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FEDERAL REGISTER

Vol. 89 Monday,
No. 29 February 12, 2024

Pages 9739–10004

OFFICE OF THE FEDERAL REGISTER

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Title 3—

The President

Proclamation 10701 of February 6, 2024

National Tribal Colleges and Universities Week, 2024

By the President of the United States of America

A Proclamation

I have always believed that the promise of America is big enough for everyone to succeed and that it is each generation's responsibility to open the doors of opportunity just a little bit wider to include those who have been left behind. During National Tribal Colleges and Universities Week, we honor and celebrate these critical institutions for doing just that: providing opportunities for students and their communities throughout Indian Country.

A quality education can transform lives and give students the power to shape their future. But we know that not everyone has a fair shot at pursuing higher education—including many Native American students. We know that promoting educational opportunities is all the more important for Native people, after over a century of Federal assimilation policies that used education as a tool of cultural and physical violence—devastating Native communities and ripping Native families apart. We have seen time and again that Tribal Colleges and Universities uplift Native American students through culturally grounded education and put them on a path toward a brighter future. That is why my Administration has been working relentlessly to provide these institutions with the support they need to thrive.

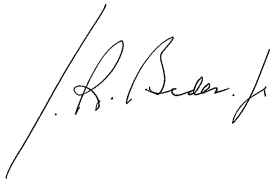
During my first year in office, I was proud to issue an Executive Order on the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities. This initiative directs the Secretary of Education, the Secretary of the Interior, and the Secretary of Labor to collaborate with leaders from Tribal Nations to advance educational equity, excellence, and economic opportunity for Native American students. We are also investing millions of dollars to provide Tribal Colleges and Universities with the resources they deserve.

My Administration has also been working to make higher education more affordable for all students. To date, we have worked with the Congress to increase the maximum Pell Grant by $900—making it easier for millions of students to pay for school. We have also fixed the Public Service Loan Forgiveness program to ensure that students who become public servants receive the debt relief they are entitled to under the law. Through our Saving on a Valuable Education Plan, we are cutting payments for undergraduate loans in half, providing early forgiveness to many borrowers with low balance loans, and saving the typical borrower around $1,000 per year. We are pursuing new actions to relieve the burden of student debt for as many borrowers as we can, as fast as we can.

Every child in America has a dream. It is our responsibility to give them the opportunity to make those dreams a reality. This National Tribal Colleges and Universities Week, let us recommit to supporting these centers of academic excellence as they empower young Native American leaders to pursue their loftiest ambitions and build an America we can all be proud of.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 4 through February 10, 2024, as National Tribal Colleges and Universities Week.

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



[FR Doc. 2024–02934
Filed 2–9–24; 8:45 am]
Billing code 3395–F4–P

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Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0224; Project Identifier AD–2024–00055–T; Amendment 39–22673; AD 2024–03–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company (Boeing) Model 737–8, 737–8200, and 737–9 airplanes. This AD was prompted by a report of a missing washer and nut and consequent migrated bolt discovered by an operator during scheduled maintenance. This AD requires a one-time inspection of the aft rudder quadrant and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2024.

The FAA must receive comments on this AD by March 28, 2024

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2024–0224; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Anthony Caldejon, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3534; email: *Anthony.V.Caldejon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2024–0224 and Project Identifier AD–2024–00055–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Anthony Caldejon, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3534; email: *Anthony.V.Caldejon@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of a missing nut and washer and of a migrated bolt in the aft rudder quadrant, which were discovered by an operator during a scheduled routine inspection in mid-December 2023. Boeing subsequently inspected all Model 737–8, –8200, and –9 airplanes in production and found one additional under-torqued nut at the same location. It was discovered that the required run-on and final torques had not been applied to the nut in production.

