions, as described in section 1303 of the ACA and comments on whether additional regulations under this authority are necessary;

5. Information, including specific examples where feasible, from health care providers regarding alleged violations of the conscience provisions provided for in the Medicaid and Medicare statutes, including the provisions codified at 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3), 1397j–1(b), and 14406(2) and comments on whether additional regulations under these authorities are necessary;

6. Information, including specific examples where feasible, regarding alleged violations of any of the other authorities that appeared in the 2019 Final Rule but not the 2011 Final Rule;

7. Comment on whether the 2019 Final Rule provided sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule, and whether any statutory terms require additional clarification;

8. Comment on whether the provisions added by the 2019 Final Rule are necessary, collectively or with respect to individual provisions, to serve the statutes' or the rule's objectives, including with regard to whether the Department accurately evaluated the need for additional regulation in the 2019 Final Rule, and whether those provisions should be modified, or whether the rule's objectives may also be accomplished through alternative means, such as outreach and education;

9. Comment on the proposal to retain a voluntary notice provision, including comments on whether such notice should be mandatory, and what a model notice should include; and

10. Comment on the proposal to retain portions of the 2019 Final Rule's enforcement provisions in the proposed § 88.2.

II. Comments on the Proposed Rule

The Department received more than 48,000 comments addressing the 2023 proposed rule. A wide range of individuals and organizations submitted comments, including private citizens, health care workers and institutions, faith-based organizations, patient advocacy groups, civil rights organizations, professional associations, state and local government and elected officials, and members of Congress. These comments covered a variety of issues and points of view responding to the Department's requests for comments, and the Department reviewed and analyzed all of the comments. Most commenters supported the Department's proposed rule. The overwhelming majority of comments were individual comments associated with form letter campaigns from various groups and individuals.

Numerous commenters, including civil rights organizations, health organizations, legal associations, and individual commenters, supported the proposed rule as written, while some commenters, including some faith-based organizations, supported the proposed rule as an improvement over the 2011 Final Rule. Some others supportive of the proposed rule, including certain legal associations, faith-based organizations, and individual commenters, requested the Department incorporate additional provisions from the 2019 Final Rule that were not at issue in the litigation over that rule. Still other commenters said they generally supported the proposal to rescind the 2019 Final Rule.

Commenters also expressed opposition to the proposed rule for a variety of reasons. Numerous commenters, including some non-profits, legal organizations, faith-based organizations, and individuals opposed this rule because they would like the Department to retain the 2019 Final Rule. Other commenters, including a professional health care organization, a legal organization, and a local Department of Health, opposed the proposed rule on the grounds that they would like the Department to return to the 2011 Final Rule completely. Numerous commenters said they believed that the proposed rule would remove conscience protections, undermine the diversity of views in health care, and cause health care professionals to exit the profession.

The Department thanks commenters for sharing their views on the proposed rule. Because the 2019 Final Rule never went into effect, the 2011 Final Rule has been in effect since its enactment. This final rule builds on the 2011 Final Rule and does not remove provisions from it. The Department therefore disagrees that employees would decide to leave the workforce in response to this final rule. The Department responds in greater detail in the following sections to comments requesting additions to the proposed rule text and other comments raising specific points of support for or opposition to this rule.

This final rule responds to comments as follows. Subpart A addresses comments expressing concern over access to care; Subpart B addresses comments received on specific sections

of the proposed rule; and Subpart C addresses comments in response to the Department's requests for comments in the proposed rule.

A. General Comments

Concerns Over Access to Care

Comment: The Department received numerous comments that raised concerns over access to health care generally. For example, commenters, including reproductive health organizations and major professional health care associations, discussed the negative impact that refusals of care have on people of certain genders, sexes, ages, or races, and individuals with disabilities. The commenters further explained that these refusals exist against the backdrop of barriers many patients already face, especially among Black, Indigenous, and other people of color. These disparities are heightened for individuals living in rural areas, religious minorities, and people with disabilities. Some commenters said that conscience-based refusals to provide certain forms of health care block access to such care and endanger patient's lives. Many reproductive health organizations, individuals and other commenters, discussed the impact on reproductive health care after *Dobbs vs. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), and the confusion for providers and patients that they contended that decision caused, especially in states that have banned, or attempted to ban, abortion. Commenters gave various examples of pregnant women being denied medical treatment for miscarriage management and sterilization procedures. Others were denied, or delayed in obtaining, medications, including emergency contraception. Many commenters, including reproductive health groups, reported that women were forced to wait extended periods or travel across state lines to obtain health care.

Others said conscience-based refusals to provide certain kinds of care have negatively impacted the LGBTQI+ community, especially older LGBTQI+ adults. Many of these commenters also cited what they said were specific examples of such denials of care that constituted discrimination against LGBTQI+ individuals, including patients being shamed by doctors for taking pre-exposure prophylaxis (PrEP) medication; denials of gender-affirming care at hospitals; denials of emergency room care; refusals to provide prescription refills for gender dysphoria medication by pharmacists; and refusals of requests from persons with HIV to process lab specimens. Also, a professional health care organization urged the Department to ensure that its efforts to protect conscience not further reduce availability of abortion care, especially in areas where providers retain the ability under state law to provide those services. The organization recommended that while HHS permits individual providers to abide by their conscience, providers should do so in a way that is consistent with patients' immediate needs.

Response: The Department thanks commenters for sharing this information. The Department is committed to protecting access to health care and protecting conscience rights as set forth in Federal statutes.[2] OCR works to advance access to health care by enforcing federal civil rights laws, the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rules, the Patient Safety Act and Rule, and Federal health care conscience statutes, which together protect fundamental rights of nondiscrimination, health information privacy, and conscience. The Federal health care conscience protection statutes represent Congress' attempt to strike a careful balance between maintaining access to health care on the one hand and honoring religious beliefs and moral convictions on the other.[3] Some doctors, nurses, and hospitals, for example, object for religious or moral reasons to providing or referring for abortions or assisted suicide, among other procedures. Respecting such objections honors liberty and human dignity. Patients also have rights and health needs, sometimes urgent ones. The Department will continue to respect the balance Congress struck, work to ensure individuals understand their conscience rights, and enforce the law.

B. Comments Addressing §§ 88.1–88.4 of the Proposed Rule

1. Comments Addressing § 88.1

General Support and Opposition

Comment: Numerous commenters including some non-profit, legal, and faith-based organizations, supported the inclusion of the statutory authorities contained in § 88.1 of the 2019 Final Rule, and that are maintained in the proposed rule, because their inclusion provides clarity and awareness of the various conscience protections and ensures all federal conscience protections follow one clear and transparent process.

Response: The Department appreciates the commenters' views. We will finalize and include in this final rule all the authorities providing for conscience protections that were contained in the 2019 Final Rule.

Comment: Two reproductive health groups stated that the proposed rule properly relies on HHS's Housekeeping Authority under 5 U.S.C. 301 to create internal processes and guidelines ''rather than impose substantial burdens on those regulated by the Church, Coats-Snowe, and Weldon Amendments, which HHS lacks the authority to do.'' Another commenter argued that the Department's interpretation of the Federal conscience statutes is not entitled to deference given that ''nothing in the Church, Coats-Snowe, and Weldon Amendments suggest that HHS is 'charged with administering' them.'' Other individual commenters noted that the 2019 Final Rule was justified under the Housekeeping Authority. Two commenters suggested that, in order to be consistent in noting the limited nature of the Housekeeping Authority for this rule, the Department must rescind other rules that exceed the bounds of that authority.

Response: The Department thanks the commenters for their views on the scope of the Department's authority, including under the Housekeeping Authority. The Department agrees that it is authorized under its Housekeeping Authority, 5 U.S.C. 301, to establish internal processes for handling complaints raised under the conscience statutes. HHS is obligated to ensure compliance with these statutes because they apply to certain HHS programs and specific funding streams that HHS is expressly charged with administering.[4] Finally, whether any HHS rules outside of the context of the rulemakings for the Federal conscience statutes should be rescinded as beyond the Housekeeping Authority is beyond the scope of this rulemaking.

Comment: Some commenters, including professional health care

[2] *See* ''Nondiscrimination in Health Programs and Activities,'' 87 FR 47824 (Aug. 4, 2022).

[3] See lengthier discussion of this principle on pages 40–41, below.

[4] For example, 42 U.S.C. 300a–7(b) regards the receipt of Public Health Service Act funds which are administered by HHS agencies such as the Substance Abuse and Mental Health Services Administration (SAMHSA), the Agency for Healthcare Research and Quality (AHRQ), and the National Institutes of Health (NIH)); 42 U.S.C. 280g–1(d) regards funds for hearing screening which are awarded through the Health Resources and Services Administration (HRSA); 42 U.S.C. 1395w–22(j)(3)(B) and 1396u–2(b)(3)(B) are rules of construction expressly applying to Medicare Advantage and Medicaid Managed Care Organizations which the Department oversees through the Centers for Medicare and Medicaid Services (CMS).

organizations and a local governmental entity, expressed opposition to the inclusion of statutes in the 2019 Final Rule that were not in the 2011 Final Rule.[5] The commenters argued: (1) HHS does not adequately justify why it is necessary to reference these statutes; (2) including these statutes will have negative consequences, such as undermining patients' access to medical care and information, imposing barriers to physicians' and health care institutions' ability to provide treatment, legitimizing discrimination against underserved and vulnerable patients, especially as regards abortion and gender-affirming care, and creating confusion and uncertainty among physicians, other health care professionals, and health care institutions about their legal and ethical obligations to treat patients; (3) HHS has not demonstrated that the public lacks awareness about these statutes; and (4) no influx of relevant complaints justifies the inclusion of the statutes. Another commenter noted that many of the conscience provisions have not been traditionally overseen by OCR, meaning they do not share the well-developed body of legal guidance applicable to civil rights complaints and it is therefore unclear which, if any, of the traditional safeguards for civil rights complainants, such as anti-retaliation protection, are available to complainants that refuse to engage in certain activities due to their religious or moral beliefs. Another commenter suggested HHS should not frame the statutes as conscience statutes and instead ''accurately describe the scope of possible exemptions, including both religious and secular exemptions'' or remove certain provisions from the rule. For example, 42 U.S.C. 18081 covers individuals seeking an exemption ''as an Indian, or as an individual eligible for a hardship exemption''; 22 U.S.C. 7631 prevents aid from being provided with a condition that the recipient ''endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS''; 29 U.S.C. 669 prevents that chapter from being ''deemed to authorize or require medical examination.''

Response: The Department appreciates the concerns raised by commenters. First, the Department notes that this rule clarifies the Department's processes for handling the Federal health care conscience statutes. Second, the Department agrees that access to health care is a significant concern, especially for patients with urgent health care needs or marginalized populations whose care is facing restrictions across the country. As stated in the proposed rule, the Federal health care conscience protection statutes represent Congress' attempt to strike a careful balance. The Department is obligated to ensure compliance with the Federal conscience statutes set forth in this rule and is committed to doing so. At the same time, the Department, through OCR, also enforces civil rights laws that prohibit recipients of HHS federal financial assistance from discriminating on the basis of race, color, national origin, disability, age, sex, and religion in the provision of health care services. In addition to exhibiting the Department's commitment to patient access to care, this guidance is an example of OCR's role in coordinating compliance across various authorities. As explained in the proposed rule, retaining these provisions as part of the rule, and maintaining OCR as the centralized HHS office tasked with receiving and investigating complaints under these provisions, is consistent with OCR's existing role and delegations and will aid the public by: (1) increasing awareness of the rights protected by the various statutes, and (2) providing clear direction on where to file complaints alleging violations of those rights, even where the public is already aware of these authorities. Rather than requiring an affected party to determine which HHS component was responsible for the stream of funding connected to a potential problem, and how to raise their concerns, the rule creates a single intake point for anyone who believes their federally protected conscience rights may have been violated in the context of HHS programs. The Department disagrees that it should not retain the additional conscience statutes from the 2019 Final Rule in this final rule.

In addition, the Department disagrees that 42 U.S.C. 18081, 22 U.S.C. 7631(d), and 29 U.S.C. 669(a)(5) are unrelated to conscience and do not belong in this rule. As with each of the other Federal health care conscience statutes, each of the provisions referenced by the commenter provides exemptions for or prohibits discrimination based on an individual or entity's religious or moral (or other) objection to a health care method or service. First, as noted in the proposed rule, 42 U.S.C. 18081(b)(5)(A) addresses exemptions to the ACA's ''individual responsibility requirement.'' [6] Under this section, the Department may grant exemptions based on hardship, which the Department has stated includes an individual's inability to secure affordable coverage that does not provide for abortions (84 FR 23172), membership in a particular religious organization, or membership in a ''health care sharing ministry.'' Second, the provisions at 22 U.S.C. 7631(d) state that a faith-based organization or other organization is not required in order to receive such assistance to ''endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS;'' or ''endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.'' Finally, the relevant provision at 29 U.S.C. 669(a)(5) clarifies that nothing in that chapter will be deemed to ''authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds.'' The text of these statutes makes it clear that these provisions relate to protections for conscience, and so the Department declines to remove them from this rule.

Comment: Some commenters, including a health care organization, requested that the Department ensure the conscience statutes are properly enforced even in the context of enforcing other recent proposed HHS regulations, such as the Section 1557 notice of proposed rulemaking, 87 FR 47824, so that there is not an increase in instances where religious adherents are required to engage in conduct that violates their religious beliefs. These commenters suggested that the Department clarify how they planned to enforce the conscience statutes in light of these other regulations.

Response: The final rule will maintain the general framework that OCR has been employing since 2011—enforcing the listed conscience statutes on a case-by-case basis, which respects the balance Congress sought to achieve through these statutes. The Section 1557 proposed rule is beyond the scope of this rulemaking. We note, however, that the proposed rule for Section 1557, for

[5] The statutes added by the 2019 Final Rule and retained in this final rule are: 42 U.S.C. 18113; 42 U.S.C. 14406(1)) 26 U.S.C. 5000A; 42 U.S.C. 18081; 42 U.S.C. 18023(b)(1)(A) and (b)(4); 42 U.S.C. 1395w–22(j)(3)(B) and 1396u–2(b)(3)(B); 42 U.S.C. 1395cc(f), 1396a(w)(3), and 14406(2); 22 U.S.C. 7631(d); 22 U.S.C. 2151b(f), see, *e.g.,* the Consolidated Appropriations Act, 2019, Public Law 116–6, Div. F, sec. 7018 (the ''Helms, Biden, 1978, and 1985 Amendments''); 42 U.S.C. 1396f and 5106i(a); 42 U.S.C. 280g–1(d); 29 U.S.C. 669(a)(5); 42 U.S.C. 1396s(c)(2)(B)(ii); 42 U.S.C. 290bb–36(f); 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395x(e), 1395x(y)(1), 1396a(a), and 1397j–1(b)). 84 FR 23170, 23170 (May 2019).

[6] In 2017 Congress effectively eliminated the penalty for noncompliance by being reducing it to zero. *See* Tax Cuts and Jobs Act of 2017, Public Law 115–97, 11081, 131 Stat. 2092 (codified in 26 U.S.C. 5000A(c)).

example, contains its own religious and conscience exemption process at proposed § 92.302 for how to raise such claims in the context of that rulemaking, 87 FR 47885–47886.

Requests for Technical Changes

Comment: Some commenters, including members of Congress, stated § 88.1's list of citations is incomplete without additional context like that provided in the 2019 Final Rule, making it harder for covered entities to have a full understanding of the implications of the law and how they will be applied and enforced. These commenters suggest that the rule ''should include the full list of laws with their applicability, requirements, and prohibitions explained, as included in the 2019 rule at 88.3.'' A commenter argued it would be unlawful for HHS not to retain language from § 88.1 of the 2019 Final Rule, given this rule's purpose of protecting conscience rights and preventing non-discrimination.

Response: The Department thanks the commenters for their views. We have added explanatory text to the preamble of this final rule to elaborate on the full list of the laws included in this final rule. However, we are finalizing this rule without the additional information drawn from § 88.3 of the 2019 Final Rule because, in the Department's view, that explanatory language is not necessary to accomplish the goal of this section, namely clarifying which conscience statutes OCR enforces. We have added the full list of the laws covered by this final rule in the model notice. Additionally, the Department maintains information about the Federal conscience statutes on OCR's website, and has included a link to this web page in the model notice text in Appendix A of this final rule.[7] Moreover, a purpose provision similar to § 88.1 of the 2019 Final Rule is unnecessary given the procedural nature of this final rule. We note in this regard that the court in *New York* v. *U.S. Dep't of Health & Human Servs.,* 414 F. Supp. 3d 475, 513–14, 523 (S.D.N.Y. 2019), cited language used in the purpose provision of § 88.1 of the 2019 Final Rule in support of its view that that rule was substantive.

Comment: Two commenters requested that the Department correct an error in the preamble of the proposed rule that improperly paraphrased a provision of Section 1303 of the ACA, 42 U.S.C. 18023. The commenters pointed out that, when paraphrasing one provision of Section 1303 of the ACA, 42 U.S.C. 18023(c)(1), the language in the proposed rule did not mirror the language of the statute because the NPRM stated the provision discussed preemption of state laws about conscience, rather than lack of preemption of certain state laws about abortion.

Response: OCR has made the noted corrections. Section 1303(c)(1) states that ''Nothing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.'' 42 U.S.C. 18203(c)(1). The preamble of the final rule uses that language.

Comment: A commenter suggested that § 88.1 should explicitly state that the Department's goal is to balance the interests of providers and patients. Another commenter argued that the freedom of conscience and religion should not be extended to facilities or institutions, such as hospital systems or universities, but only to individual providers.

Response: The Department maintains that Congress sought to balance provider and patient rights through a variety of statutes and, as we noted in the proposed rule, the Department respects that balance. The Department declines to make changes to the final rule recommended by the commenter but discusses the issue of balancing these rights in greater detail in response to other comments *infra* at pages 42–43. Finally, regarding facilities or institutions, the Department will refer to each individual conscience statute in determining whether a particular statute applies to a particular entity.

Comment: Noting that some of the statutory provisions do not apply to only health care providers, a commenter suggested changing the collective reference to the statutory authorities in § 88.1 and throughout the rule from ''health care provider conscience protection statutes'' to ''health care conscience statutory protections.''

Response: The Department agrees with the commenter's concern. For example, 42 U.S.C. 280g–1(d) protects parents of newborns, infants, and young children who object to hearing screenings based on religious beliefs. Likewise, 29 U.S.C. 669(a)(5) protects employees who object to ''medical examination, immunization, or treatment . . . on religious grounds.'' The Department will revise this provision in the final rule to refer to the statutes as the ''Federal health care conscience protection statutes.''

Comment: A commenter requested that reference be made to 42 U.S.C. 1395x(ss) within the reference to ''certain Medicare and Medicaid provisions'' in the list of statutory authorities in § 88.1.

Response: OCR has been delegated multiple authorities that relate to protecting Religious Nonmedical Health Care Institutions (RNHCIs), five of which reference 42 U.S.C. 1395x(ss)(1), which defines RNHCIs. Section 1395x(ss)(1) contains the definition of RNHCIs, Section 1395x(ss)(2) covers accreditation of RNHCIs, and Section 1395x(ss)(3) contains a conscience provision that restricts the Secretary from requiring patients of RNHCIs to undergo certain medical services, such as medical screenings and treatment, against their religious beliefs, or from requiring RNHCIs and their personnel from undergoing medical supervision, regulation, or control, against their religious beliefs. Section 1395x(ss) was not delegated to OCR in the 2018 proposed rule's Delegations of Authority.[8] The Department declines to include 1395x(ss) in this final rule but is taking this comment under consideration outside this rulemaking process.

2. Comments Addressing § 88.2

Requests for Clarification

Comment: Many commenters, including legal organizations and reproductive health groups, asked OCR to clarify that its enforcement authority is limited to existing provisions—such as those in the proposed rule and HHS's Uniform Administrative Requirements (UAR)—and clarify that it is not creating new mechanisms under this provision. Many commenters asked for clarification regarding the terms ''relevant funding'' and ''appropriate action,'' as well as the scope of the terms regarding violations of the proposed rule. Specifically, some commenters urged HHS to clarify that ''appropriate action'' relates to the enforcement tools of existing regulations (such as the UAR) and suggested establishing a limiting principle for ''relevant funding'' so that it cannot include all the funds available to an entity.

One commenter expressed support for the proposed rule because they believed it removed the authority to initiate compliance reviews, make enforcement referrals to the Department of Justice,

[7] *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Conscience and Religious Nondiscrimination, https://www.hhs.gov/conscience/conscience-protections/index.html.*

[8] ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' 83 FR 3880, 3901 (Jan. 26, 2018)

and claw back relevant funding. The commenter argued that these enforcement tools went beyond the existing regulations for enforcement that should be used when handling and investigating complaints. Another commenter indicated that in their view, proposed § 88.2(a)(4) in conjunction with proposed § 88.2(d) removes OCR's ability to undertake involuntary enforcement measures. The commenter approved of this perceived change and what they understood in the proposed rule to be a clarification that enforcement will be a voluntary process with flexibility for recipients to work with OCR to correct any findings of violations of the proposed rule. Other commenters asked the Department to modify the proposed rule to clarify that the scope of OCR's authority is limited to seeking voluntary resolution of complaints. Other commenters stated that the Department should not wait for a complaint in order to ensure compliance with the conscience statutes, and so should include the authority to initiate compliance reviews.

Additional commenters argued that OCR should release formal findings of fact in any investigation before reconciliation is attempted and that the rule should state that complainants should be informed of other possible avenues for seeking relief when their complaint is resolved.

Response: The Department thanks commenters for their views. As noted in the proposed rule, 45 FR 820, 825, the Department decided to retain certain provisions of the 2019 Final Rule with modifications and not to retain others in order to address various concerns, including concerns raised in litigation regarding the lawfulness of certain provisions of the 2019 Final Rule. The Department clarifies, however, that, where authorized by the funding at issue, OCR may initiate compliance reviews when it determines to do so in its enforcement discretion and may refer items to the Department of Justice for appropriate proceedings. Additionally, the provisions included under this rule maintain the authority to seek voluntary compliance. Specifically, the rule provides that matters of noncompliance will, when possible, be resolved using informal means. This does not preclude the Department from using relevant enforcement regulations, including, when necessary, formal means of achieving compliance. These existing enforcement regulations could include, for example, the Department's authority under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements For HHS Awards (UAR; 45 CFR part 75). We also note that ''relevant funding'' as referenced in § 88.2(c) of the proposed rule is defined by the terms of the Federal conscience statutes. The Department makes several changes to the rule text to clarify its authority. The Department is adding reference to OCR's authority to initiate compliance reviews in § 88.2(a)(2) and a new § 88.2(c). The Department also notes OCR's authority in § 88.2(a)(7) to coordinate additional remedial action as the Department determines to be both necessary and allowed by applicable law and regulation. Additionally, the Department is adding a new paragraph (3) to proposed § 88.2(d), now § 88.2(g) in this final rule, to specify that where a matter is not able to be resolved by informal means, OCR will coordinate with the relevant Departmental component to (1) utilize enforcement regulations, such as those existing applicable to grants, contracts, or other programs and services, or (2) withhold funding as authorized and relevant under the statutes listed in § 88.1. Finally, the Department is also adding in § 88.2(a)(8) a reference to, and a new paragraph in § 88.2(g)(4) regarding, OCR's ability to refer enforcement items to the Department of Justice.

Comment: Many commenters, including some non-profits, elected officials, and legal organizations, suggested that the provisions in proposed § 88.2 are not strong enough. Specifically, commenters were concerned that this rule does not include certain enforcement provisions from the 2019 Final Rule and were concerned with the statement that matters ''will be resolved by informal means whenever possible.'' Some asked the Department to define ''informal means'' and explain how that will deter future violations of the conscience statutes or prevent retaliation. One commenter stated that HHS should incorporate a formal resolution process in the rule in order to ensure conscience rights are not treated differently than other civil rights. Two commenters stated that the proposed rule was at risk of being unlawful because the Department failed to explain its rationale for not maintaining a formal resolution process similar to the 2019 Final Rule or because the rule was removing additional protections for conscience rights. Another commenter stated that the lack of effective and reasonable enforcement mechanisms would be an obstacle to ensuring compliance with the law.

Several commenters stated that the proposed rule's removal of enforcement provisions from the 2019 Final Rule, including the requirement that HHS respond to and resolve conscience complaints, demonstrates clear anti-religious and anti-conscience bias and treats conscience rights as ''less-than'' or demonstrates ''overt hostility on the part of the administration to both conscience rights and to religious liberty of health care professionals.'' Many commenters raised the Department's investigation of the University of Vermont Medical Center, the California Department of Managed Health Care, and other recent decisions by the Department as examples of the need for additional provisions to ensure the final rule is adequate for consistently enforcing the Federal health care conscience statutes. Another commenter argued that the enforcement provisions retained in the proposed rule lacked an articulable standard against which any investigation will be conducted. The commenter stated that providers will be uncertain with respect to complaint investigations in this area, but that such uncertainty is preferable to over-regulating in the form of attempting to define violations without sufficiently stated guidance. Other commenters also claimed that the proposed rule will make it harder for any further discrimination claims to be filed, investigated, and remedied.

Commenters made various additional requests, including for the rule to contain more rigorous enforcement protections, the explanatory provisions and enforcement mechanisms from the 2019 Final Rule, and clear protections against retaliation.

Response: OCR works to achieve voluntary compliance with all the authorities it is delegated to enforce and has found this to be an effective means of ensuring compliance. This includes OCR's approach to enforcement of the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules, to the extent practicable and consistent with law,[9] and Title VI.[10] The Department's approach to the Federal conscience statutes is consistent with this approach. OCR further notes that applying a single ''articulable standard,'' as requested by a commenter, may not be appropriate given the breadth and variety of conscience statutes OCR is delegated to enforce. Rather than provide a one-size-fits-all standard, OCR will investigate complaints based on the relevant statute at issue. This rule

[9] *See* 45 CFR 160.304.

[10] *See* 28 CFR 42.411 (''Effective enforcement of title VI requires that agencies take prompt action to achieve *voluntary* compliance in all instances in which noncompliance is found.'' (emphasis added)). Many of the other authorities OCR enforces, such as Title IX, Section 1557, Section 504, and the Age Discrimination Act, contain identical requirements.

clarifies that OCR is the central office to receive and handle complaints related to the conscience statutes and will coordinate complaints with partner agencies as appropriate on a case-by-case basis. This approach creates a more efficient and powerful method for ensuring compliance with the various statutes.

Further, the Department is making several additions to the rule text, similar to procedures contained in the 2019 Final Rule, in response to comments. As discussed in response to other comments, the Department is adding reference to OCR's authority to initiate compliance reviews in § 88.2(a) and a new § 88.2(c). The Department also notes OCR's authority in § 88.2(a)(7) to coordinate other remedial action as the Department deems appropriate and necessary and as allowed by law and applicable regulation. The Department is adding a new paragraph (3) to proposed § 88.2(d), now § 88.2(g) in this final rule, to specify that where a matter is not able to be resolved by informal means, OCR will coordinate and consult with the relevant Departmental component to either utilize enforcement regulations, such as those that existing applicable to grants, contracts, or other programs and services, or withhold funding as authorized and relevant under the statutes listed under § 88.1. Finally, the Department notes its authority in § 88.2(a)(8) to make enforcement referrals to the Department of Justice, and is adding a new paragraph (4) to proposed § 88.2(d), now § 88.2(g) in this final rule, to specify that OCR may, in coordination with the Office of the General Counsel, refer a matter that cannot be resolved informally to the Department of Justice to enforce the Federal health care conscience protection statutes as authorized by law.

The Department takes seriously its obligations to comply with the Federal health care conscience protection statutes and has taken numerous actions to defend religious freedom rights, including by supporting the right to exercise faith freely. For example, the Department is participating in the National Strategy to Counter Anti-Semitism, including by providing ongoing OCR trainings on antidiscrimination laws, including the Federal health care conscience statutes, to medical students nationwide and holding listening sessions with chaplains on religious discrimination in healthcare settings.[11] As part of this same initiative, OCR recently released a bulletin on countering antisemitism which explains that, depending on the factual context, Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act may prohibit discrimination against individuals who are or are perceived to be Jewish, Christian, Muslim, Sikh, Hindu, Buddhist, or of another religion, if the discrimination is based on their ancestry or ethnic characteristics.[12] Also, the Department, through the longstanding operation of the HHS Center for Faith-Based and Neighborhood Partnerships, continues efforts to build and support partnerships with faith-based and community organizations in order to better serve individuals, families and communities in need.[13] The Department's regulations state that faith-based organizations are eligible, on the same basis as any other organization, to participate in agency programs and services.[14]

Comment: One commenter requested that the Department specifically clarify OCR's process for handling complaints and the potential involvement of state health agencies as mentioned in proposed § 88.2(b). Other commenters requested OCR limit the extent to which OCR is permitted to rely on state agencies due to concerns about state laws and policies related to abortion and gender-affirming care potentially interfering with an accurate evaluation of the complaint under applicable federal law, especially where the state health departments involved have a record of hostility towards those seeking reproductive health care and gender-affirming care. They requested that OCR implement protections for the information gathered in the investigative process and clarify which state agencies may provide assistance, whether these agencies will make recommendations regarding resolution of the investigation, and when OCR will engage in independent fact finding. Another commenter suggested that HHS work to implement privacy protections ensuring state agencies cannot weaponize any collected information against any patients.

Response: Where appropriate, OCR may coordinate the handling of complaints related to the Federal conscience statutes with State agencies. However, authority for making determinations about the Department's or another entity's compliance with the Federal conscience statutes as it relates to HHS programs and funding ultimately rests with the Department, which will consider all relevant facts and use its independent judgment in making its determination.

Comment: Some commenters noted that the proposed rule does not obligate OCR to evaluate every complaint or assure the public of the prompt, transparent, thorough, and reasonable handling of complaints, which undercuts the effectiveness of the proposed rule. In addition, some commenters said the rule should be modified to ''permit OCR to adopt a negative inference against an investigated entity for any factual question to which the entity fails to respond.'' A couple of commenters questioned whether OCR was truly an independent factfinder without conflicts of interests and argued that more enforcement or compliance tools are needed to demonstrate independence.

Response: The Department agrees with the commenters' recommendation on the prompt handling of complaints and has determined to retain, at proposed § 88.2(b), now § 88.2(d) of this final rule, text from § 88.7(d) of the 2019 Final Rule stating that ''OCR shall make a prompt investigation'' of conscience complaints. Additionally, OCR reviews all complaints it receives and takes into consideration a covered entity's response to questions and data requests to assess if a violation has taken place, or technical assistance can help the entity comply with the law. To clarify this, the Department is finalizing this final rule with the addition of a new § 88.2(e) that notes that, OCR may adopt a negative inference if, absent good cause, an entity that is subject to the Federal health care conscience protection statutes fails to respond to a request for information or to a data or document request within a reasonable timeframe. As noted in the proposed rule, the Department remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and using its independent judgment to ensure compliance.

[11] *See* Press Release, The White House, Fact Sheet: Biden-Harris Administration Releases First-Ever U.S. National Strategy to Counter Antisemitism (May 25, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/25/fact-sheet-biden-harris-administration-releases-first-ever-u-s-national-strategy-to-counter-antisemitism/.*

[12] *See* Bulletin, U.S. Dep't of Health and Human Servs., Off. for Civil Rights, Fact Sheet: Protecting Patients and Recipients of Human Services from Discrimination Based on Actual or Perceived Shared Ancestry or Ethnic Characteristics (Sept. 28, 2023), *https://www.hhs.gov/civil-rights/for-individuals/special-topics/shared-ancestry-or-ethnic-characteristics-discrimination/index.html.*

[13] *See* Off. of Intergovernmental and External Affairs, Ctr. for Faith-based and Neighborhood Partnerships (Partnership Center) Homepage, (updated as of September 21, 2023), *https://www.hhs.gov/about/agencies/iea/partnerships/index.html.*

[14] 45 CFR part 87.

Comment: One commenter recommended that to reduce confusion, the Department should use different forms to collect information on violations of the proposed rule than those used to collect civil rights complaints because conscience claims are legally distinct from civil rights complaints and will likely require different data and information during intake.

Response: The Department thanks the commenter for their suggestion. However, OCR's intake forms are beyond the scope of this rulemaking.

Comment: Some commenters requested that the rule state that complainants may be represented by legal counsel.

Response: OCR's website states that a complaint may be filed on behalf of someone else.[15] We agree that legal counsel may file a complaint on behalf of their client and represent their client throughout the complaint investigation process. The Department is finalizing this final rule with the addition of a new § 88.2(b) which explains that any entity or individual may file a complaint with OCR alleging a potential violation of Federal health care conscience protection statutes, and the entity or individual filing does not have to be the entity or individual whose rights have been violated.

Interpretation of Federal Health Care Conscience Statutes

Comment: Numerous commenters provided their views on the proper interpretation of the Federal health care conscience statutes with many requesting substantive guidance in the final rule on how OCR will interpret and apply the various statutes included in § 88.1. Two commenters stated that even if the Department lacks authority to issue substantive regulations interpreting any or all of the Federal health care conscience statutes, it cannot pretend that it will not engage in some interpretation of the meaning of those statutes in the course of its enforcement efforts. The commenters argued that therefore, the proposed rule should set out, for internal administrative purposes, and in at least general terms, principles governing how the Department will interpret the federal health care conscience statutes in relation to other laws. In the absence of definitions, the commenters argued that such a provision would provide some guidance to covered entities about how the Department understands the statutes subject to the proposed rule.

Response: We appreciate these comments. The Department is committed to applying the relevant conscience statutes on a case-by-case basis, which respects the balance Congress sought to achieve through these statutes.[16] The Department appreciates the recommendation to issue additional guidance outside of this rulemaking and takes these comments under advisement, but it does not agree that there is a need for additional language as to the Department's interpretation of the statutes in this rule at this time given the Department's intended case-by-case approach to enforcing the conscience statutes. The Department consequently declines to add language interpreting the provisions of the conscience statutes to the rule text as it is unnecessary to include such information to clarify OCR's processes by which it enforces these statutes or to enforce the conscience statutes on a case-by-case basis. Additionally, this final rule encompasses a variety of statutes such that certain ''general principles,'' may not apply to all the statutes contained in this rulemaking.

Comment: Many commenters, including some faith-based organizations, legal organizations, and non-profits, stated the federal conscience rights should not be balanced against other competing interests and that HHS was not delegated authority to balance these interests, especially as against access to abortion. These commenters also expressed concern that a balancing test could result in different levels of protection for different providers based on factors like their geographic location or otherwise result in the arbitrary handling of conscience complaints. Another commenter said it was confusing to speak about a balance between the federal health care conscience statutes and other interests, as the proposed rule did, noting that the conscience statutes set forth absolute protections. The commenter went on to say that the courts that vacated the 2019 rule incorrectly held that the rule's broad construction of the federal health care statutes unlawfully displaced Title VII's application to employment-related religious exercise claims in the health care setting.

Another commenter also emphasized that conscience statutes ''are themselves a subset of nondiscrimination law.'' At the same time, this commenter stressed that it agreed ''that patients' autonomy and religious moral convictions must be respected'' too.

Response: As noted in the proposed rule, the Federal health care conscience protection statutes represent Congress' attempt to strike a careful balance between the rights of both providers and patients, and the Department intends to respect that balance. This statement reflects the balance *Congress* struck, not the legal requirements specific to each conscience statute set forth in this rule. Each of those conscience statutes contain particular legal requirements that must be met in order for them to apply to any given set of facts, and any determination regarding their application will be made based upon each statute.