A disconnect between the aft rudder quadrant and the output rod (due to the bolt falling out) would result in loss of rudder control via the rudder pedals. Rudder surface position would then be based only on the rudder trim and yaw damper systems. The pilots would be able to slowly move the rudder surface by adjusting the rudder trim position but would be limited by the maximum rudder trim authority. In the event of a disconnect, and with the limited rudder trim authority, there would not be enough rudder control to counter an engine-out scenario during takeoff/climb out or to counter a high crosswind (above 20 kts) during landing. This condition, if not addressed, could result in the loss of continued safe flight and landing. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information

The FAA reviewed Boeing Multi Operator Message MOM–MOM–23–0993–01B, dated December 27, 2023. The service information specifies

performing a one-time detailed visual inspection or remote video inspection of the aft rudder quadrant for any missing bolt, nut, or washer; any gap between the bolt/nut/washer and quadrant; and insufficient thread protrusion. The service information also specifies the following corrective actions if necessary: inspection of the bolt and nut for damage and replacement as needed; torque application; and a rudder travel test.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because a disconnect between the aft rudder quadrant and the output rod would result in loss of rudder control via the rudder pedals and insufficient rudder control to counter an engine-out scenario during takeoff/climb out or to counter a high crosswind during landing, which could result in the loss of continued safe flight and landing. The corrective actions required by this AD must be accomplished within 30 days. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 482 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	0.50 work-hour × $85 per hour = $42.50	$0	$42.50	$20,485

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

ON-CONDITION COSTS

Actions	Labor cost	Parts cost	Cost per product
Inspection/replacement of bolt/nut, torque application, rudder travel test.	2 work-hours × $85 per hour = $170	$3	$173

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–03–04 The Boeing Company: Amendment 39–22673; Docket No. FAA–2024–0224; Project Identifier AD–2024–00055–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8, 737–8200, and 737–9 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before December 20, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report of a missing washer and nut and consequent migrated bolt discovered by an operator during scheduled maintenance. The FAA is issuing this AD to address improper torque of the aft rudder quadrant output rod fasteners, which may cause a disconnect between the aft rudder quadrant and the output rod, which would result in loss of rudder control via the rudder pedals to counter an engine-out scenario during takeoff/climb out or to counter a high crosswind during landing. The unsafe condition, if not addressed, could result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Inspection

Within 30 days after the effective date of this AD, perform a one-time detailed visual inspection or remote video inspection of the aft rudder quadrant for missing bolts, nuts, and washers; a gap between the bolt/nut/washer and quadrant; and insufficient thread protrusion.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by paragraph (g) of this AD can be found in Boeing Multi Operator Message MOM–MOM–23–0993–01B, dated December 27, 2023.

(h) On-Condition Actions

If any discrepancy is found during the inspection required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) through (3) of this AD before further flight.

(1) Do a detailed inspection of the bolt, washer, and nut for damage and, before further flight, replace any missing or damaged bolts, washers, and nuts.

(2) Install each bolt, washer, and nut with a torque of 65 in-lb.

(3) Perform a rudder travel test to ensure that the rudder is operating correctly. If the test fails, before further flight, do applicable corrective actions and repeat until the test is passed.

Note 2 to paragraph (h) of this AD: Guidance for accomplishing the actions required by paragraph (h) of this AD can be found in Boeing Multi Operator Message MOM–MOM–23–0993–01B, dated December 27, 2023.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi Operator Message MOM–MOM–23–0993–01B, dated December 27, 2023.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(k) Related Information

(1) For more information about this AD, contact Anthony Caldejon, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3534; email: *Anthony.V.Caldejon@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(l) Material Incorporated by Reference

None.

Issued on February 2, 2024.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–02930 Filed 2–8–24; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. FDA–2019–N–1363]

RIN 0910–AH50

Biologics License Applications and Master Files

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to amend its regulations to address the use of master files by applications licensed under the Public Health Service Act (PHS Act). This final rule codifies FDA's existing approach that former approved applications for certain biological products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) that have been deemed to be licenses for the biological products under the PHS Act may continue to incorporate by reference drug substance, drug substance intermediate, or drug product (DS/DSI/DP) information contained in a drug master file (DMF) if such information was being referenced at the time the application was deemed to be a license. This final rule also codifies FDA's general practices regarding the referencing of information in master files by applications licensed under the PHS Act, including applications for combination products licensed under the PHS Act, and by investigational new drug applications (INDs) for products that would be subject to licensure under the PHS Act.

DATES: This rule is effective March 13, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule 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: Natalia Comella, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3141, Silver Spring, MD 20993–0002, 301–796–6226, *natalia.comella@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.

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I. Executive Summary

A. Purpose and Coverage of the Final Rule

This final rule amends FDA's regulations to codify FDA's existing approach that former approved applications for biological products under the FD&C Act that have been deemed, pursuant to the Biologics Price Competition and Innovation Act of 2009 (BPCI Act), to be licenses for the biological products under the PHS Act can continue to incorporate by reference DS/DSI/DP information contained in a DMF if such information was referenced at the time the application was deemed to be a license, in order to avoid the risk of unnecessary disruptions and potential drug shortages for these products. This final rule also amends the regulations to reflect FDA's longstanding practices regarding the referencing of information contained in master files by biologics license applications (BLAs). The final rule codifies FDA's practice and policy that INDs for products that would be subject to licensure under the PHS Act may incorporate by reference any information in a master file. The final rule also amends the regulations to address the use of master files for the constituent parts of combination products licensed under the PHS Act.

B. Summary of the Major Provisions of the Final Rule

Under this final rule, FDA is amending its regulations to address the use of master files by BLAs and INDs for products subject to licensure under the PHS Act. This final rule confirms that former approved applications for biological products in new drug applications (NDAs) under the FD&C Act that have been deemed, pursuant to the BPCI Act, to be licenses for the biological products under the PHS Act may continue relying on DMFs for information on DS/DSI/DP if such information in a master file was relied on at the time the application was deemed to be a license under the PHS Act. For BLAs outside the scope of the circumstances described in the preceding sentence, the final rule also codifies FDA's existing practice that BLAs may not rely on a master file for DS/DSI/DP information but may rely on a master file for other kinds of information.[1] This final rule also codifies FDA's practice that an IND for a product that would be subject to licensure as a BLA may incorporate by reference any information, including DS/DSI/DP information, contained in a master file. This final rule also provides that, while BLAs under the PHS Act may not incorporate by reference DS/DSI/DP information contained in master files for biological product constituent parts of combination products, they may do so for non-biological product constituent parts.

C. Legal Authority

This final rule amends FDA's regulations, as part of FDA's implementation of the BPCI Act, as amended by the Further Consolidated Appropriations Act, 2020 (FCA). FDA's authority for this rule also derives from the biological product licensing provisions of the PHS Act and the provisions of the FD&C Act applicable to drugs; the FD&C Act provisions are applicable to biological products under the PHS Act.

D. Costs and Benefits

By allowing certain BLAs to continue referencing a DMF for DS/DSI/DP information, FDA avoids imposing a potential new regulatory burden. Affected entities will incur minimal costs to read and understand the rule. FDA estimates that over 10 years at a discount rate of 7 percent, the final rule will generate annualized net cost savings ranging from $0.40 million to $5.19 million with a primary estimate of $2.80 million; at a discount rate of 3 percent, the final rule will generate annualized net cost savings ranging from $0.37 million to $5.17 million with a primary estimate of $2.77 million.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
BLA	Biologics License Application.
BPCI Act	Biologics Price Competition and Innovation Act of 2009.
DMF	Drug Master File.
DP	Drug Product.
DS	Drug Substance.
DSI	Drug Substance Intermediate.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	U.S. Food and Drug Administration.
FCA Act	Further Consolidated Appropriations Act, 2020.
IND	Investigational New Drug Application.
IVD	In Vitro Diagnostic.
NDA	New Drug Application.
PHS Act	Public Health Service Act.