The Department wishes to affirm that conscience statutes are a subset of nondiscrimination law and to clarify that it understands that the text of the conscience statutes themselves generally does not contain balancing tests. At the same time, these statutes co-exist with others protecting rights of access to health care. As it did in the preamble to the 2011 final rule, the Department continues to affirm that health care entities must comply with the long-established requirements of statutes governing Departmental programs. These statutes strike a careful balance between the rights of patients to access needed health care, and the conscience rights of health care providers. Many of the conscience laws in this rule and the other federal statues have operated side by side, often for many decades. As the 2011 Final Rule stated, ''repeals by implication are disfavored and laws are meant to be read in harmony.'' The Department will continue to enforce all the laws it has been charged with administering. At the same time, entities must continue to comply with their Title X, Section 330, EMTALA, Medicaid obligations and the federal health care provider conscience protection statutes.[17]

The Department will bear these points in mind in its investigation of any complaints it may receive.

Comment: Many commenters, including professional health care associations and reproductive health groups, stated that the government should ensure that patients' access to care is a top priority and should be appropriately balanced with the needs of health care providers. Another commenter stated that it is important to ensure an exhaustive good faith effort is made to connect patients with care.

Response: The Department thanks commenters for raising these concerns

[15] *See, e.g.,* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Complaint Portal Assistant, https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf.*

[16] See lengthier discussion of this principle on pages 40–41, below.

[17] 76 FR 9968, 9973–74 (2011).

and agrees that patients' access to care is a top priority. Protecting the rights of conscience, as directed by Congress in federal statutes, is also a top priority, which the Department is committed to safeguarding as well. As noted elsewhere, the Department will handle complaints related to conscience on a case-by-case basis which respects the balance Congress sought to achieve through these statutes.

Comment: One commenter requested that HHS focus its resources on civil rights complaints rather than conscience complaints because, compared to civil rights complaints, violations of conscience rights occur less frequently and rarely result in adverse medical outcomes for the provider. The commenter said that patients who encounter denial of care may be unable to find a suitable provider if they face a denial of care and may suffer adverse health consequences or death due to the denial. On the other hand, the commenter said providers seeking to deny care or that were prevented from denying care are unlikely to face the medical complications or death that can result from denial of care.

Response: OCR reviews all the complaints it receives and will continue to do so for each of the authorities it is delegated to enforce.

Comment: One commenter recommended that HHS include a provision that states no one served by HHS programs will be denied medically indicated care and impose a penalty for institutions and providers that deny necessary services under the ''pretext'' of religious freedom. The commenter noted, however, that HHS should restore the enforcement provisions from the 2019 Final Rule to avoid making providers feel they must choose between their religion and livelihood and facing retaliation.

Response: The Department thanks the commenter for sharing its views. As discussed in response to other comments, the Department is adding provisions to this final rule similar to some of the enforcement provisions of the 2019 Final Rule. These include: reference to OCR's authority to initiate compliance reviews in § 88.2(a) and a new § 88.2(c); noting OCR's authority in § 88.2(a)(7) to ''coordinate other appropriate remedial action as the Department deems necessary and as allowed by law and applicable regulation''; new paragraphs (3) and (4) to proposed § 88.2(d), now § 88.2(g) in this final rule, to specify formal means of enforcement, which may include the withholding of funds and referrals to the Department of Justice.

Comment: One commenter recommended requiring that providers, grantees, and other entities subject to the proposed rule ensure patients are able to obtain care, including by being made aware of the treatments and procedures a provider refuses to provide, informed of alternative providers, and referred to alternative providers when failing to do so would harm the patient.

Response: The Department agrees that patients should be able to make informed choices about which providers to seek care from, access care broadly, and receive the best care possible. This final rule clarifies OCR's existing authority and process for handling complaints under the conscience statutes. Adding a substantive provision in line with the commenter's request is beyond the scope of this rulemaking. The Department notes, however, that patients will also benefit from awareness of the Federal conscience statutes generated by entities posting a voluntary notice as outlined in this final rule.

Comment: Several commenters, including professional health care organizations and a think tank, addressed the importance of having sufficient enforcement provisions in the proposed rule because courts have held that conscience statutes do not contain or imply a private right of action, meaning the government has the central role in enforcing Federal conscience laws and protecting providers from discrimination.

Response: The Department agrees with commenters regarding the importance of the Department's role with respect to the Federal conscience statutes. As stated in the proposed rule, 45 FR 820, 826, the Department remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and remains committed to ensuring compliance. As mentioned in response to other comments, this rule is being finalized with additional provisions from the 2019 Final Rule as well as all the authorities that the proposed rule previously incorporated from the 2019 Final Rule to allow for consistent and effective enforcement of the Federal conscience statutes. We believe that this rule simplifies, and therefore strengthens, the Department's approach to ensuring compliance with the underlying statutes. It provides clarity to providers and patients about where and how they may register their concerns. And it provides the Department the ability to apply the specific legal standards and enforcement mechanisms that correspond to the statute at issue. This, in turn, allows the Department to better achieve outcomes consistent with the statutory protections Congress enacted. We also note that in the proposed rule for Section 1557, the Department provided an additional process at proposed § 92.302 for individuals to raise requests for a conscience or religious freedom exemption, 87 FR 47885–47886.

3. Comments Addressing § 88.3

General Support

Comment: Many commenters, including a national association of faith-based medical and dental providers and a national hospital association of faith-based providers, expressed support for the voluntary nature of the rule's notice provision. Additionally, a couple of commenters supported the proposed rule for allowing entities to tailor the voluntary notice to ''particular circumstances and communities'' and combine the notice with other notices. A couple of commenters also supported the proposed rule's inclusion of a recognition that some entities will have a conscience-based objection to posting details about alternative providers that offer services that the posting entity objects to providing. Commenters stated the proposed voluntary notice provision appropriately promotes compliance without undue burden.

Response: The Department appreciates the commenters' support. The Department includes the voluntary notice provision, including the provision recognizing that some entities will have a conscience-based objection to posting details about alternative providers in the final rule.

Requests for Changes to Rule Text

Comment: A commenter argued that the proposed rule does not incentivize entities to post a voluntary notice. This commenter suggested that certain compliance requirements from § 88.6 of the 2019 Final Rule and the provision from § 88.5 of the 2019 Final Rule, which noted that posting the voluntary notice would constitute ''non-dispositive evidence of compliance'' and support the Department's goal of clarifying what an entity must do to comply with the federal conscience statutes.

Response: As noted in the proposed rule, while the Department considers posting a notice to be a best practice and encourages covered entities to post the model notice included in this regulation, this alone does not satisfy the substantive obligations imposed on

a covered entity by the underlying statutes. The proposed rule and this final rule modify § 88.5 of the 2019 Final Rule to avoid implying that covered entities can substantively comply with the underlying statute by simply posting a notice because such an implication could undermine the conscience protections provided by the underlying statutes themselves, and therefore the goal of this rule. While the Department does not adopt § 88.5 of the 2019 Final Rule, the Department is finalizing § 88.3 with additional statements that the Department considers posting a notice to be a best practice ''towards achieving compliance with and educating the public about the Federal health care conscience statutes'' and that ''OCR will consider posting a notice as a factor in any investigation or compliance review'' to emphasize the importance of posting the voluntary notice.

The Department declines, however, to maintain all the compliance requirements from § 88.6 of the 2019 Final Rule. Some commenters raised concerns in response to both the 2018 Proposed Rule and the proposed rule for this rulemaking that the compliance requirements at § 88.6 were overly burdensome on covered entities, especially the record keeping requirements, and not authorized by the conscience statutes. In the Department's view, these concerns raised by commenters warrant additional consideration. Even though the Department declines to maintain the duty to cooperate as specified in § 88.6(c) of the 2019 Final Rule, however, this final rule includes a notice to covered entities in § 88.2(e) that OCR will adopt a negative inference if, absent good cause, an entity that is subject to the Federal health care conscience protection statutes fails to respond to a request for information or to a data or document request within a reasonable timeframe. In the Department's view, this requirement will encourage compliance without creating additional regulatory burden.

Comment: One commenter requested that HHS require that notices related to conscience exceptions also be required to comply with the Section 1557 language access and auxiliary aids and services requirements.

Response: The Department appreciates this comment. Covered entities are required to comply fully with all applicable language access requirements found in statute or regulation, regardless of whether the requirements overlap with the topics of this regulation.

Language of the Notice

Comment: Some commenters stated that the model notice should be the same as the model notice proposed in the 2019 Final Rule because it provided more clarity. Other commenters recommended more specific and clear language generally. A commenter said that, while they supported aspects of the proposed notice, such as listing the relevant statutes and dropping the implication that posting the notice would be some evidence of substantive compliance with the underlying statute, the commenter urged HHS to include in the notice a general description of the types of protections these statutes provide.

Response: The Department appreciates the commenters' recommendations and has included the following text in the model notice text in response to commenter requests for more clarity: ''You may have rights as a provider, patient, or other individual under these Federal statutes, which prohibit coercion or other discrimination on the basis of conscience in certain circumstances.'' The Department also notes that § 88.3(d) states that an entity ''may tailor its notice to address its particular circumstances and to more specifically address the conscience laws covered by this rule that apply to it.'' Finally, the Department has included in the model notice a list of the federal health care conscience protection statutes and a link to the HHS web page where additional resources can be accessed for covered entities and the public to better understand their obligations and rights under the Federal health care conscience statutes.[18]

Comment: A commenter argued that the following language in proposed § 88.3(d) was improper: ''where possible, and where the recipient does not have a conscience-based objection to doing so, the notice should include information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience.'' This commenter maintained that the language is improper because the Coats-Snowe Amendment prohibits a covered entity from requiring a physician or certain other individuals to refer patients, which may be the case where a covered employer does not object to the inclusion of information about alternative providers, but their employee physician does. Another commenter argued that this language was ''a prudent observance of the Supreme Court's decision in NIFLA v. Becerra.''

Response: The Department disagrees that the challenged language is improper. The provision identified by the commenter does not require recipients to provide information about alternative providers in any notice, nor does it suggest that any recipient may require a health care provider (*e.g.,* a doctor) to post this information in violation of their rights under applicable health care conscience protection statutes or the Constitution.

Comment: A few commenters requested additional language in the voluntary notice that would focus on protecting patients from negative impacts caused by a denial of care under the conscience statutes. These commenters suggested that the voluntary notice provision has two target audiences: employees of providers and members of the public, and so there should be two separate notice provisions for each group, and they should be posted on the health care provider's website.

Response: The Department agrees that patients should also be the focus of the voluntary notice and notes that the text of § 88.3 addresses this concern. Section 88.3(d) states that ''[w]here possible, and where the recipient does not have a conscience-based objection to doing so, the notice should include information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience,'' which gives entities the opportunity to include additional information for the consideration of patients about access to certain health care services. Additionally, the Department in § 88.3(d) states that an entity ''may tailor its notice to address its particular circumstances and to more specifically address the conscience laws covered by this rule that apply to it.'' The Department is also adding text to the voluntary notice to make clear that the Federal health care conscience statutes also provide certain conscience protections for patients. Finally, the Department notes that § 88.3(b)(1) of both the proposed rule and this final rule recommends the model notice be posted on provider's websites, where both patients and providers may view it.

4. Comments Addressing Section 88.4

Comment: A commenter noted that the preamble to the proposed rule stated that it was repealing the severability provision, but that the provision is retained in the regulation text at § 88.4.

[18] *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Conscience and Religious Nondiscrimination, https://www.hhs.gov/conscience/conscience-protections/index.html.*

Response: The Department thanks the commenter. The statement that OCR was removing the severability provision was a typographical error at 88 FR 820, 825. The error is corrected in this final rule. This rule provides meaningful tools for OCR to enforce the Federal health care conscience protection statutes. Section 88.4 ensures that portions of this rule not found to be unlawful would remain in effect even if a court were to strike down some provision of this final rule. The various complaint handling and investigating provisions at § 88.2, for instance, operate independently of each other. Likewise, the notice provision at § 88.3 can operate independently of the rest of the rule.

C. Comments Addressing the Proposed Rule's Requests for Comment

1. Information, Including Specific Examples Where Feasible, Addressing the Scope and Nature of the Problems Giving Rise to the Need for Rulemaking, and Whether Those Problems Could Be Addressed by Different Regulations Than Those Adopted in 2019 or by Sub-Regulatory Guidance

Comments Addressing the Scope and Nature of the Problems Giving Rise to the Need for Rulemaking

Comment: In support of the need for rulemaking, one legal organization provided court cases related to the Religious Freedom Restoration Act. Another individual commenter cited her own published work which suggests that nurses and nursing students are under the impression that they must set aside their conscientious views to be a nurse. Other commenters highlighted that their religious beliefs and moral convictions are what motivate them to be in the health care field and help them to relate to the spiritual needs of patients who desire a religious perspective.

Response: The Department appreciates the concerns raised by the commenters regarding the need for this rulemaking. While the Department does not opine here on any of the cases raised by the commenters, the comments help illustrate that finalizing this rule will provide further clarity about OCR's enforcement authority and processes related to the Federal health care conscience statutes. The Department is committed to applying the text of the relevant conscience statutes on a case-by-case basis, which respects the balance Congress sought to achieve through these statutes, and that commitment is evidenced in part through this new rulemaking. The Department has also taken steps to ensure that the public is aware of the protections under the conscience statutes beyond this rulemaking, including by issuing guidance on the Church Amendments.[19] The Department encourages anyone who believes the Federal health care conscience statutes have been violated to file a complaint with OCR. For detailed instructions on how to file a complaint or to download a complaint form, please visit OCR's website at *www.hhs.gov/ocr/complaints.*

Whether the Problems Giving Rise to Rulemaking Could Be Addressed by Different Regulations or by Sub-Regulatory Guidance

Comment: A commenter proposed a new framework for evaluating conscience complaints, revolving around requiring objections to be stated in advance, increasing staffing to accommodate objections, and requiring health care entities that object to providing procedures to either (1) facilitate and pay for transferring patients to hospitals that provide procedures or (2) limit their services to patients who share their beliefs and divest facilities where there is no similar sized health care entity within a 30 minute drive that provides all needed services. Another commenter similarly commented that any exceptions based on the Church Amendments should not apply if the provider's refusal to provide care results in serious harm to the patient, and the patient could not schedule another in-network provider.

Response: The Department thanks the commenters. We decline to implement the commenters' recommendations in this final rule as they are beyond the scope of this rulemaking. The Department will adhere to the Federal health care conscience statutes and apply them on a case-by-case basis.

Comment: Given the lack of explicit enforcement mechanisms in the existing statutes, one commenter urged the Department to consider what additional regulatory language or subsequent guidance it can provide consistent with its authority to ensure that the conscience laws are fully and effectively enforced when violations of conscience rights are found.

Response: The Department thanks the commenter for recommending that the Department consider additional regulatory language and subsequent guidance. As discussed in response to other comments, the Department is adding regulatory language to clarify the Department's and OCR's authority to enforce the Federal health care conscience statutes, including through compliance reviews (§ 88.2(a) and a new § 88.2(c)), coordinating other appropriate remedial action (§ 88.2(a)), and OCR's authority to utilize existing enforcement regulations or withhold relevant funding to the extent authorized under the Federal health care conscience statutes where a matter cannot be resolved by informal means (§ 88.2(g)(3)). The commenter did not provide any recommendations on what that guidance should include, but the Department will continue to consider whether additional guidance under the conscience statutes is warranted.

2. Information, Including Specific Examples Where Feasible, Supporting or Refuting Allegations That the 2019 Final Rule Hindered, or Would Hinder, Access to Information and Health Care Services, Particularly Sexual and Reproductive Health Care and Other Preventive Services

Comment: Some commenters, including reproductive health groups, claimed that the 2019 Final Rule generally would have had a negative effect on patients by restricting access to care and increasing denials of care. Commenters stated that barriers to health care are compounded in health systems that refuse to provide certain types of care due to religious or moral objections. These commenters said patients do not necessarily know about such limits on care. The commenters further said this occurs more often in rural areas where there are often no alternative providers, impacts those with lower incomes, and impacts pregnant women of color who disproportionately give birth at hospitals that object to abortion and contraception.

Numerous commenters, including reproductive health groups and LGBTQI+ rights groups discussed the 2019 Final Rule's potential impact on services and access to care for groups of marginalized or underserved populations, including but not limited to women, older Americans, LGBTQI+ people, people with disabilities, people living in rural areas, Black, Indigenous, and people of color, immigrants, low-income communities, people with HIV, and people with substance use disorder. Numerous commenters discussed general health disparities and heightened discrimination against LGBTQI+ individuals, including access

[19] U.S. Dep't of Health and Human Servs., Off. for Civil Rights, ''Guidance on Nondiscrimination Protections under the Church Amendments'' (Content last reviewed Feb. 3, 2023), *https://www.hhs.gov/conscience/conscience-protections/guidance-church-amendments-protections/index.html.*

to reproductive health care and technology, that they claimed would have occurred because of the 2019 Final Rule. One commenter tied the fact that LGBTQI+ individuals already experience significant health inequities due to refusals to provide certain forms of care and stated LGBTQI+ individuals often suffer from ''health care avoidance'' due to facing discrimination in a number of services, including reproductive services, adoption and foster care services, childcare, homeless shelters, and transportation services—as well as physical and mental health care services. A commenter stated the 2019 Final Rule would have allowed providers to object to providing care, especially emergency services, which would disproportionately affect transgender people because of their struggle to access care. Another commenter argued the 2019 Final Rule would have harmed older adults by authorizing discrimination and increasing disparities in Medicare and Medicaid, especially for transgender older adults that would be at the mercy of Medicare Advantage plans hoping the plan contracts with providers who will not refuse them treatment. Additionally, a commenter discussed refusals to provide care that are based on religious or moral objections as particularly impactful to transgender individuals.

Numerous commenters described the types of services that they believed the 2019 Final Rule would have negatively impacted, such as contraception, end-of-life care, vaccination, pregnancy and reproductive services, counseling and behavioral health, infertility treatment, pre-exposure prophylaxis (PrEP) and HIV treatment, among others. One commenter said the 2019 Final Rule could have allowed providers to refuse cancer treatment or reproductive services for pregnant individuals. Another commenter discussed the importance of family planning under the Title X program, stating that they believed the 2019 Final Rule would have reduced access to such ''sexuality education'' and family planning care and would have made it difficult for Title X facilities to hire employees willing to perform core job functions. Other commenters said that by further restricting access, the 2019 Final Rule would have exacerbated existing racial and socio-economic health disparities.

A few commenters, including reproductive health organizations, noted that immigrants, ethnic minorities, and LGBTQI+ individuals faced disproportionate barriers accessing reproductive health care before the *Dobbs* v. *Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), decision and the 2019 Final Rule would have increased those barriers. One commenter stated that the 2019 Final Rule targeted people seeking reproductive health care, but even before the 2019 Final Rule, people cited religious beliefs to deny access to services such as abortion, sterilization, certain infertility treatments, and miscarriage management. A commenter stated there are serious physical and socioeconomical impacts on patients who experience discrimination when seeking abortion care, and refusals to provide such care can have profound health consequences for women. Two commenters stated that this partial recission of the 2019 Final Rule comes at an important time in the wake of the *Dobbs* decision, as abortion services are harder to obtain.

Several commenters, including a reproductive health group, stated that the 2019 Final Rule upset the careful balance in Federal laws between patient needs and conscience rights, and that the proposed rule appropriately resets that balance. A professional health care association stated that in the balance between conscience rights and patients' rights, patients' rights must come first as the patient is in the more vulnerable position, meaning there is a duty to refer on the part of the objecting provider. A few commenters argued that the proposed rule is needed to ensure LGBTQI+ patients have access to care, free from discrimination. Two commenters stated that the proposed rule would minimize the frequency of refusals to provide abortions, which especially burden the most vulnerable in our society. The commenter also stated that physicians should have some discretion if they truly believe performing an abortion in certain cases would violate their duties as medical professionals, but those who would be unwilling to perform abortion under any circumstance are not well suited for reproductive health care.

Numerous commenters, including a reproductive health organization, urged the Department to eliminate the 2019 Final Rule because it would have allowed almost any worker in a health care facility, insurance plan, or hospital to delay or block patients from getting care because of who they are or the kind of care they seek, including individuals indirectly involved in the provision of health care. One commenter stated that the 2019 Final Rule would have caused massive disruptions to large provider networks because costs of compliance with the 2019 Final Rule would have been astronomical, since losing federal funding for failure to comply would have led to the discontinuation of essential services and even closures.

One commenter stated that the 2019 Final Rule failed to account for health care providers who have moral beliefs that motivate them to treat and provide health care, especially abortion, end-of-life care, and gender-affirming care, to patients.

Response: The Department thanks commenters for sharing their views. The Department appreciates the concern that patients have full access to health care and as the proposed rule stated, 88 FR 820, 826, the Department maintains that our health care systems must effectively deliver services to all who need them in order to protect patients' health and dignity. The Department is engaging in this rulemaking in part to address the concerns raised by commenters about the impact of the 2019 Final Rule. The Department reiterates its commitment to ensuring that patients are not discriminated against, including by being denied health care on the various bases protected under civil rights laws. In addition, the Department is committed to ensuring compliance with the conscience statutes, including those provisions under the Church Amendments that offer protections for physicians or certain other individuals in certain federally funded health, training, or research programs who have performed or assisted in the performance of, or who are willing to perform or assist in the performance of, a lawful sterilization procedure or abortion.

3. Information, Including Specific Examples Where Feasible, Regarding Complaints of Discrimination on the Basis That an Individual or Health Care Entity Did Not Provide Services for the Purpose of Causing or Assisting in the Death of Any Individual, Including Through Assisted Suicide, Euthanasia, and Mercy Killing, as Described in Section 1553 of the ACA, and Comments on Whether Additional Regulations Under This Authority Are Necessary

General Support for Conscience Protections

Comment: Some commenters requested that conscience protections for assisted suicide be strengthened due to a recent rise in conscience objections. Some commenters referenced various examples, including cases and state laws from Vermont, Maine, California, and New Mexico and stated that since state laws protect conscience rights to a lesser degree than Section 1553, the Department must ensure compliance with Section 1553 to protect the

conscience rights of those providers who object to taking human life.

Response: The Department appreciates commenters providing their views regarding conscience rights related to assisted suicide. The Department remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and remains committed to ensuring compliance, including with Section 1553 of the Affordable Care Act.

Comment: A commenter noted that assisted suicide or medical aid in dying is not necessary, life-preserving, or lifesaving, so there should be no issue with permitting health care entities to refuse to perform such services for moral or religious objections. A commenter stated that conscientious objections are from the perspective of the objector, meaning it is immaterial how a state defines the ''practice'' of assisted suicide or whether it disagrees that abortion is a procedure that takes the life of a separate, unique, human being.

Response: Each of the conscience statutes contains particular requirements that must be met in order for them to apply to a given set of facts. The Department remains committed to faithfully applying each statute as drafted by Congress on a case-by-case basis.

Requests for Technical Changes

Comment: One end-of-life patient advocacy group raised concerns about the proposed rule using the term ''assisted suicide'' as opposed to ''medical aid in dying,'' arguing that using that term in conjunction with citing Section 1553 of the Affordable Care Act would create barriers preventing terminally ill patients from accessing their right to ''medical aid in dying'' in states that authorize it and consider it as distinct from assisted suicide. The commenter argued that medical aid in dying is a medical procedure in which a physician writes a prescription for medication for a mentally capable, terminally ill adult who can then decide if they want to self-administer the medication if their suffering becomes too great. The commenter contrasted that with assisted suicide, which it defined as a criminal act in which someone encourages and facilitates the self-inflicted death of an individual irrespective of their life expectancy. The commenter recommended the Department use the term ''medical aid in dying'' to ensure that patients are informed of the option, and to distinguish between the duty to share information about medical options at the end of life from the act of participating in a medical procedure to which a provider objects.

Response: The Department appreciates this comment. The Department notes that the final rule includes reference to Section 1553 of the Affordable Care Act, which uses the terms ''assisted suicide,'' ''euthanasia,'' and ''mercy killing.'' [20] The Department declines, however, to incorporate additional language in the rule text regarding the definition of ''assisted suicide'' or the other terms in the statute as it is unnecessary to include such language to clarify OCR's processes by which it enforces this statute or to enforce it on a case-by-case basis.

4. Information, Including Specific Examples Where Feasible, Regarding Complaints of Discrimination by a Qualified Health Plan Under the ACA on the Basis That a Health Care Provider or Facility Refused To Provide, Pay for, Cover, or Refer for Abortions, as Described in Section 1303 of the ACA and Comments on Whether Additional Regulations Under This Authority Are Necessary

Comment: The Department received a comment in response to this question, but did not receive information regarding complaints of discrimination by a qualified health plan. The commenter expressed concern that patients can either choose their employer's insurance plan or an Affordable Care Act plan but stated that neither type of insurance plan should be allowed to deny care under the federal conscience statutes. The commenter stated that health insurance plans, and hospitals as well, are not people with rights that can be infringed.

Response: The Department thanks the commenters for sharing their views, but notes that each of the conscience statutes contains particular requirements and prohibitions that were put in place by Congress. Any determination regarding their application will be made based upon the specifics of each statute.

[20] ''The Federal Government, and any State or local government or health care provider that receives Federal financial assistance under this Act (or under an amendment made by this Act) or any health plan created under this Act (or under an amendment made by this Act), may not subject an individual or institutional health care entity to discrimination on the basis that the entity does not provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.'' 42 U.S.C. 18113(a).

5. Information, Including Specific Examples Where Feasible, From Health Care Providers Regarding Alleged Violations of the Conscience Provisions Provided for in the Medicaid and Medicare Statutes, Including the Provisions Codified at 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3), 1397j–1(b), and 14406(2) and Comments on Whether Additional Regulations Under These Authorities Are Necessary

Comment: A patient advocacy group generally discussed the importance of advance directives as a health care planning tool for end-of-life medical care. The commenter stated that the Medicare and Medicaid provisions regarding advanced directives should not be construed to allow entities and providers to fail to provide complete information to patients about end-of-life care and advance directives, pointing out that under many state laws providers may refuse to follow advance directives for religious or moral beliefs so long as the physician informs the patient and in many cases assists in the transfer to another provider who will honor the patient's wishes.

Another commenter stated that the Department failed to articulate a sufficient reason for expanding the proposed rule to include these Medicare and Medicaid provisions. The commenter stated the proposed rule invalidates the inherent authority of advance directives by allowing providers to ignore these documents if they disagree. The commenter asserted that Section 1395cc(f) and CMS implementing regulations (See 42 CFR 489.102(a)(1)(ii) (2018); 42 CFR 418.52(a)(2) (2018)) require facilities to inform patients and residents of their rights to have completed advance directives, and that facilities should provide their patients and residents with written information about whether or not the provider objects on conscience grounds to honoring the directive. The commenter recommended that the Department require health care entities to provide accessible and prominent notice about all information the health care entity or provider refuses to offer and urged the Department to ensure patients are still timely transferred if a health care provider objects to honoring an advance directive.

Response: As the proposed rule stated, retaining the Federal conscience provisions as a part of the rule and maintaining OCR as the centralized HHS office tasked with receiving and investigating complaints under these

provisions will aid the public by increasing awareness of the rights protected by these statutes and where to file complaints alleging violations of those rights. The Department declines to include provisions beyond the text of the conscience statutes in this procedural rule as recommended by the commenter or to require entities to post information about services to which they have a conscience objection. The Department notes, however, that the voluntary notice provision of this final rule states that, where possible, and where the recipient does not have a conscience-based objection to doing so, the notice should include information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience.

Comment: One commenter referenced the Department's request for comment for examples from providers about discrimination in violation of conscience provisions in the Medicaid and Medicare statutes without directly providing such examples. The commenter stated that public and private insurance should safeguard existing benefits for children and should include reproductive health and related services. The commenter urged HHS to ensure no individuals receiving care through public health insurance are denied access to care or willing providers.

Response: The Department thanks the commenter for sharing their concern. Providing such substantive provisions, however, is beyond the scope of this rulemaking.

6. Information, Including Specific Examples Where Feasible, Regarding Alleged Violations of Any of the Other Authorities That Appeared in the 2019 Final Rule But Not the 2011 Final Rule

Comment: The Department only identified one comment in response to this question. A commenter offered suggestions on ''other relevant authorities'' (without citation) in reference to this request for comment and urged HHS to support only organizations that advocate in favor of childhood vaccination and not to make policy changes to weaken measures to immunize health care personnel.

Response: The Department thanks the commenter for their response. This final rule clarifies OCR's existing authorities over the Federal conscience statutes in § 88.1, which includes a provision regarding pediatric vaccines (42 U.S.C. 1396s(c)(2)(B)(ii)).

7. Comment on Whether the 2019 Final Rule Provided Sufficient Clarity To Minimize the Potential for Harm Resulting From Any Ambiguity and Confusion That May Exist Because of the Rule, and Whether Any Statutory Terms Require Additional Clarification

Whether the 2019 Final Rule Provided Sufficient Clarity To Minimize the Potential for Harm

Comment: Numerous commenters, including reproductive health organizations and legal organizations, generally expressed support for the rescission of 2019 Final Rule provisions, stating that the 2019 Final Rule was confusing and redundant, unlawful, overbroad, discriminatory, and ripe for abuse. Many of these commenters also stated that rescinding the 2019 Final Rule would restore OCR's appropriate scope of enforcement. One commenter stated that the proposed rule reflected the appropriate balance between providing reasonable accommodations for providers who cannot perform certain services in good conscience and obligations to patients and providing the care they need—a balance that hospitals already have vast experience in addressing.

Two commenters stated that for many major medical providers, including their own, the threat of loss of federal funding is a threat to the facilities' existence, meaning the 2019 Final Rule would have skewed health systems against patient care and in favor of refusals to provide certain services based on religious or moral objections. Three commenters stated that the 2019 Final Rule would have aggravated health disparities, contrary to the mission of HHS and OCR. One commenter expressed their support for the proposed rule because it declined to retain the provisions in the 2019 Final Rule that appeared to give OCR the authority to withhold federal financial assistance and suspend award activities based on ''threatened violations'' alone, without first allowing for the completion of an informal resolution process. A couple of commenters stated that they support the proposed rule for removing onerous reporting requirements that the 2019 Final Rule would have imposed.

Other commenters discussed physicians' duties to patients, with one commenter asking that the Department clarify that the Federal government's stance is that providers cannot refuse to serve patients due to personal beliefs. Another commenter supported the proposed rule out of concern that the 2019 Final Rule would have negatively impacted the field of pediatrics and the care and well-being of children in particular.

Many commenters, including legal organizations and reproductive health organizations, argued that the sweeping language of the 2019 Final Rule definitions exceeded statutory and constitutional authority by abandoning the long-standing balancing framework under Title VII of the Civil Rights Act of 1964 or violating the Establishment Clause, especially the definitions of ''referral/refer'' and ''assist in the performance.'' Many of these commenters said the 2019 Final Rule definitions would have allowed providers to violate principles of medical ethics and informed consent by refraining from informing patients about treatment options that they find objectionable and referring the patient to another provider, even in an emergency. These commenters said that this would have weakened the integrity of key HHS programs and the quality of U.S. health care by disregarding evidence-based standards of care. One legal organization asserted that the 2019 Rule's definition of ''discrimination'' contrasted with prior case law regarding the Weldon and Coats-Snowe Amendments and the reasonableness of accommodations. Several commenters, including state attorneys general, a legal organization, and a reproductive health organization, argued that the definition of ''health care entity'' in the 2019 Rule would have exceeded the reach of the Weldon and Coats-Snowe Amendments by including dozens of new entities under their protection, such as employers that provide health benefits, pharmacists, and medical laboratories. One of these commenters elaborated that in the Coats-Snowe Amendment, Congress chose to focus on a select group of individuals involved in the abortion training context in its definition of ''health care entity,'' and cited to contemporary statements by Senator Coats that the statute was meant to ''simply address the question of training for induced abortions.'' [21] The commenter likewise cited floor statements by Representative Weldon to show that the Weldon Amendment was meant to apply to a limited group of entities. Additional commenters argued the 2019 Final Rule would have made it exceedingly difficult for health care providers to interview, hire, or respond to accommodation requests, and to continue to provide essential services to their patients since the rule would have, in their view, impermissibly broadened the right to object based on conscience

[21] 142 Cong. Rec. 5,158 (1996) (statement of Sen. Coats).

to virtually any other person in the health care setting.

Response: The Department thanks the commenters for sharing their views on the 2019 Rule. As stated in the proposed rule, the Federal health care conscience protection statutes represent Congress' attempt to strike a careful balance, which the Department will respect. Some doctors, nurses, and hospitals, for example, object for religious or moral reasons to providing or referring for abortions or assisted suicide, among other procedures. Respecting such objections honors liberty and human dignity. It also redounds to the benefit of the medical profession. Patients also have autonomy, rights, and moral and religious convictions. And they have health needs, sometimes urgent ones. Our health care systems must effectively deliver services to all who need them in order to protect patients' health and dignity. The Department maintains that this final rule appropriately addresses the concerns raised by commenters and three separate district courts about the 2019 Final Rule, and in particular, its definitions, and allows the Department to faithfully apply each statute on a case-by-case basis.

Whether Any Statutory Terms Require Additional Clarification

Comment: Several commenters, including local governments, legal organizations, and others, generally expressed opposition to the rescission of the definitions that appeared at § 88.2 of the 2019 Final Rule on the grounds that those definitions provide more clarity regarding conscience protection statutes, that some of the definitions were not redundant, unlawful, or unnecessary, and that the definitions would ensure adequate enforcement and prevent arbitrary determinations by OCR. One commenter stated that the Department has failed to provide an adequate justification for why the removal of all definitions improves the application or interpretation of laws regarding conscience protections, while another commenter requested that the Department replace the allegedly confusing definitions of the rule with new definitions. A few commenters said that the 2019 Final Rule's definitions upheld the balance between conscience protection and patient rights and appropriately reflected the breadth of the underlying statutes.

Response: The Department thanks the commenters for sharing their concerns regarding the 2019 Final Rule's definitions and clarifying certain statutory terms. The Department is declining to include certain portions of the 2019 Final Rule, including the definitions mentioned by commenters, because questions have been raised as to their clarity and legality, including whether they undermine the balance Congress struck between safeguarding conscience rights and protecting access to health care. In response to the 2018 Proposed Rule, the Department received numerous comments about the clarity and scope of the proposed definitions. *See,* 84 FR 23170, 23186–23204 (May 21, 2019). While the Department finalized the definitions in the 2019 Final Rule with changes to address these concerns, the district court for the Southern District of New York found that the 2019 Final Rule's definitions of ''discrimination,'' ''assist in the performance,'' ''referral,'' and ''health care entity,'' in the court's view, impermissibly broaden the conscience statutes beyond the balance struck by Congress. *New York,* 414 F. Supp. 3d at 523. The district court for the Northern District of California similarly found that the 2019 Final Rule, including the definitions and enforcement provisions, were not ''mere housekeeping.'' *San Francisco,* 411 F. Supp. 3d at 1023. In the court's view, the ''expansive definitions,'' which departed from the federal statutes, coupled with the termination of all HHS funding as a consequence of noncompliance, rendered the rule ''undoubtedly substantive.'' *Id.* In response to the proposed rule, the Department received comments again raising concerns about the clarity and scope of the 2019 Final Rule's definitions. Taken together, the Department determined that the questions raised about the definitions in the 2019 Final Rule by commenters and the courts warrant additional careful consideration. Finally, as noted elsewhere, the Department declines to add language interpreting the provisions of the conscience statutes to the rule text as it is unnecessary to include such language to clarify OCR's processes by which it enforces these statutes or to enforce them on a case-by-case basis.[22]

[22] The Department notes that the model notice text includes a link to the HHS web page where additional resources can be accessed for covered entities and the public to better understand their obligations and rights under the Federal health care conscience statutes. *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Conscience and Religious Nondiscrimination, https://www.hhs.gov/conscience/conscience-protections/index.html.* As noted elsewhere in this preamble, the Department agrees it is important to ensure the public is aware of the Federal conscience statutes and remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes, including through education and outreach efforts.