III. Background

A. History of This Rulemaking

In the proposed rule,[2] FDA announced its intention to amend its regulations to address the use of master files by BLAs. Section 7002(b)(1) of the BPCI Act revised section 351(i) of the PHS Act (42 U.S.C. 262(i)), in part, to amend the definition of a ''biological product'' to include a ''protein (except any chemically synthesized polypeptide).'' Section 605 of the FCA Act (Pub. L. 116–94) later amended this definition to remove the parenthetical ''(except any chemically synthesized polypeptide).''[3] Also, section 7002(e)(4) of the BPCI Act provided that, on March 23, 2020, an approved application for a biological product under section 505 of the FD&C Act (21 U.S.C. 355) ''shall be deemed to be a license for the biological product under'' section 351 of the PHS Act.[4] A number of products that were

[1] FDA notes that an applicant may seek guidance from the relevant review division at the Agency if the applicant is unsure whether information in a master file constitutes DS/DSI/DP information in the context of a particular BLA.

[2] ''Biologics License Applications and Master Files,'' 84 FR 30968 (June 28, 2019).

[3] See FDA's final rule issued on February 21, 2020, regarding its interpretation of the term ''protein'' as used in section 351(i)(1) of the PHS Act (definition of the term ''Biological Product,'' 85 FR 10057).

[4] Section 607 of Division N of the FCA Act, 2020 (Pub. L. 116–94, 133 Stat 3127), amended section

approved in NDAs under section 505 of the FD&C Act met the revised definition of a biological product and the applications for these products were deemed to be biologics license applications on March 23, 2020 (deemed BLAs). The proposed rule described FDA's interpretation of the ''deemed to be a license'' provision of the BPCI Act with respect to the use of master files by BLAs.[5]

The preamble to the proposed rule described FDA's current regulatory framework and practices regarding the use of master files by BLAs and INDs. The proposed rule also described a mechanism to provide for continued use of DMFs referenced by deemed BLAs. The preamble to the proposed rule further noted that there are combination products approved in BLAs under the PHS Act and that the rationale described in the proposed rule for the Agency's proposed approach to BLAs also applied to the biological product constituent part(s) of such combination products. FDA sought comments on whether applications for combination products submitted in BLAs under the PHS Act should be permitted to incorporate by reference DS/DSI/DP information for any non-biological product constituent part (for example, the drug constituent part of an antibody-drug conjugate).

In this final rule, FDA is finalizing the approach described in the proposed rule with several changes. Based on comments received, FDA is adding provisions codifying the use of master files by BLAs under the PHS Act for combination products. In addition, FDA is making nonsubstantive changes to the structure of the codified language to improve its readability.

7002(e)(4) of the BPCI Act to provide that FDA will continue to review an application for a biological product under section 505 of the FD&C Act after March 23, 2020, so long as that application was submitted under section 505 of the FD&C Act, is filed not later than March 23, 2019, and is not approved as of March 23, 2020. If such an application is approved under section 505 of the FD&C Act before October 1, 2022, it will be deemed to be a license for the biological product under section 351 of the PHS Act upon approval (see section 7002(e)(4)(B)(iii) and (vi) of the BPCI Act).

[5] For more information about FDA's interpretation of the ''deemed to be a license'' provision of the BPCI Act, see the guidance for industry entitled ''Interpretation of the 'Deemed to be a License' Provision of the Biologics Price Competition and Innovation Act of 2009'' (Ref. 1). We update guidances periodically. To make sure you have the most recent version of a guidance, check the FDA Drugs guidance web page at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

B. Summary of Comments to the Proposed Rule

We received fewer than 30 comment letters on the proposed rule. Several comments generally support the proposed rule, in whole or in part. Several comments recommend revisions to, or disagree with, individual provisions in the proposed rule. Some comments address the use of master files for combination products in response to FDA's request for public comment in the preamble to the proposed rule.