8. Comment on Whether the Provisions Added by the 2019 Final Rule Are Necessary, Collectively or With Respect to Individual Provisions, To Serve the Statutes' or the Rule's Objectives, Including With Regard to Whether the Department Accurately Evaluated the Need for Additional Regulation in the 2019 Final Rule, and Whether Those Provisions Should Be Modified, or Whether the Rule's Objectives May Also Be Accomplished Through Alternative Means, Such as Outreach and Education

Whether the Provisions Added by the 2019 Final Rule Are Necessary and Whether the Department Accurately Evaluated the Need for Additional Regulation in the 2019 Final Rule

Comment: Some commenters, including a reproductive health group, stated that the Department did not accurately evaluate the need for additional regulation in its promulgation of the 2019 Final Rule, stating that the paucity of data on conscience complaints or allegations of conscience statute violations, and the decision by three federal district courts to vacate the 2019 Final Rule, illustrates that the provisions of the 2019 Final rule were not actually necessary. One legal organization agreed that the 2019 Final Rule made significant changes to the conscience statutes and argued the Department did not need to engage in rulemaking given that there were less than a dozen conscience complaints filed with OCR between 2011 and 2017 and instances in which providers are required to violate their conscience are rare. Some commenters noted that, as the Southern District of New York found, the number of conscience complaints received by OCR was significantly less than the 2019 Final Rule stated, which undermined one key argument for it. These commenters said that this lack of data means HHS has no justification for the assertion in the 2019 Final Rule that HHS otherwise lacks the capacity to enforce the provisions of the Federal conscience statutes. These commenters stated that the provisions of the 2019 Final Rule are not necessary because (1) Congress did not delegate to HHS rulemaking authority to promulgate the substantive components of the 2019 Final Rule and (2) Congress did not delegate to OCR the ultimate enforcement power to cut off all of a recipient's funding for the breach of a conscience provision.

Response: The Department acknowledges that the litigation surrounding the 2019 Final Rule raised questions regarding the complaints of statutory violations that served as a predicate for the 2019 Final Rule, and

thanks the commenters for sharing their other thoughts regarding this issue. The Department notes that OCR's overall caseload has multiplied in recent years, increasing to over 51,000 complaints in 2022—an increase of 69 percent between 2017 and 2022—with 27 percent of those complaints alleging violations of civil rights, 66 percent alleging violations of health information privacy and security laws, and 7 percent alleging violations of conscience/religious freedom laws.[23] The Department has concluded that this final rule will enable OCR to effectively process and resolve complaints related to the Federal health care conscience statutes.

Comment: One commenter stated that the 300 complaints filed with OCR within a month of the announcement of the new Conscience and Religious Freedom Division within OCR are evidence of the need for broader conscience protections, and another commenter defended the 2019 Final Rule in part due to an increase in complaints filed with OCR.

Response: Among other things, the litigation over the 2019 Final Rule raised significant questions regarding the complaints of statutory violations that served as a predicate for the 2019 Final Rule. As noted above, OCR's caseload has increased,[24] but the Department has concluded that this final rule will enable OCR to effectively process and resolve complaints related to the Federal health care conscience statutes.

Comment: Some commenters, including a faith-based organization, expressed opposition to the removal of the compliance requirements at § 88.6 of the 2019 Final Rule, stating that removal of these requirements is contradictory to the stated goal of protecting conscience rights and will hinder the Department's ability to prevent discrimination. Commenters explained that compliance requirements would provide clarity on how conscience rights are expected to be enforced, would aid in the fact-intensive investigations conscience complaints can require, and would fit in with the general practices for other for civil rights laws. One commenter elaborated that in the absence of these requirements, recipients may under- or over-record, incurring laborious administrative costs and enormous legal fees. Additionally, some commenters expressed opposition to the rescission of the applicable requirements and prohibitions that appeared at § 88.3 in the 2019 Final Rule because this rescission creates issues with enforcement. Without this provision's language, several commenters said that the rule fails to provide information to covered entities about which statutes apply to them, removes helpful context, and imposes increased costs on covered entities who now have to research over two dozen separate statutes instead of having one place to learn about them.

Response: The Department thanks the commenters for their recommendations. The Department declines to retain, among other provisions, the applicable requirements and prohibitions that appeared at § 88.3 and the compliance requirements at § 88.6. Specifically, the applicable requirements and prohibitions that appeared at § 88.3 were unnecessary because they simply repeated the language of the underlying statutes.[25] Some commenters also raised concerns in response to both the 2018 Proposed Rule [26] and the proposed rule for this rulemaking that the compliance requirements at § 88.6 were overly burdensome on covered entities and not authorized by the conscience statutes. The concerns raised by commenters highlight significant questions that warrant additional consideration, and in the Department's view, these provisions are not necessary to clarify OCR's processes by which it enforces these statutes. This final rule specifies the Department's procedures for handling conscience complaints in a manner that allows the Department to address conscience complaints on a case-by-case basis to ensure the balance struck by Congress is respected. Finally, the Department notes, as it has already elsewhere, that in response to comments received on the proposed rule, this rule is being finalized with additional enforcement provisions similar to provisions in the 2019 Final Rule that did not raise the same issues as were raised by the other provisions noted above.

Comment: One commenter stated that the potential withdrawal of federal funds or the potential for a lawsuit needs to remain in the rule to ensure that there is effective enforcement; and that requirements for reporting incidents of discrimination from § 88.6 of the 2019 Final Rule need to be left in place. One commenter said, ''The courts that vacated the 2019 Final Rule did not find that the use of such formal means was impermissible per se, but only that the 2019 rule's text deviated from those existing frameworks in specific ways.'' The commenter also said that the final rule should therefore retain OCR's authority to pursue formal as well as informal means of enforcing the conscience statutes.

Response: As discussed in response to other comments, the Department is adding regulatory language to clarify the Department's and OCR's authority to enforce the Federal health care conscience statutes, including through compliance reviews (§ 88.2(a) and a new § 88.2(c)), coordinating other appropriate remedial action (§ 88.2(a)), and OCR's authority to utilize existing enforcement regulations, such as those that apply to grants, contracts, or other programs and services, or withhold relevant funding to the extent authorized under the Federal health care conscience statutes where a matter cannot be resolved by informal means (§ 88.2(g)(3)).

As the Department has already noted in response to other comments, the Department determined not to retain, among other provisions, compliance requirements at § 88.6. In the Department's view, this provision is not necessary to clarify OCR's processes by which it enforces these statutes. The Department has concluded that the final rule's enforcement provisions, which set out procedures for the Department to handle conscience complaints on a case-by-case basis as they arise, appropriately permit the Department to ensure compliance with the conscience statutes without raising certain potential concerns commenters identified in connection with compliance provisions included in the 2019 final rule.

Comment: Some commenters, including several faith-based organizations and a couple non-profits, expressed concern regarding the rescission of the rule of construction and severability provisions at § 88.9 and § 88.10 of the 2019 Final Rule, arguing that they provided much needed clarity as to the Department's interpretation and enforcement of the conscience

[23] *See* Press Release, U.S. Dep't of Health and Human Servs., Off. for Civil Rights, HHS Announces New Divisions Within the Office for Civil Rights to Better Address Growing Need of Enforcement in Recent Years (Feb. 27, 2023), *https://www.hhs.gov/about/news/2023/02/27/hhs-announces-new-divisions-within-office-civil-rights-better-address-growing-need-enforcement-recent-years.html.*

[24] *Id.*

[25] The Department notes that the model notice text includes a link to the HHS web page where additional resources can be accessed for covered entities and the public to better understand their obligations and rights under the Federal health care conscience statutes. *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Conscience and Religious Nondiscrimination, https://www.hhs.gov/conscience/conscience-protections/index.html.* As noted elsewhere in this preamble, the Department agrees it is important to ensure the public is aware of the Federal conscience statutes and remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes, including through education and outreach efforts.

[26] *See* 84 FR 23170, 23219 (May 21, 2019).

protection laws. Three commenters cited caselaw to elaborate that courts and administrative agencies have long recognized that non-discrimination laws should be construed broadly to give full effect to their remedial purposes, and so it would be entirely appropriate for HHS to announce a rule of broad construction in the final rule.

Response: The Department notes that the language from the severability provision from § 88.10 of the 2019 Final Rule is retained at § 88.4 of the proposed rule and in this final rule. Additionally, as noted in the proposed rule, the enactment of the Federal health care conscience protection statutes represents Congress' attempt to strike a careful balance, and the Department will respect that balance. The conscience statutes each contain particular requirements that must be met in order for them to apply. The Department is committed to meeting its obligations and ensuring compliance with all relevant federal law, including under the Federal conscience statutes.

Comment: One commenter stated that the proposed rule does not provide any justification for rescinding the 2019 Final Rule other than by citing *New York* v. *U.S. Dep't of Health & Human Servs.,* 414 F. Supp. 3d 475, 513–14, 535 (S.D.N.Y. 2019), without explaining why HHS is deferring to the court's decision. Many other commenters argued that the Department should not rely on the *New York* decision because the district court's ruling was based on an incomplete and incorrect understanding of the underlying legislation. Other commenters maintained that, because only certain provisions of the 2019 Final Rule were held unlawful, the proposed rule over-relied on the finding of the court as to the other provisions in the 2019 Final Rule and did not clearly articulate the reasoning for rescissions in general to specific rescinded provisions.

Response: The Department respectfully disagrees with commenters that the sole proffered justification for rescinding the 2019 Final Rule was the *New York* decision. As the Department noted in the proposed rule, 88 FR 820, 825–26, ''[t]he Department proposes to rescind the other portions of the 2019 Final Rule because those portions are *redundant, unlawful, confusing or undermine the balance Congress struck* between safeguarding conscience rights and protecting access to health care, or because significant questions have been raised as to their legal authorization.'' (Emphasis added). For example, the applicable requirements and prohibitions that appeared at § 88.3 were unnecessary because they simply repeated the language of the underlying statute.[27] Additionally, the Department received comments in response to the 2018 Proposed Rule and the proposed rule for this final rule that stated that many of the definitions at § 88.2 were confusing or undermined the balance struck by Congress between safeguarding conscience rights and protecting access to care. Likewise, commenters in response to the 2018 Proposed Rule and the proposed rule for this final rule stated that the assurance and certification requirements that appeared at § 88.4 were overly burdensome. The Department also determined that the requirements at § 88.4 are not necessary as the Department has updated the HHS Form 690 Assurance of Compliance (which OCR maintains) independent of the 2019 Final Rule and this rulemaking to include reference to the Federal conscience statutes.[28] Further, the compliance requirements at § 88.6, the relationship to other laws provision at § 88.8, and rule of construction at § 88.9 (which was echoed in § 88.1) were flagged by commenters to both the 2018 Proposed Rule and the proposed rule for this final rule as, in their view, unlawful or having created confusion or risk of harm by undermining the balance struck by Congress. Finally, as noted in the proposed rule, in the view of the court in the *New York* decision, the purpose provision at § 88.1, several of the definitions at § 88.2, and the assurance and certification requirements at § 88.4 were found to be unlawful since the court understood them to impose new substantive duties on regulated entities in the health care sector, beyond the Department's Housekeeping Authority. The district court decisions overlapped with concerns raised by commenters regarding the provisions at § 88.1, several of the definitions at § 88.2, and the assurance and certification requirements at § 88.4, and so the Department determined these concerns warrant additional consideration. In the current instance, however, the Department does not view these provisions as necessary to clarify OCR's processes by which it enforces these statutes. This final rule specifies the Department's procedures for handling conscience complaints in a manner that allows the Department to address conscience complaints on a case-by-case basis to ensure the balance struck by Congress is respected.

The Department notes as well, as it has already elsewhere, that in response to comments received on the proposed rule, this rule is being finalized with additional enforcement provisions similar to provisions in the 2019 Final Rule that did not raise the same issues as were raised by the other provisions noted above.

Comment: One commenter argued that the specified reasons for the removal of § 88.4 are not rational and weaken the argument proffered by the Department that the proposed rule strengthens conscience rights. Some commenters requested that the Department maintain assurance and certification requirements in the final rule as it is a common mechanism for preventing discrimination used in civil rights regulations. Another commenter argued that HHS, at a minimum, must replace the assurance and certification requirements with a requirement that the names of all conscience statutes that a grantee may be subject to be included in the terms of any grant agreements. One commenter argued that the purpose provision of the 2019 Final Rule was necessary evidence of the Department's commitment to ensuring that conscience rights are respected and protected to the furthest extent of the law, and that the rule in general was a vital expression of the need to protect conscience rights in health care, where, in the commenter's view, discrimination against ''pro-life'' persons is evident.

Response: The Department believes the final rule clearly demonstrates the Department's commitment to ensuring that the federal conscience statutes are given full effect. The Department determined that the requirements at § 88.4 are not necessary as the Department has updated the HHS Form 690 Assurance of Certification (which OCR maintains) independent of the 2019 Final Rule and this rulemaking to include reference to the Federal conscience statutes. The purpose provision from § 88.1 of the 2019 Final Rule similarly is not necessary for this rule as this rule is not intended to ''implement'' the conscience statutes. The final rule is the result of the Department's careful efforts to design an

[27] The Department notes that the model notice text includes a link to the HHS web page where additional resources can be accessed for covered entities and the public to better understand their obligations and rights under the Federal health care conscience statutes. *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, *Conscience and Religious Nondiscrimination, https://www.hhs.gov/conscience/conscience-protections/index.html.* As noted elsewhere in this preamble, the Department agrees it is important to ensure the public is aware of the Federal conscience statutes and remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes, including through education and outreach efforts.

[28] *See* U.S. Dep't of Health and Human Servs., Off. for Civil Rights, ''Assurance of Compliance,'' HHS Form 690, OMB Control Number 0945–0008 (Last updated Nov. 2019), *https://www.hhs.gov/sites/default/files/form-hhs690.pdf.*

effective system of enforcement that is fully supported by the authority Congress has granted the Department, and these determinations likewise avoid potential concerns raised by the court decisions and commenters regarding §§ 88.4 and 88.1 of the 2019 rule. As noted in the proposed rule, the district court for the Southern District of New York found that, in its view, the 2019 Final Rule's purpose and assurance and certification requirements, among others, ''impose[d] new substantive duties on regulated entities in the health care sector'' and did not fall within the agency's Housekeeping Authority. *New York,* 414 F. Supp. 3d at 523.The court's decision raised similar concerns as those raised by commenters in response to both the 2018 Proposed Rule and the proposed rule for this final rule, who stated concerns that those provisions were overly burdensome or overly broad.

Comment: Two commenters noted that HHS has explicit rulemaking authority to engage in substantive rulemaking on the conscience protections set out in Sections 1303, 1411, and 1553 of the Affordable Care Act, 42 U.S.C. 18023, 18081, and 18113; and certain Medicare and Medicaid provisions, 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3)(B), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3)(B), 1397j–1(b), and 14406. The commenters argued that the Department should retain as applicable to those statutes the provisions of the 2019 Final Rule requiring assurances and certifications of compliance, establishing compliance requirements comparable to those applicable to other civil rights laws, and defining terms.

Response: The Department has carefully considered these comments but declines to make these substantive changes in this final rule at this time. This rule addresses statutes beyond those mentioned by the commenters, and none of the statutes mentioned by the commenters requires the Department to enact regulations for the respective statute's implementation. The Department maintains that addressing all of the statutes listed in § 88.1 uniformly under this rule outweighs the benefits of including piecemeal provisions for certain statutes but not others. The Department will consider, however, whether further rulemaking on the statutes recommended by commenters is needed.

Whether the Rule's Objectives May Also Be Accomplished Through Alternative Means, Such as Outreach and Education

Comment: One professional health care organization stated that they believe physicians are aware of their legal obligations under the conscience statutes, and so the proposed rule is not necessary to enforce the conscience provisions under existing law. A few commenters urged HHS to pursue education and outreach to entities and individuals instead, with some commenters requesting the Department do so as an alternative to rulemaking and others requesting that the Department do so in addition to rulemaking. Commenters stated that such efforts would ensure that physicians and other providers and health care entities are fully aware of their rights and responsibilities under the numerous federal conscience protection laws, especially in light of the proposal to remove the assurance of compliance requirement and to only require voluntary notice.

Response: The Department thanks the commenters for their recommendations. The Department agrees it is important to ensure the public is aware of the Federal conscience statutes and remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes, including through education and outreach efforts. The Department looks forward to working with covered entities and stakeholders to increase outreach activities and ensure awareness. The Department notes as well that it has updated the HHS Form 690 Assurance of Certification (which OCR maintains) to include reference to the Federal conscience statutes as another means of increasing awareness. The Department maintains that that this rule is also an important component of educating the public about these statutes.

9. Comment on the Proposal To Retain a Voluntary Notice Provision, Including Comments on Whether Such Notice Should Be Mandatory, and What a Model Notice Should Include

Opposition To Retention of Voluntary Notice

Comment: One local government agency argued that having a voluntary notice provision was inconsistent with the scope of the Housekeeping Authority as explained in *City and County of San Francisco* v. *Azar,* 411 F. Supp. 3d 1001 (N.D. Cal. 2019), and argued in favor of returning to the 2011 Final Rule in full. A commenter that provides Skilled Nursing & Assisted Living services opposed the rule's inclusion of a voluntary notice, arguing that there is already overregulation, and adding additional notices would only add confusion and increase anxiety.

Response: While the court in *San Francisco* v. *Azar* determined that some provisions in the 2019 Final Rule were ''substantive'' provisions that were not authorized by the Department's Housekeeping Authority, it did not address that rule's voluntary notice provision. 411 F. Supp. 3d at 1023. This rule lacks the provisions that the *San Francisco* v. *Azar* court identified as substantive, and, as the notice is voluntary, the rule does not impose new responsibilities on health care providers. The Department maintains that providing notice is an important way for covered entities to promote compliance and ensure the public, patients, and workforce, which may include students or applicants for employment or training, are aware of their rights under the health care conscience protection statutes. The Department declines to remove the voluntary notice provision on the bases cited by the commenters and encourages all covered entities to provide the voluntary notice. As stated in this final rule, the Department will consider posting a notice as a factor in an investigation or compliance review.