IV. Legal Authority

We are issuing this final rule under section 7002(e) of the BPCI Act, as amended by section 607 of the FCA Act. FDA's authority for this final rule also derives from the biological product licensing provisions of the PHS Act and the provisions of the FD&C Act (21 U.S.C. 321, *et seq.*) applicable to drugs. Under these provisions, FDA has the authority to issue regulations designed to ensure, among other things, that biological products are safe, pure, and potent and manufactured in accordance with current good manufacturing practice. FDA also has general authority to issue regulations for the efficient enforcement of the FD&C Act under section 701 of the FD&C Act, which is applicable to biological products pursuant to section 351(j) of the PHS Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

We received fewer than 30 comment letters on the proposed rule by the close of the comment period, each addressing one or more issues. We received comments from industry, individuals, and a trade organization.

We describe and respond to the comments in section V.B below. We have numbered each comment topic to help distinguish between the issues raised in the comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment for purposes of our responses. The number assigned to each comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

In addition, FDA has restructured the codified language to address comments and for ease of reading. The paragraph numbers in the codified text and preamble of this final rule differ from those used in the proposed rule. Where applicable in this preamble, we identify the paragraphs as numbered in the proposed, as well as final, codified language. Although the codified language has been restructured for ease of reading into a new § 601.2(g), the separate paragraphs of this rule, applicable to certain deemed BLAs, to INDs for products that would be subject to licensure as a BLA, and to non-biological product constituent parts of combination products regulated under the PHS Act, each function independently to address specific circumstances and codify FDA's practices for those circumstances. In the event of a stay or invalidation of any paragraph of new § 601.2(g), those paragraphs that remain in effect would continue to function sensibly[6] to address their respective circumstances. For example, invalidation of § 601.2(g), which is specific to certain deemed BLAs, would have no effect on the provisions applicable to applications outside the scope of that paragraph.

B. Specific Comments and FDA Response

1. Final § 601.2(g)(1) (Proposed § 601.2(g))

We proposed that an application for a biological product submitted to FDA for licensure under section 351 of the PHS Act, licensed under section 351 of the PHS Act, or, except as provided in proposed § 601.2(h), deemed to be licensed under section 351 of the PHS Act, may not incorporate by reference DS/DSI/DP information contained in a master file (see proposed § 601.2(g)). We also proposed that amendments and supplements to these applications may not incorporate by reference such information contained in a master file.

FDA received several comments addressing this aspect of the proposed rule, some of which agree with the need for the provision and with FDA's rationale, and some of which disagree. Some of the comments that disagree propose that FDA permit BLAs more generally to incorporate by reference information on DS/DSI/DP contained in master files or permit this on a case-by-case basis. A few comments suggest that BLAs should be permitted to incorporate certain kinds of DS/DSI/DP information by reference or that BLAs for certain products should be permitted to incorporate by reference DS/DSI/DP

[6] See, *e.g., Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 188 (D.C. Cir. 2022) (finding severability of portion of an administrative action, applying principle that severability is appropriate where ''the agency prefers severability to overturning the entire regulation'' and where the remainder of the regulation ''could function sensibly without the stricken provision'') (citations omitted).

information. For the reasons described below, we are not changing our approach in finalizing this proposal. However, because the final regulation also addresses combination products licensed in BLAs, final § 601.2(g)(1) (as well as final § 601.2(g)(3)) includes references to such applications. In addition, because § 601.2(g)(1) applies to a BLA regardless of submission type (*e.g.,* application for approval, licensed BLA, amendment, supplement), we have removed the reference to ''amendments'' and ''supplements.''

(Comment 1) FDA received three comments disagreeing with FDA's proposed approach and suggesting that FDA instead permit BLAs more generally to incorporate by reference DS/DSI/DP information contained in master files on a case-by-case basis. One of these comments asserts that FDA's proposal is inconsistent with applying a risk-based approach to regulatory review of applications, and, in support of a case-by-case approach, specifically suggests that FDA permit BLAs to incorporate by reference this information when it does not increase risk to the patient.

(Response 1) FDA disagrees that its proposal is inconsistent with applying a risk-based approach and declines to revise its proposal to permit incorporation by reference of DS/DSI/DP information contained in a master file on a case-by-case basis.