Whether the Notice Should Be Mandatory

Comment: Some commenters, including some faith-based organizations, elected officials, and professional health care organizations, argued that the voluntary notice provision should be mandatory instead, citing a variety of reasons. A couple of commenters argued that making the notice mandatory would increase awareness of the conscience statutes. Another commenter relied on the concept of notice in many other areas of law to argue that a mandatory notice provision should be applied here. Other commenters, including a professional health care organization, argued that a mandatory notice would increase access to services that providers might object to and supported changes that would ensure that the notice offered information about access to such services. A commenter proposed the notice should include the words ''religious and moral beliefs'' along with ''conscience.''

Response: The Department declines to make the notice mandatory, and notes that the 2019 Final Rule notice was also voluntary. The Department also notes that the wide variety of entities subject to the Federal health care conscience

protection statutes would make it difficult to mandate a notice with text that would be relevant to each of those entities. In the Department's view, a voluntary notice with recommended text does a better job of giving covered entities the flexibility to post a notice that is relevant to their obligations without increasing regulatory burden on the Department and covered entities. The Department nonetheless is clarifying in the rule text that posting a notice will be considered as a factor in any relevant OCR investigation or compliance review. Lastly, in response to the commenter's request, the Department has added ''religious beliefs or moral convictions'' in the model notice.

10. Comment on the Proposal To Retain Portions of the 2019 Final Rule's Enforcement Provisions in the Proposed § 88.2

General Support

Comment: Numerous commenters, including some faith-based organizations, expressed general support for retaining the complaint handling and investigation provisions in § 88.2 on the grounds that it is an improvement over the 2011 Final Rule, noting that OCR is best equipped to be the central HHS office for receiving and investigating complaints.

Response: The Department thanks the commenters for sharing their views and agrees that maintaining OCR as the centralized HHS office tasked with receiving and investigating complaints under these provisions will aid the public by increasing awareness of the rights protected by the various statutes and where to file complaints alleging violations of those rights.

Requests for Clarification

Comment: Many commenters, including reproductive health organizations and legal organizations, expressed support for the rescission of several portions of the 2019 Final Rule, especially what they characterized as overly broad enforcement provisions, but urged HHS to provide more clarity on the limits of the retained enforcement provisions and on OCR's enforcement authority generally. Some commenters recommended that the Department provide a more detailed justification for the proposal to retain procedural elements from the 2019 Final Rule's § 88.7, which includes the authority to conduct interviews and issue ''written data or discovery requests.'' 88 FR at 829–30.

Response: The Department thanks the commenters for sharing their views. Section 88.2(a)(5) makes clear that OCR's authority is to ''[c]onsult and coordinate with the relevant Departmental funding component, and *utilize existing enforcement regulations.*'' [29] These existing enforcement regulations could include, for example, the Department's authority under the Uniform Administrative Requirements, Cost Principles, And Audit Requirements for HHS Awards (UAR; 45 CFR part 75). Second, the ability to conduct interviews and issue written data requests are standard components of OCR's function as an enforcement agency. The Department considers these elements to be part and parcel of the Department's compliance powers, and, as the commenter notes, procedural elements that fall within the Department's Housekeeping Authority. As with its other authorities, OCR may also use the provision of technical assistance or voluntary resolution agreements in an effort to achieve voluntary compliance. The Department's approach to enforcing the Federal health care conscience statutes will continue to rely on the Department's existing compliance and enforcement authority. Finally, the Department notes that, as discussed in response to other comments, the Department is adding regulatory language to clarify the Department's and OCR's authority to enforce the Federal health care conscience statutes, including through compliance reviews (§ 88.2(a) and a new § 88.2(c)), coordinating other appropriate remedial action (§ 88.2(a)), and OCR's authority to utilize existing enforcement regulations or withhold relevant funding to the extent authorized under the Federal health care conscience statutes (§ 88.2(g)(3)) or to refer to the Attorney General (§ 88.2(g)(4)) where a matter cannot be resolved by informal means.

Comment: Many commenters expressed concern that the modifications to § 88.7 of the 2019 Final Rule (§ 88.2 of the proposed rule) remove assurances that OCR will conduct a prompt investigation of complaints and investigate complaints involving a potential or threatened failure to comply with the conscience statutes. One individual commenter specifically pointed to the change of verb from ''should'' to ''may'' with regard to the investigatory and fact-finding methods the proposed rule stated OCR would employ, which the commenter felt left the Department with too much discretion in the complaint handling process. The commenter stated that the proposed rule fails to clarify which, if any, complaints are accepted, and fails to clarify how complaints are to be handled by OCR, making it uncertain who is allowed to file a complaint.

Response: OCR reviews all complaints received as a matter of course in its normal business operations and may use some or all of the investigatory tools outlined in § 88.2 in evaluating and investigating a complaint. As noted in the proposed rule, the Department remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and remains committed to ensuring compliance. In addition, the Department is finalizing proposed § 88.2(b) as § 88.2(d) with a revision to state that OCR shall make a *prompt* investigation of a complaint alleging failure to comply with the Federal health care conscience protection statutes, and adding a new § 88.2(b) explaining that any entity or individual may file a complaint with OCR alleging a potential violation of Federal health care conscience protection statutes, and that the entity filing does not have to be the entity whose rights have been violated. The Department declines to modify the language of § 88.2(d) to mandate the use of certain investigation methods as not all the investigatory and fact-finding methods available to OCR are appropriate or necessary to be used in all cases. Any relevant complaints filed with the Department will be routed to OCR if they are not initially filed directly with OCR, and OCR will review all received complaints and make a determination regarding the allegations raised.

Comment: Numerous commenters criticized the proposed rule and HHS for rescinding portions of the 2019 Final Rule's enforcement provisions and only retaining some, stating it would make it difficult for HHS to protect conscience rights and would lead to discrimination against health care entities and individual providers. Many commenters, including a professional health care organization and a think tank, requested the Department include explicit authority for OCR to pursue formal rather than just informal enforcement and a clear statement on how the Department will interpret the conscience laws in relation to other laws, similar to the language provided in §§ 88.7 and 88.8 of the 2019 Final Rule.

[29] Section 88.2(a)(5) of the proposed rule stated, ''Consult and coordinate with the relevant Departmental funding component, and utilize existing *regulations enforcement.*'' (emphasis added). 88 FR 820, 829. This typo has been corrected in this final rule to ''enforcement regulations'' instead.

Response: OCR works to achieve voluntary compliance with all of its authorities, including HIPAA Privacy, Security, Breach Notification, and Enforcement Rules [30] and Title VI.[31] As finalized in this rule, the Department states that matters of noncompliance will ''be resolved by informal means *whenever possible*.'' (Emphasis added). This is consistent with OCR's approach to enforcement across the authorities it has been delegated and does not preclude the Department from using appropriate formal means at its disposal to achieve compliance whenever it is not possible to resolve a matter through informal means. As well, as discussed in response to other comments, the Department is adding regulatory language to clarify the Department's and OCR's processes and authority to enforce the Federal health care conscience statutes, including through compliance reviews (§ 88.2(a) and a new § 88.2(c)), coordinating other appropriate remedial action (§ 88.2(a)), and OCR's authority to utilize existing enforcement regulations or withhold relevant funding to the extent authorized under the Federal health care conscience statutes where a matter cannot be resolved by informal means (§ 88.2(g)(3)). The Department declines, however, to add § 88.8 from the 2019 Final Rule into this rule as this is a procedural rule that does not address the scope of any substantive right, and thus there is no need to clarify how the rule interacts with laws that do establish protections for religious freedom or moral convictions. Moreover, in the Department's view, it is appropriate to proceed with case-by-case enforcement of the conscience statutes. The Department has determined therefore that additional guidance is not necessary at this point.

III. Statutory Authority

The Secretary is partially rescinding the May 21, 2019, Final Rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.'' As discussed above, the Church Amendments, section 245 of the PHS Act, the Weldon Amendment, and the Affordable Care Act require, among other things, that the Department and recipients of Department funds (including State and local governments) refrain from discriminating against institutional and individual health care entities for their participation in, abstention from, or objection to certain medical procedures or services, including certain health services, or research activities funded in whole or in part by the federal government. No statutory provision, however, requires promulgation of regulations for their interpretation or implementation. This rule is being issued pursuant to the authority of 5 U.S.C. 301, which empowers the head of an Executive department to prescribe regulations ''for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.''

IV. Overview and Section-by-Section Description of the Final Rule

Section 88.1 describes the purpose of the Final Rule. The language is revised from the 2019 Final Rule, and states that the purpose of this Part 88 is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a–7; the Coats-Snowe Amendment, section 245 of the Public Health Service Act, 42 U.S.C. 238n; the Weldon Amendment, *e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. H, title V General Provisions, section 507(d)(1) (Dec. 29, 2022); Sections 1303(b)(1)(A), (b)(4), and (c)(2)(A), and 1411(b)(5)(A), and 1553 of the ACA, 42 U.S.C. 18023(b)(1)(A), (b)(4), and (c)(2)(A), 18081(b)(5)(A), and 18113; certain Medicare and Medicaid provisions, 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3)(B), 1395x(e) 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3)(B), 1397j–1(b), and 14406; the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f); *accord., e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. H, section 209, div. K, title VII, section 7018 (Dec. 29, 2022); 22 U.S.C. 7631(d42 U.S.C. 280g–1(d), 290bb–36(f), 1396f, 1396s(c)(2)(B)(ii); 5106i(a); and 29 U.S.C. 669(a)(5), referred to collectively as the ''Federal health care conscience protection statutes.'' The Department is finalizing this provision with two changes. First, in response to a comment, the Department is removing the word ''provider'' from the proposed rule's collective reference of the ''federal health care conscience protection statutes.'' Second, the Department identified and corrected an error in the citations to the Medicare and Medicaid statutes. The proposed rule cites 42 U.S.C. 1395w–22(j)(3)(A) and 1396u–2(b)(3)(A) as conscience provisions when 42 U.S.C. 1395w–22(j)(3)(B) and 1396u–2(b)(3)(B) are the relevant conscience provisions.

Sections 88.2 through 88.4 of the 2019 Final Rule have been removed. The language of § 88.7 of the 2019 Final Rule has been revised and redesignated as § 88.2 in this final rule. Section 88.2 in this final rule states under paragraph (a) that OCR has been delegated the authority to facilitate and coordinate the Department's enforcement of the Federal health care provider conscience protection statutes and includes a list of related authorities. This includes three authorities that did not appear in the proposed rule, but which the Department is finalizing at § 88.2(a)(2), (7), and (8) addressing OCR's authority to initiate compliance reviews, ''coordinate other appropriate remedial action as the Department deems necessary and as allowed by law and applicable regulation,'' and ''make enforcement referrals to the Department of Justice.'' In response to comments, the Department is finalizing this rule with a new § 88.2(b) and (c) to clarify OCR's authority to conduct compliance reviews and to clarify who may file a complaint with OCR regarding the Federal health care conscience protection statutes. Section 88.2(b) of the proposed rule has been redesignated in this final rule as § 88.2(d) and describes OCR's investigation process. In response to comments, the Department is finalizing § 88.2(d) with a revision to state that OCR shall make a *prompt* investigation of a complaint alleging failure to comply with the Federal health care conscience protection statutes. The Department is also making a technical edit to remove the term ''discovery'' from § 88.2(d) as that term is generally used in litigation, but is keeping the term ''data request.'' The Department is also finalizing this rule with a new § 88.2(e) that did not appear in the proposed rule, but which now notes that, ''OCR may adopt a negative inference if, absent good cause, an entity that is subject to the Federal health care conscience protection statutes fails to respond to a request for information or to a data or document request within a reasonable timeframe.'' Proposed § 88.2(c) has been redesignated as § 88.2(f) and describes OCR's role in providing supervision and coordination of compliance where OCR makes a determination as a result of an investigation that an entity is not compliant with their responsibilities under the Federal health care conscience protection statutes. Proposed § 88.2(d) has been redesignated as § 88.2(g) and describes OCR's process for achieving resolution of matters. In

[30] *See* 45 CFR 160.304.

[31] *See* 28 CFR 42.411 (''Effective enforcement of title VI requires that agencies take prompt action to achieve *voluntary* compliance in all instances in which noncompliance is found.'' (emphasis added)).

response to comments, the Department is finalizing § 88.2(g) with a new paragraph (3) that describes OCR's authority to ''coordinate with the relevant Departmental component to (1) utilize existing enforcement regulations, such as those that apply to grants, contracts, or other programs and services, or (2) withhold relevant funding to the extent authorized under the statutes listed under § 88.1'' where informal means of achieving compliance have failed to resolve a given matter. In response to comments, the Department is also finalizing § 88.2(g) with a new paragraph (4) that describes OCR's authority to ''in coordination with the Office of the General Counsel, refer the matter to the Department of Justice for proceedings to enforce the statutes listed under § 88.1'' where informal means of achieving compliance have failed to resolve a given matter.

Section 88.5 of the 2019 Final Rule has been revised and redesignated as § 88.3 of this final rule. In response to comments, section 88.3(a) in this final rule now states that OCR considers the posting of a notice consistent with this part ''as a best practice towards achieving compliance with and educating the public about the Federal health care conscience protection statutes, and encourages all entities subject to the Federal health care conscience protection statutes to post the model notice provided in Appendix A.'' In addition, we have also added to section 88.3(a) language to explain that ''OCR will consider posting a notice as a factor in any investigation or compliance review under this rule.'' Section 88.3(b) describes places where the model notice in Appendix A should be posted. Section 88.3(c) describes the format of the notice. Section 88.3(d) describes the content of the notice text. Section 88.3(e) provides that the Department and each recipient may post the notice text along with the content of other notices (such as other nondiscrimination notices). The language from Appendix A to Part 88 in the 2019 Final Rule has been revised but is still designated as Appendix A to Part 88 in this final rule. The Department is finalizing the text of Appendix A with one change in response to commenters to include a statement for clarity that ''You may have rights as a provider, patient, or other individual under these Federal statutes, which prohibit coercion or other discrimination on the basis of conscience in certain circumstances.''

V. Regulatory Impact Analysis

A. Introduction

The Department has examined the impacts of this Final Rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Office of Information and Regulatory Affairs has designated this final rule significant under Section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. The Department addresses the Regulatory Flexibility Act below.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires agencies to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current threshold after adjustment for inflation is approximately $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not create an unfunded mandate under the Unfunded Mandates Reform Act because it does not impose any new requirements resulting in unfunded expenditures by state, local, and tribal governments, or by the private sector.

Congress enacted the Paperwork Reduction Act of 1995 to ''maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal government'' and to minimize the burden of this collection. 44 U.S.C. 3501(2). This final rule does not require new collections of information under the Paperwork Reduction Act of 1995. *See generally* 44 U.S.C. 3501–3520.

The Department made several changes to this Regulatory Impact Analysis (RIA) in response to public comment to the RIA that was published with the proposed rule in January 2023. In response to multiple comments regarding potential cost savings against a baseline of the 2019 Final Rule, the Department reviewed all RIA cost categories from the 2019 Final Rule to determine if they will be potentially recoverable by virtue of the recission of the 2019 Final Rule. The Department concluded that regulatory familiarization costs likely happened immediately following the publication of the 2019 Final Rule and would not be recoverable as a result of this final rule. The Department determined that all other cost categories might be considered as potential savings in a rescission scenario. We also added regulatory familiarization costs in response to concerns about the need of various stakeholders to review the provisions of this rule. Finally, the Department addressed comments about the impacts to small businesses by including a separate regulatory flexibility analysis section.

B. Requests for Comment

The Department solicited comments on the proposed rule's RIA, including whether the non-quantified impacts identified in the 2019 Final Rule's RIA would likely be realized, absent any further regulatory action. The Department responds to those comments here.

Comment: A commenter said that the 2019 Final Rule would have been burdensome because providers would have had to: obtain legal counsel to determine whether and how policies must be altered; revise employment manuals and training programs; maintain the records the Rule requires; and provide the mandated assurances and certifications.

Response: The Department thanks the commenter for insight into potential burdens.

Comment: A commenter stated that HHS did not ''adequately or accurately'' consider the costs of the proposed rulemaking. The commenter elaborated that the RIA did not show that the proposed rule is justified ''when evaluated reasonably,'' stating that the primary baseline used is ''irrational and self-contradictory.'' The commenter disagreed that the Department's explanation of the proposed rescissions of the 2019 Final Rule could be considered a savings, since the rule was not put into effect. The commenter stated that HHS should use its alternative baseline scenario, which assumes the 2019 Final Rule to be unimplemented, instead of the primary baseline to avoid arbitrariness. The commenter also said that the Department underestimates the impact of the proposed rule because the calculations under the alternative baseline in the RIA leave out the familiarization costs included with the 2019 Final Rule's RIA.

Response: The Department acknowledges the commenter's concern. The two baselines in question—the primary baseline that the 2019 Final Rule would go into effect and the alternative baseline that it would never go into effect—involve different ways of looking at the economic impact of the rule, not the justification for the rule. The Department continues to use the primary baseline but presents the alternative baseline as well.

Comment: A commenter stated that the RIA published with the proposed rule excludes the impact of the rulemaking on voluntary remedial efforts. The commenter cited the 2019 Final Rule's RIA statement that ''some recipients will institute a grievance or similar process to handle internal complaints raised to the recipient's or sub-recipient's attention,'' and concluded that ''an additional undiscounted 5-year cost of $36 million at minimum must be added to the total cost of the proposed rule.'' The commenter stated that there is no reason to suggest that the proposed rule will not cause adoption of the same number of grievance processes as the 2019 Final Rule would have.

Response: The Department has reviewed this comment and disagrees. The commenter did not provide any new data to support the argument that the Department should adopt a particular view regarding how many entities will adopt a grievance or other remedial process. The Department does have reason to disagree with the remedial costs being identical, as significant provisions from the 2019 Final Rule that would likely have incentivized entities to voluntarily adopt grievance processes are removed. The rule rescinds significant portions of the 2019 Final Rule including required assurance and compliance provisions. Absent new data, the Department continues to believe that the recissions in this final rule will generate $8.3 million per year in savings through less grievance costs.

Comment: One commenter claimed that if the assurance and certification requirements of the 2019 Final Rule were ''redundant and unnecessary'' as HHS described them in the proposed rule, then ''there would likely not be any costs within the first five years of publication'' since ''entities were already fully taking steps to be educated on, and comply with, all the laws that are the subject of this rule,'' as stated in the 2019 Final Rule's RIA. Given this assumption, the commenter continued, then the impact of the 2019 Final Rule should be reduced by the $255.3 million in assurance and certification impact, bringing the total undiscounted cost of the 2019 Final Rule to $769.7 million. The commenter argued that this ''overall lack of consideration of cost itself'' constitutes a failure to meet the demands of *Michigan* v. *EPA.*

Response: The commenter quotes from the 2019 Final Rule's RIA's statement that there would likely not be ''any costs within the first five years of publication'' for *remedial efforts* taken by a recipient to meet the assurance and certification requirements in § 88.4 if ''entities were already fully taking steps to be educated on, and comply with, all the laws that are the subject of this rule[.]'' In other words, the costs of these remedial efforts would be zero if entities were taking these steps. But this conclusion cannot be extrapolated to the assurance and compliance requirements more generally. Section 88.4(b)(6) of the 2019 Final Rule required annual assurance and certification to OCR. These assurance and certification costs were projected to occur regardless of whether entities were already educated about the health care conscience protection statutes.

Comment: Some commenters suggested that, because a pandemic has occurred since the 2019 Final Rule, various estimates in the RIA are unreliable because of the strain on the health care community, including from loss of staffing.

Response: The Department agrees with the commenter that the impact estimates of the final rule are subject to several sources of uncertainty, including any impacts of the COVID–19 pandemic on covered entities. However, the comment did not provide any new data to explain which numbers in the 2019 RIA should be changed because of the noted strain due to the pandemic. The comment also did not provide a recommended approach for projecting these impacts over the 5-year time horizon of the analysis of the final rule. The Department notes that, while the analysis does not modify its estimates based on impacts related to the COVID–19 pandemic, it does address uncertainty, including by assessing a secondary baseline scenario.

Comment: Several commenters urged HHS to consider additional costs in the calculation of the final rule. These included: the impact of turnover, increased agency costs, increased litigation, and risk management costs; the costs of potential increased conscience and religious freedom complaints; the Federalism implications associated with impacts on state hospitals, medical facilities, and insurance plans, as well as the interaction with state and local laws regarding conscience and religious freedom; specific costs, such as: the stresses placed on the nation's infrastructure of health care as a whole, and the public health consequences of ''conscientious providers'' leaving the workforce; the loss of access to certain providers; the costs that may result from companies that choose to ignore conscience protections, and thus lose employees and patients as a result; the compound effect of the rule's impact on existing labor shortages, among others.

Response: The Department is unable to quantify most of these costs, as the necessary data are not provided by the commenter and are not available in any data sources that the Department has reviewed. This approach is consistent with the 2019 Final Rule, in which these potential effects were discussed qualitatively but were also not quantified.

In response to the concerns about federalism, some of the Federal laws that this rule implements and enforces, such as the Weldon and Coats-Snowe Amendments, directly regulate States and local governments that receive Federal funding by conditioning the receipt of such funding on the governments' commitments to refrain from discrimination on certain bases or by imposing certain requirements on States and local governments that receive Federal funding. This impact, however, is a result of the statutory prohibitions and requirements themselves and are not due to the mechanisms provided by this rule.

Comment: A commenter pointed out that a premise of the 2019 Final Rule was that the 2019 Final Rule would expand access to health care, specifically by reducing barriers to the entry of certain health professionals and delaying the exit of certain health professionals from the field, by reducing discrimination or coercion that health professionals anticipate or experience. The commenter suggested that the proposed rule's disagreement with this conclusion means the Department (which continues to rely on the 2019 RIA) now underestimates the effects of reversing the 2019 Final Rule, as the commenter agrees with the 2019 Final Rule's assessment of its effects.

Response: The Department has reviewed this comment and found that it does not provide any new data or other actionable information relevant to the economic analysis. Consistent with numerous comments received on the 2018 proposed rule, the Department has no reason to conclude that the 2019 Rule would have resulted in more providers entering the workforce or

would have resulted in greater patient access to care.

Comment: Commenters had varying views regarding what percent of providers would post the voluntary notice. One commenter, who suspected the percent of covered entities posting voluntary notices would be minimal, requested that OCR better estimate the percentage of entities that will comply with the proposed posting notice on a voluntary basis. Another commenter suggested it would be reasonable for the Department to assume that all entities will provide voluntary notices, and, therefore, the overall cost to covered entities from posting the voluntary notices will be higher than the RIA states.

Response: The Department has reviewed this issue but disagrees that nearly all entities will post a voluntary notice. No commenter provided data to support their assertion that all covered entities or else a minimal number of covered entities will post the voluntary notice. After consideration, the Department in this final rule maintains the 2019 Final Rule RIA's estimate that half of all entities would post a voluntary notice in this final rule. If all entities posted a voluntary notice, the costs associated would be equivalent to the costs of a mandatory notice summarized in Policy Option 3 (this final rule, modified to include a mandatory notice). This final rule adopts a voluntary notice provision, and the cost is the same as the cost of the 2019 Final Rule's voluntary notice provision summarized in Policy Option 2 (this final rule).

C. Detailed Economic Analysis

HHS considered several policy alternatives, in addition to the approach of this final rule. This economic analysis considers the likely impacts associated with the following three policy options: (1) rescinding the 2019 Final Rule without exceptions; (2) adopting the approach of this final rule, which partially rescinds the 2019 Final Rule, and modifies other provisions; and (3) adopting the approach of this final rule, except further modifying the notice provision to require mandatory notices instead of voluntary notices. To simplify the narrative of this RIA, we present the impacts of rescinding the 2019 Final Rule in its entirety first, and then present the impacts of a partial rescission with modifications. These modifications correspond to the policy option of the final rule, and the policy option of mandatory notices. This RIA then summarizes the impacts of each policy option against common assumptions about the baseline scenario of no further regulatory action.

Policy Option 1: Rescinding the 2019 Final Rule

Rescinding the final rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' published in the **Federal Register** on May 21, 2019 (84 FR 23170, 45 CFR part 88) (hereafter, ''2019 Final Rule'') would prevent the realization of many of the anticipated impacts of the 2019 Final Rule. For the purposes of this economic analysis, we provisionally adopt the characterization and quantification of these impacts that were presented in the regulatory impact analysis (RIA) of the 2019 Final Rule. The potential impacts identified and estimated in the RIA covered a five-year time horizon following the effective date of the 2019 Final Rule. However, because the 2019 Final Rule has been vacated by three federal district courts, these impacts have mostly not occurred and are not likely to occur. The litigation status of the 2019 Final Rule introduces substantial analytic uncertainty into any characterization of the baseline scenario of no further regulatory action. We address this uncertainty directly by analyzing the potential impacts of Policy Option 1 under two discrete baseline scenarios. First, for the purposes of this economic analysis, we adopt a primary baseline scenario that the 2019 Final Rule would take effect. Second, we adopt an alternative baseline scenario that the 2019 Final Rule would never take effect, even without any subsequent regulatory action.

Under our primary baseline scenario, Policy Option 1 would entirely reverse the impacts of the 2019 Final Rule. To analyze the impacts of Policy Option 1 under this scenario, we provisionally adopt the estimates of the likely impacts of the 2019 Final Rule in its RIA, although we understand that commenters raised questions whether, for example, certain of the non-quantified benefits that the 2019 Final Rule anticipated would in fact be realized. The RIA identified five categories of quantified costs: (1) familiarization; (2) assurance and certification; (3) voluntary actions to provide notices of rights; (4) voluntary remedial efforts; and (5) OCR enforcement and associated costs. The narrative of the RIA described an approach for estimating each of these costs, and Table 6 of the RIA summarized the timing and magnitude of these quantified costs (84 FR 23240). In addition to identifying quantified costs, the RIA identified non-quantified costs associated with compliance procedures and non-quantified costs associated with seeking alternative providers of certain objected to medical services or procedures.

The 2019 Final Rule's RIA did not identify any quantified benefits, but identified non-quantified benefits associated with compliance with the law; protection of conscience rights, the free exercise of religion and moral convictions; more diverse and inclusive providers and health care professionals; improved provider-patient relationships that facilitate improved quality of care; equity, fairness, nondiscrimination; and increased access to care. The District Court in *New York,* however, also identified some non-quantified costs of the 2019 Final Rule, including: ''that the Rule could potentially impose liability on an employer . . . for insisting that an ambulance driver complete a mission of transporting a patient to a hospital for an emergency procedure,'' that the Rule ''would authorize individuals [to leave] the operating theater or medical procedure [and] withhold their services,'' and other instances of failing to provide care in life-threatening situations. 414 F.Supp.3d at 539, 519, 514 (citing *Shelton* v. *Univ. of Med. & Dentistry of N.J.,* 223 F.3d 220, 222–23, 224–28 (3d Cir. 2000)). The Department has no reason to conclude that, consistent with numerous comments received on the 2018 proposed rule, the 2019 Rule would have resulted in more providers entering the workforce or would have resulted in greater patient access to care, and acknowledges the potential harms raised by the *New York* decision. In addition, the Department notes that there are non-quantifiable benefits of this revised rule, including respecting Congress' attempt to strike a careful balance between patient and provider rights, ensuring patient access to health care, notifying the public of OCR's existing authorities on conscience laws, and clarifying to the public what OCR's process is for handling complaints under these authorities.

Table 1 of the 2019 Final Rule's RIA reported the present value and annualized value of the quantified costs and summarized the non-quantified costs and benefits of the 2019 Final Rule (84 FR 23227). That RIA reported estimates of the present value of the total costs over a 5-year time horizon of $900.7 million using a 3-percent discount rate and $731.5 million using a 7-percent discount rate. That RIA also reported annualized estimates of the costs of $214.9 million under a 3-percent discount rate and $218.5 million using a 7-percent discount rate.

Both sets of these cost estimates were reported in year 2016 dollars. We updated these estimates to year 2022 dollars using the Implicit Price Deflator for the Gross Domestic Product. We removed the regulatory familiarization costs for the 2019 Final Rule from the potential costs savings, as we believe these were incurred in full upon publication of the rule and will therefore be non-recoverable despite the partial recission of the 2019 Final Rule. Likewise, we added regulatory familiarization costs for this final rule following the general methodology of the 2019 Final Rule updated with the most recent available data. We estimate that 513,627 entities will spend 2 hours of legal professional time to review the document. To determine the cost of legal professional time, we use the average wage for Lawyers (OES 23–1011) and load it with the factor for all civilian workers.[32] As Table 1 notes below, the present value of these familiarization costs add up to $114 million using a 3-percent discount rate, or $106 million using a 7-percent discount rate; they will also partially offset any cost savings in the first year of this current rule. The annualized costs are $24.8 million, and $23.2 million, respectively.

HHS next estimated the Policy Option 1 cost savings by calculating the total potentially recoverable costs from fully rescinding the 2019 Final Rule and adjusting them with the new regulatory familiarization costs. The present value of potentially recoverable costs from fully rescinding the 2019 Final Rule is $1,026.0 million using a 3-percent discount rate and $856.8 million using a 7-percent discount rate; these cover assurance and certification, voluntary notice and remedial efforts, and OCR enforcement costs (see Table 1 below for detailed breakdown of individual costs), and annualized costs of $224.0 million using a 3-percent discount rate and $187.1 million using a 7-percent discount rate. Under our primary baseline scenario, the cost savings of Policy Option 1 would be approximately the inverse of the impacts contained in the 2019 potentially recoverable costs from the 2019 Final Rule's RIA plus the newly incurred regulatory familiarization cost. These cost savings sum up to a total discounted value of $912.3 million at a 3-percent discount rate, or $750.5 million using a 7-percent discount rate; the annualized values are, $199.2 million, and $163.9 million, respectively. Table A in the Summary of Impacts section of this preliminary regulatory impact analysis reports the summary impacts of the Policy Option 1 under this baseline scenario in millions of 2022 dollars, covering a 5-year time horizon, including annualized values, and Table 1 reports the detailed impacts in this primary baseline scenario, by cost category.

TABLE 1—COSTS AND COST SAVINGS—OPTION 1 (PRIMARY BASELINE)

[Discounted 3% and 7% in millions]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Costs and Cost Savings—Option 1						
Familiarization (undiscounted)	$117.2	$0.0	$0.0	$0.0	$0.0	$117.1
Familiarization (3%)	113.8	0.0	0.0	0.0	0.0	113.7
Familiarization (7%)	106.3	0.0	0.0	0.0	0.0	106.3
Assurance and Certification (undiscounted)	−187.2	−171.1	−171.1	−171.1	−171.1	−871.5
Assurance and Certification (3%)	−181.7	−161.3	−156.6	−152.0	−147.6	−799.1
Assurance and Certification (7%)	−169.8	−140.8	−127.8	−116.0	−105.2	−659.6
Voluntary Notice (undiscounted)	−112.3	−17.0	−17.0	−17.0	−17.0	−180.3
Voluntary Notice (3%)	−109.1	−16.0	−15.5	−15.1	−14.6	−170.4
Voluntary Notice (7%)	−101.9	−14.0	−12.7	−11.5	−10.4	−150.6
Voluntary Remedial Efforts (undiscounted)	−8.8	−8.8	−8.8	−8.8	−8.8	−43.9
Voluntary Remedial Efforts (3%)	−8.5	−8.3	−8.0	−7.8	−7.6	−40.2
Voluntary Remedial Efforts (7%)	−8.0	−7.2	−6.6	−5.9	−5.4	−33.1
OCR Enforcement Costs (undiscounted)	−3.6	−3.6	−3.6	−3.6	−3.6	−17.9
OCR Enforcement Costs (3%)	−3.5	−3.4	−3.3	−3.2	−3.1	−16.4
OCR Enforcement Costs (7%)	−3.3	−3.0	−2.7	−2.4	−2.2	−13.5
Total Costs (undiscounted)	−194.6	−200.4	−200.4	−200.4	−200.4	−996.4
Total Costs (3%)	−189.0	−188.9	−183.4	−178.1	−172.9	−912.3
Total Costs (7%)	−176.6	−165.0	−149.7	−135.8	−123.3	−750.5

Notes: Negative costs indicate the Policy Option, if finalized would result in cost savings.

Under our alternative baseline scenario, we assume that the 2019 Final Rule would never take effect, even without any additional regulatory action. Under this baseline scenario, Policy Option 1 would maintain the current status quo, which is characterized by the 2011 Final Rule (76 FR 9968). Thus, for this baseline scenario, we conclude that adopting Policy Option 1 would result in the new regulatory familiarization costs (discussed above) plus other *de minimis* impacts that we do not quantify, such as resolving any regulatory uncertainty associated with the 2019 Final Rule, which has been vacated by three federal courts but not rescinded. We report the summary impacts of Policy Option 1 under this alternative baseline scenario in Table A in the Impacts Summary section.

Policy Option 2: The Final Rule

The final rule partially rescinds the 2019 Final Rule, with certain exceptions. Specifically, this final rule retains three aspects of the 2019 Final Rule: (1) the addition to part 88 of statutes included in the 2019 Final Rule;

[32] U.S. Dep't of Labor, Bureau of Labor Statistics, *May 2022 State Occupational Employment and Wage Estimates* (Last visited October 30, 2023), *https://www.bls.gov/oes/current/oessrcst.htm;* U.S. Dep't of Labor, Bureau of Labor Statistics, *Employer Costs for Employee Compensation,* Quarter 1, 2023 (Last visited October 30, 2023), *https://www.bls.gov/ecec/data.htm.*

(2) several enforcement provisions; and (3) a voluntary notice provision.[33] However, as described in greater detail in the Preamble, the Department is also modifying each of these provisions of the 2019 Final Rule. For example, the voluntary notice provision in the proposed rule would clarify that providing these voluntary notices would not satisfy an entity's substantive obligations imposed upon covered entities by the underlying statutes.

We considered the likely impacts of each of the three retained aspects of the 2019 Final Rule. The Department estimates that maintaining the statutes from the 2019 Final Rule will not impact costs. For the remaining two aspects of the 2019 Final Rule, we identify quantifiable impacts associated with retaining the aspects of the 2019 Final Rule related to the enforcement provisions and quantifiable impacts related to the voluntary notice provision. We adopt the analytic approach contained in the 2019 Final Rule's RIA to quantify these impacts, including an assumption in that RIA that about half of covered entities would provide notices voluntarily. For the provisions related to enforcement, the 2019 RIA estimated an annual impact of about $3 million in costs to the Department and $15 million in total costs over five years. For the provisions related to voluntary notices, that RIA estimated an impact of about $93.4 million in costs in the first year of the analysis, and about $14.1 million in costs in subsequent years, or about $150 million over five years. Combined, the 2019 RIA estimated 5-year costs for these two provisions of $165 million; in present value terms, these estimates are $142 million using a 3-percent discount rate and $118 million using a 7-percent discount rate. The 2019 RIA reported these costs in 2016 dollars.

To quantify the net impact of this rule, we fully remove the costs associated with enforcement and voluntary notice provisions from our earlier estimates of the total cost savings of rescinding the 2019 Final Rule. Since the voluntary notice requirement will not be rescinded, and some enforcement provisions will be retained, we anticipate that there will be no cost savings against the 2019 Final Rule under these cost categories. As an intermediate step, we converted the 2016 dollar estimates from the previous paragraph to 2022 dollars using the Implicit Price Deflator for the Gross Domestic Product. Compared to our primary baseline, we estimate that over the first five years of this rule, this rule will result in total cost savings in 2022 dollars of $725.5 million using a 3-percent discount rate and $586.4 million using a 7-percent discount rate (as shown in Table 2); the corresponding annualized cost savings are $158.4 million using a 3-percent discount rate and $128.0 million using a 7-percent discount rate. We report these estimates in Table A in the Summary of Impacts section, which also reports comparable estimates corresponding to our alternative baseline scenario, and include a detailed breakdown of primary baseline costs in Table 2 below.