FDA agrees that it is important to employ a science- and risk-based approach to its regulation of BLAs. Accordingly, FDA considers the establishment and function of a robust quality assurance program to be essential for evaluating, controlling, and mitigating product quality risks. The Agency has carefully considered the (generally) complex characteristics of most biological products and the risks to product quality inherent in the manufacture of these products. As stated in the preamble to the proposed rule, most biological products tend to have certain features (*e.g.,* amino acid sequence, glycosylation, folding, cellular phenotype) essential to their intended effect and can be very sensitive to changes to the manufacturing process. In addition, biological products isolated from biological sources may be complex heterogeneous mixtures. As a result of such characteristics, the manufacture of most biological products carries increased potential risk to product quality. As a scientific matter, for biological products, the Agency considers it to be generally impractical for the applicant to confirm DS/DSI/DP quality characteristics without complete knowledge of, and control over, all aspects of the manufacturing process, including the manufacturing process for the DS/DSI/DP. Absent such knowledge and control, the applicant generally cannot operate a quality assurance program that independently identifies, assesses, and mitigates quality risks, which is critical to assuring the quality of a biological product.

For biological products, FDA has found that the fragmentation of DS/DSI/DP information between a master file and a BLA results in a risk to quality that is very difficult to mitigate. Therefore, requiring DS/DSI/DP information to be submitted as part of the BLA, rather than incorporated by reference to a master file, is consistent with FDA's scientific assessment of the risks associated with this category of products and the need for BLA applicants to have direct knowledge of and control over the entire manufacturing process.

As we acknowledged in the preamble to the proposed rule, there may be some biological products for which referencing a DMF for DS/DSI/DP information presents somewhat less risk. However, FDA declines to adopt a case-by-case approach to BLAs incorporating by reference DS/DSI/DP information contained in master files. Given the complex characteristics of most biological products, the importance of the applicant's knowledge of and direct control over the manufacturing processes for biological products, and the advantages in administrative efficiency and predictability, the Agency is proceeding with an approach that draws a distinction between BLAs and NDAs with regard to the referencing of master files for DS/DSI/DP information, except for certain deemed BLAs (see section V.B.2).

(Comment 2) One comment suggests that it would be unfair to prohibit sponsors of applications for ''biological products'' from incorporating by reference DS/DSI/DP information contained in master files while permitting sponsors of applications for ''drug products'' to do so because it would create unequal starting points and incentives for product development.

(Response 2) FDA disagrees that it would be unfair to prohibit BLAs from incorporating by reference DS/DSI/DP information contained in master files while permitting applications under the FD&C Act to do so. FDA's longstanding practice of not permitting BLAs to incorporate by reference DS/DSI/DP information contained in master files is based on the differences in risk generally associated with products regulated under the PHS Act and products regulated under the FD&C Act, as described above and in the preamble to the proposed rule.

With regard to a difference in starting points and incentives, nothing in this rule prohibits an IND for a product that would be subject to licensure under section 351 of the PHS Act from incorporating by reference DS/DSI/DP information contained in a master file, in the same way that an IND can for a product that would be subject to approval under the FD&C Act. Therefore, the starting points for INDs for products that would be regulated under the PHS Act and products that would be regulated under the FD&C Act are the same in this regard. Furthermore, it should be noted that at the BLA stage the inability to incorporate by reference DS/DSI/DP information contained in a master file does not remove BLA applicants' incentives or ability to proceed with product development. An applicant who does not intend to manufacture all aspects of the product for licensure may, as stated in the preamble to the proposed rule, consider other types of cooperative manufacturing arrangements, while still assuming responsibility for meeting the applicable product and establishment standards.[7] These other arrangements would provide alternatives in cases where the incorporation by reference of a master file is not permitted.

(Comment 3) Two comments assert that BLAs should be permitted to incorporate by reference DS/DSI/DP information contained in master files because IND applications are permitted to do so.

(Response 3) FDA disagrees with these comments. FDA requires an applicant to be able to submit DS/DSI/DP information directly to the BLA because, at the time a BLA is submitted, FDA expects the sponsor to have knowledge of and direct control over the manufacturing process.

As described in the preamble to the proposed rule, INDs are permitted to incorporate by reference DS/DSI/DP information contained in master files for several reasons, including the following: exposure to the investigational product is limited to subjects enrolled in clinical trials, which are typically carried out in controlled settings; the sponsor and FDA can mitigate risk by closely monitoring patients in clinical trials to evaluate the safety of the investigational

[7] See the guidance for industry ''Cooperative Manufacturing Arrangements for Licensed Biologics'' (Ref. 2).

product; and permitting INDs to incorporate by reference DS/DSI/DP information contained in master files may facilitate product development because a sponsor might otherwise choose not to make the significant investment to manufacture the DS/DSI/DP for the product at the early, investigational stage. None of these situations apply at the time of BLA submission.

Because the rationale for permitting INDs to incorporate by reference DS/DSI/DP information contained in a master file does not apply at the BLA stage, FDA declines to change its approach and permit BLAs to incorporate such information by reference.

(Comment 4) One comment contends that BLAs should be permitted to incorporate by reference DS/DSI/DP information contained in master files because, if there are concerns with the safety of a product during the BLA review process, FDA can issue a complete response letter or request mandatory postmarketing studies and postmarketing surveillance.

(Response 4) Complete response letters are regulatory responses that convey deficiencies identified by FDA during the review and evaluation of an application. Postmarketing requirements, postmarketing commitments, and postmarketing surveillance are regulatory tools that can be used to assess and address potential product risks after the product is licensed. Complete response letters, postmarketing study commitments, and postmarketing surveillance are application-specific actions. For the reasons discussed above, FDA declines to take a case-by-case (*i.e.,* application-specific) approach to BLAs' incorporation by reference of DS/DSI/DP information contained in master files. Furthermore, complete response letters, postmarketing study commitments, and postmarketing surveillance are relevant only after the product has been developed and an application has been submitted to and reviewed and evaluated by the Agency. In contrast, given the importance of the applicant's knowledge of and direct control over the manufacturing processes for biological products, a clear rule that applies to all BLAs provides all applicants with administrative efficiency and predictability early in the development process about the Agency's expectations regarding the use of master files, allowing applicants to take these expectations into account in their product development plan and when preparing content to be submitted in the application.

For the reasons discussed above, FDA declines to take a case-by-case approach, and has concluded that the availability of complete response letters, postmarketing study commitments, and postmarketing surveillance does not provide a suitable alternative to FDA's approach, which is, among other things, intended to provide predictability regarding the use of master files for BLAs.

(Comment 5) One comment proposes that FDA permit BLAs to incorporate by reference certain kinds of DS/DSI/DP information contained in a master file, advocating for the ability of BLAs to reference DS/DSI/DP information that is not ''highly product-specific.'' As an example, the comment asserts that ''drug product information'' could be interpreted to encompass extensive aseptic processing information and, in certain circumstances, this information could be appropriately managed in a master file because elements of aseptic processing can cut across multiple products and very few elements of aseptic processing are drug product-specific. The comment also suggests that platform data to support viral clearance could be more appropriately captured once in a DMF instead of being repeated in multiple BLAs, thereby reducing burden on the Agency and sponsors.

(Response 5) FDA declines to change its approach in order to permit BLAs to incorporate by reference certain DS/DSI/DP information contained in a master file as suggested by the comment.

The comment uses, but does not explain what it means by, the term ''highly product-specific information,'' other than providing examples of information that the comment considers not to be ''highly product-specific,'' such as platform data to support viral clearance and aseptic processing information. It is unclear whether these examples would, in fact, be DS/DSI/DP information in the context of a particular BLA. FDA notes that an applicant may seek guidance from the relevant review division at the Agency if the applicant is unsure whether information in a master file constitutes DS/DSI/DP information in the context of a particular BLA.

Accordingly, FDA declines to change this provision to treat DS/DSI/DP information that is not ''highly product-specific'' different from any other kind of DS/DSI/DP information contained in master files.