TABLE 2—COSTS AND COST SAVINGS—OPTION 2 (PRIMARY BASELINE)

[Discounted 3% and 7% in millions]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Costs and Cost Savings—Option 2						
Familiarization (undiscounted)	$117.2	$0.0	$0.0	$0.0	$0.0	$117.1
Familiarization (3%)	113.8	0.0	0.0	0.0	0.0	113.7
Familiarization (7%)	106.3	0.0	0.0	0.0	0.0	106.3
Assurance and Certification (undiscounted)	−187.2	−171.1	−171.1	−171.1	−171.1	−871.5
Assurance and Certification (3%)	−181.7	−161.3	−156.6	−152.0	−147.6	−799.1
Assurance and Certification (7%)	−169.8	−140.8	−127.8	−116.0	−105.2	−659.6
Voluntary Notice (undiscounted)	0.0	0.0	0.0	0.0	0.0	0.0
Voluntary Notice (3%)	0.0	0.0	0.0	0.0	0.0	0.0
Voluntary Notice (7%)	0.0	0.0	0.0	0.0	0.0	0.0
Voluntary Remedial Efforts (undiscounted)	−8.8	−8.8	−8.8	−8.8	−8.8	−43.9
Voluntary Remedial Efforts (3%)	−8.5	−8.3	−8.0	−7.8	−7.6	−40.2
Voluntary Remedial Efforts (7%)	−8.0	−7.2	−6.6	−5.9	−5.4	−33.1
OCR Enforcement Costs (undiscounted)	0.0	0.0	0.0	0.0	0.0	0.0
OCR Enforcement Costs (3%)	0.0	0.0	0.0	0.0	0.0	0.0
OCR Enforcement Costs (7%)	0.0	0.0	0.0	0.0	0.0	0.0
Total Costs (undiscounted)	−78.7	−179.8	−179.8	−179.8	−179.8	−798.2
Total Costs (3%)	−76.4	−169.5	−164.6	−159.8	−155.1	−725.5
Total Costs (7%)	−71.4	−148.1	−134.4	−121.9	−110.6	−586.4

Negative costs indicate the Policy Option, if finalized would result in cost savings.

Policy Option 3: The Final Rule With an Alternative Notice Provision

The Department analyzed a third policy option, which is similar to the final rule, but would further modify the notice provision by requiring covered entities to post these notices in designated places. The 2019 Final Rule's RIA assumes that about half of covered entities would provide these notices on a voluntary basis, and we carried this assumption through in this analysis, including in our analysis of the costs of the proposed rule. Under Policy Option 3, we anticipate that all covered entities would provide notices, and therefore estimate that the costs of mandatory notices would be double that of our estimates of the costs of voluntary notices.

To quantify the net impact of Policy Option 3, we subtract the costs associated with enforcement and mandatory notice provisions from our

[33] The Department also keeps the severability clause from the 2019 Final Rule.

earlier estimates of the total cost savings of rescinding the 2019 Final Rule. Compared to our primary baseline, we estimate that Policy Option 3 would result in annualized cost savings in 2022 dollars of $121.2 million using a 3-percent discount rate and $95.2 million using a 7-percent discount rate. We report these estimates in Table A in the Summary of Impacts section, which also includes comparable estimates corresponding to our alternative baseline scenario; a detailed breakdown of primary baseline impacts is included in Table 3 below.

TABLE 3—COSTS AND COST SAVINGS—OPTION 3 (PRIMARY BASELINE)

[Discounted 3% and 7% in millions]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Costs and Cost Savings—Option 3						
Familiarization (undiscounted)	$117.2	$0.0	$0.0	$0.0	$0.0	$117.1
Familiarization (3%)	113.8	0.0	0.0	0.0	0.0	113.7
Familiarization (7%)	106.3	0.0	0.0	0.0	0.0	106.3
Assurance and Certification (undiscounted)	−187.2	−171.1	−171.1	−171.1	−171.1	−871.5
Assurance and Certification (3%)	−181.7	−161.3	−156.6	−152.0	−147.6	−799.1
Assurance and Certification (7%)	−169.8	−140.8	−127.8	−116.0	−105.2	−659.6
Mandatory Notice (undiscounted)	112.3	17.0	17.0	17.0	17.0	180.3
Mandatory Notice (3%)	109.1	16.0	15.5	15.1	14.6	170.4
Mandatory Notice (7%)	101.9	14.0	12.7	11.5	10.4	150.6
Voluntary Remedial Efforts (undiscounted)	−8.8	−8.8	−8.8	−8.8	−8.8	−43.9
Voluntary Remedial Efforts (3%)	−8.5	−8.3	−8.0	−7.8	−7.6	−40.2
Voluntary Remedial Efforts (7%)	−8.0	−7.2	−6.6	−5.9	−5.4	−33.1
OCR Enforcement Costs (undiscounted)	0.0	0.0	0.0	0.0	0.0	0.0
OCR Enforcement Costs (3%)	0.0	0.0	0.0	0.0	0.0	0.0
OCR Enforcement Costs (7%)	0.0	0.0	0.0	0.0	0.0	0.0
Total Costs (undiscounted)	$33.6	−162.9	−162.9	−162.9	−162.9	−617.9
Total Costs (3%)	$32.6	−153.5	−149.0	−144.7	−140.5	−555.2
Total Costs (7%)	$30.5	−134.1	−121.7	−110.4	−100.2	−435.9

Notes: Negative costs indicate the Policy Option, if finalized would result in cost savings.

D. Summary of Impacts

This analysis estimates the costs associated with the final rule and for two policy alternatives. For the final rule, we estimate the present value of the costs of −$725.5 million using a 3-percent discount rate and −$586.4 million using a 7-percent discount rate. Alternatively stated, we estimate that the final rule would generate cost savings of $725.5 million using a 3-percent discount rate and $586.4 million using a 7-percent discount rate. Table A reports cost estimates for the Final Rule and for the two policy alternatives. These estimates are reported in millions of 2022 dollars over a 5-year time horizon. Table A presents these cost estimates in present value terms and as annualized values for both a 3-percent and a 7-percent discount rate. Table A reports these estimates for our primary baseline scenario that the 2019 Final Rule would take effect, and for an alternative baseline scenario that the 2019 Final Rule would never take effect, even without any subsequent regulatory action. We do not identify any quantified benefits for the Final Rule or for the two policy alternatives.

The Department has selected Policy Option 2 despite Policy Option 1 generating the most savings because Policy Option 2 both rescinds the 2019 Final Rule and maintains several of its provisions. This approach better clarifies OCR's existing authorities and processes for enforcing the conscience statutes, as explained above.

TABLE A—ACCOUNTING TABLE OF COSTS

[Millions of 2022 dollars over a 5-year time horizon]

Baseline scenario and policy option	Present value by discount rate		Annualized value by discount rate	
	3 Percent	7 Percent	3 Percent	7 Percent
Primary Baseline:				
Option 1 (Rescinding the 2019 Final Rule)	−$912.3	−$750.5	−$199.2	−$163.9
Option 2 (The Final Rule)	−725.5	−586.4	−158.4	−128.0
Option 3 (The Final Rule with an Alternative Notice Provision)	−555.2	−435.9	−121.2	−95.2
Alternative Baseline:				
Option 1 (Rescinding the 2019 Final Rule)	113.7	106.3	24.8	23.2
Option 2 (The Final Rule)	300.5	270.4	65.6	59.0
Option 3 (The Final Rule with an Alternative Notice Provision)	470.8	420.9	102.8	91.9

Notes: Negative costs indicate the Policy Option, if finalized would result in cost savings.

E. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. HHS has examined the economic implications of this final rule as required by the RFA. The RFA requires an agency to describe the impact of a rulemaking on small entities by providing an initial regulatory flexibility analysis unless the agency expects that the rule will not have a significant impact on a substantial number of small entities, provides a factual basis for this determination, and to certify the statement. 5 U.S.C. 603(a), 605(b). If an agency must provide an initial regulatory flexibility analysis, this analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact of revenue on at least five percent of small entities.

One commenter said that HHS also needs to assess and certify the impact on small businesses and all non-profits under the RFA, using the above analysis on costs and explaining its reasoning. The commenter pointed to non-profit organizations, including many religiously affiliated hospitals and health-care facilities, and small health-care practitioners as entities and individuals affected by this rule.

Based on its examination, the Department has concluded that this rule does not have a significant economic impact on a substantial number of small entities. The entities that would be affected by this final rule, in industries described in detail in the RIA, are considered small by virtue of either nonprofit status or having revenues of less than between $7.5 million and $38.5 million in average annual revenue, with the threshold varying by industry. Persons and States are not included in the definition of a small entity. The Department assumes that most of the entities affected meet the threshold of a small entity.

Although this final rule will apply to and affect small entities, this rule's per-entity effects are relatively small. The Department estimates that this rule would result in average cost savings of $307 per entity in the primary baseline scenario, or an average cost of $129 per entity in the alternative baseline scenario, over the first five years of compliance (both annualized with a 3-percent discount rate). Furthermore, any costs would generally be proportional to the size of an entity, so that the smallest affected entities will face lower average costs. Given the thresholds discussed in the preceding paragraphs, the average costs are below the Department's default threshold for significance.

Because this final rule would result in either a small reduction in costs to small entities or minimal to no impact on costs to small entities, this analysis concludes, and the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This finding and certification is consistent with the regulatory flexibility analysis of the 2019 Final Rule that would be partially rescinded by this regulatory action, which ''concluded that this rule does not have a significant economic impact on a substantial number of small entities'' (84 FR 23255).

List of Subjects in 45 CFR Part 88

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Xavier Becerra,

Secretary, Department of Health and Human Services.

■ For the reasons set forth in the preamble, the Department revises 45 CFR part 88 to read as follows:

PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW

Sec.

88.1 Purpose
88.2 Complaint handling and investigating.
88.3 Notice of Federal conscience and nondiscrimination laws.
88.4 Severability.
Appendix A to Part 88—Model Text: Notice of Rights Under Federal Conscience and Nondiscrimination Laws

Authority: 5 U.S.C. 301.

§ 88.1 Purpose.

The purpose of this part is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a–7; the Coats-Snowe Amendment, section 245 of the Public Health Service Act, 42 U.S.C. 238n; the Weldon Amendment, *e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. H, title V General Provisions, section 507(d)(1) (Dec. 29, 2022); Sections 1303(b)(1)(A), (b)(4), and (c)(2)(A), and 1411(b)(5)(A), and 1553 of the ACA, 42 U.S.C. 18023(b)(1)(A), (b)(4), and (c)(2)(A), 18081(b)(5)(A), and 18113; certain Medicare and Medicaid provisions, 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3)(B), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3)(B), 1397j–1(b), and 14406; the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f), *accord, e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. K, title VII, section 7018 (Dec. 29, 2022); 22 U.S.C. 7631(d); 42 U.S.C. 280g–1(d), 290bb–36(f), 1396f, 1396s(c)(2)(B)(ii); 5106i(a)); and 29 U.S.C. 669(a)(5), referred to collectively as the ''Federal health care conscience protection statutes.''

§ 88.2 Complaint handling and investigating.

(a) *Delegated authority.* The Office for Civil Rights (OCR) has been delegated the authority to facilitate and coordinate the Department's enforcement of the Federal health care conscience protection statutes, which includes the authority to:

(1) Receive and handle complaints;

(2) Initiate compliance reviews;

(3) Conduct investigations;

(4) Consult on compliance within the Department;

(5) Seek voluntary resolutions of complaints;

(6) Consult and coordinate with the relevant Departmental funding component, and utilize existing

enforcement regulations, such as those that apply to grants, contracts, or other programs and services;

(7) In coordination with the relevant component or components of the Department, coordinate other appropriate remedial action as the Department deems necessary and as allowed by law and applicable regulation; and

(8) In coordination with the relevant component or components of the Department, make enforcement referrals to the Department of Justice.

(b) *Complaints.* Any entity or individual may file a complaint with OCR alleging a potential violation of Federal health care conscience protection statutes. OCR shall coordinate handling of complaints with the relevant Department component(s). The complaint filer is not required to be the entity whose rights under the Federal health care conscience protection statutes have been potentially violated.

(c) *Compliance reviews.* OCR may conduct compliance reviews of an entity subject to the Federal health care conscience protection statutes, where authorized for the funding at issue, to determine whether they are complying with Federal health care conscience protection statutes. OCR may initiate a compliance review of an entity subject to the Federal health care conscience protection statutes based on information from a complaint or other source that causes OCR to suspect non-compliance by such entity with the Federal health care conscience protection statutes.

(d) *Investigations.* OCR shall make a prompt investigation of a complaint alleging failure to comply with the Federal health care conscience protection statutes. This investigation may include a review of the pertinent practices, policies, communications, documents, compliance history, circumstances under which the possible noncompliance occurred, and other factors relevant to determining whether the Department, Department components, recipient, or sub-recipient has failed to comply. OCR may use fact-finding methods including site visits; interviews with the complainants, Department components, recipients, sub-recipients, or third parties; and written data requests. OCR may seek the assistance of any State agency.

(e) *Failure to respond.* OCR will adopt a negative inference if, absent good cause, an entity that is subject to the Federal health care conscience protection statutes fails to respond to a request for information or to a data or document request within a reasonable timeframe.

(f) *Supervision and coordination.* If, as a result of an investigation, OCR makes a determination of noncompliance with responsibilities under the Federal health care conscience protection statutes, OCR will coordinate and consult with the Departmental component responsible for the relevant funding to undertake appropriate action with the component to assure compliance.

(g) *Resolution of matters.* (1) If an investigation reveals that no action is warranted, OCR will in writing so inform any party who has been notified by OCR of the existence of the investigation.

(2) If an investigation indicates a failure to comply with the Federal health care conscience protection statutes, OCR will so inform the relevant parties and the matter will be resolved by informal means whenever possible.

(3) If a matter cannot be resolved by informal means, OCR will coordinate with the relevant Departmental component to:

(i) Utilize existing enforcement regulations, such as those that apply to grants, contracts, or other programs and services, or

(ii) Withhold relevant funding to the extent authorized under the statutes listed under § 88.1.

(4) If a matter cannot be resolved by informal means, OCR may, in coordination with the Office of the General Counsel, refer the matter to the Department of Justice to the extent permitted by law for proceedings to enforce the statutes listed under § 88.1.

§ 88.3 Notice of Federal conscience and nondiscrimination laws.

(a) *In general.* OCR considers the posting of a notice consistent with this part as a best practice towards achieving compliance with and educating the public about the Federal health care conscience protection statutes, and encourages all entities subject to the Federal health care conscience protection statutes to post the model notice provided in Appendix A to this part. OCR will consider posting a notice as a factor in any investigation or compliance review under this rule.

(b) *Placement of the notice text.* The model notice in Appendix A to this part should be posted in the following places, where relevant:

(1) On the Department or recipient's website(s);

(2) In a prominent and conspicuous physical location in the Department's or covered entity's establishments where notices to the public and notices to its workforce are customarily posted to permit ready observation;

(3) In a personnel manual, handbook, orientation materials, trainings, or other substantially similar document likely to be reviewed by members of the covered entity's workforce;

(4) In employment applications to the Department or covered entity, or in applications for participation in a service, benefit, or other program, including for training or study; and

(5) In any student handbook, orientation materials, or other substantially similar document for students participating in a program of training or study, including for postgraduate interns, residents, and fellows.

(c) *Format of the notice.* The text of the notice should be large and conspicuous enough to be read easily and be presented in a format, location, and manner that impedes or prevents the notice being altered, defaced, removed, or covered by other material.

(d) *Content of the notice text.* A recipient or the Department should consider using the model text provided in Appendix A to this part for the notice but may tailor its notice to address its particular circumstances and to more specifically address the Federal health care conscience protection statutes covered by this rule that apply to it. Where possible, and where the recipient does not have a conscience-based objection to doing so, the notice should include information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience.

(e) *Combined nondiscrimination notices.* The Department and each recipient may post the notice text provided in Appendix A of this part, or a notice it drafts itself, along with the content of other notices (such as other nondiscrimination notices).

§ 88.4 Severability.

Any provision of this part held to be invalid or unenforceable either by its terms or as applied to any entity or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be severable from this part, which shall remain in full force and effect to the maximum extent permitted by law. A severed provision shall not affect the remainder of this part or the application of the provision to other persons or entities not similarly situated or to other, dissimilar circumstances.

Appendix A to Part 88—Model Text: Notice of Rights Under Federal Conscience and Nondiscrimination Laws

[Name of entity] complies with applicable Federal health care conscience protection statutes, including the Church Amendments, 42 U.S.C. 300a–7; the Coats-Snowe Amendment, section 245 of the Public Health Service Act, 42 U.S.C. 238n; the Weldon Amendment, *e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. H, title V General Provisions, section 507(d)(1) (Dec. 29, 2022); Sections 1303(b)(1)(A), (b)(4), and (c)(2)(A), and 1411(b)(5)(A), and 1553 of the ACA, 42 U.S.C. 18023(b)(1)(A), (b)(4), and (c)(2)(A), 18081(b)(5)(A), and 18113; certain Medicare and Medicaid provisions, 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3)(B), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3)(B), 1397j–1(b), and 14406; the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f), *accord, e.g.,* Consolidated Appropriations Act, 2023, Public Law 117–328, div. K, title VII, section 7018 (Dec. 29, 2022); 22 U.S.C. 7631(d); 42 U.S.C. 280g–1(d), 290bb–36(f), 1396f, 1396s(c)(2)(B)(ii); 5106i(a)); and 29 U.S.C. 669(a)(5). More information to help entities determine which statutes are applicable to them is available at *https://www.hhs.gov/conscience/conscience-protections/index.html.* You may have rights as a provider, patient, or other individual under these Federal statutes, which prohibit coercion or other discrimination on the basis of conscience, whether based on religious beliefs or moral convictions, in certain circumstances. If you believe that [Name of entity] has violated any of these provisions, you may file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at *https://www.hhs.gov/ocr/complaints/index.html* or by mail or phone at: U.S. Department of Health and Human Services, 200 Independence Avenue SW, Room 509F, HHH Building, Washington, DC 20201, 1–800–368–1019, 800–537–7697 (TDD) or by email at *ocrmail@hhs.gov.* Complaint forms and more information about Federal conscience protection laws are available at *https://www.hhs.gov/conscience.*

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