(Comment 6) One comment largely agrees with FDA's proposal and the rationale provided to support it but expresses concern about its application to purely synthetic drug substance intermediates, asserting that the considerations articulated in the proposed rule are appropriate only for biological products. The comment notes that a chemically synthesized polypeptide does not meet the definition of a biological product under section 7002(b) of the BPCI Act, which amended, in part, the definition of a ''biological product'' in the PHS Act to include a ''protein (except any chemically synthesized polypeptide).'' The comment requests clarity on the use of DMFs for drug substance intermediates for chemically synthesized polypeptides. The comment contends that some biological products may integrate drug substance intermediates that are chemically synthesized polypeptides. The comment asserts that the potential risks to quality are less significant in such cases because, according to the comment, these chemically synthesized polypeptides are not technically biological products. The comment contends that, under such circumstances, reliance on a DMF may be appropriate, and proposes that FDA allow reliance on a DMF for a drug substance intermediate that is purely synthetic.

(Response 6) FDA notes that, after the comment period for the proposed rule closed, section 605 of the FCA Act further amended the definition of a ''biological product'' in section 351(i) of the PHS Act to remove the parenthetical exception for ''any chemically synthesized polypeptide'' from the statutory category of ''protein.'' Accordingly, the comment's assertion that BLAs should be permitted to reference a DMF for information about a drug substance intermediate that is a chemically synthesized polypeptide because a chemically synthesized polypeptide does not meet the definition of a biological product is no longer applicable.

In addition, the inclusion of chemically synthesized polypeptides into the definition of a biological product does not change our overall concerns and approach with respect to biological products. Because chemically synthesized polypeptides can present many of the same issues and concerns as do other biological products, FDA's approach should be the same. When manufacturing processes for chemically synthesized polypeptides are appropriately designed, manufacturers can control the amino acid sequence and modifications to amino acids; however, the manufacturing of chemically synthesized polypeptides may still present risks to quality. As stated in the preamble to the proposed rule, most biological products tend to be

very sensitive to changes in their manufacturing process. For example, aspects of the manufacturing process (*e.g.,* temperature) can affect the folding of polypeptides. Therefore, even for chemically synthesized polypeptides, it is important for the applicant to have knowledge of and control over all aspects of the manufacturing process and to implement a robust quality assurance program. For this reason, the final rule requires that information about chemically synthesized drug substance intermediates be submitted directly to the application, rather than be incorporated by reference to a master file.

(Comment 7) One comment requests that BLAs for in vitro diagnostic (IVD) products, including those for licensed donor IVD screening tests, be excluded from the limitation on BLAs' incorporating by reference DS/DSI/DP information contained in master files, asserting that the reasons for limiting the use of master files for this kind of information in BLAs for therapeutic products do not apply to BLAs for IVDs.

(Response 7) FDA declines to exclude BLAs for IVD devices from the limitation on BLAs' use of master files for DS/DSI/DP information because such an exclusion is generally not necessary.

IVD devices subject to a BLA are intended for use in screening donated human cells, tissues, and cellular and tissue-based products (HCT/Ps) and donated blood in order to ensure the compatibility between donors and recipients and the absence of infectious agents. These assays are performed on samples collected from the HCT/P or blood donor.

Generally, the terms drug substance, drug substance intermediate, and drug product are not applicable to IVD devices. Therefore, the limitation in this rule on BLAs' use of master files for DS/DSI/DP information is not expected to affect BLAs for IVD devices. For this reason, the Agency considers it unnecessary to exclude BLAs for IVD devices from the scope of the rule's limitation on BLAs' use of master files for DS/DSI/DP information.

2. Final § 601.2(g)(2) (Proposed § 601.2(h))

Final § 601.2(g)(2) (proposed § 601.2(h)) addresses applications that have been deemed to be BLAs pursuant to section 7002(e)(4) of the BPCI Act, as amended by the FCA Act. This paragraph provides that a deemed BLA can continue to incorporate by reference DS/DSI/DP information contained in a DMF if such information was referenced at the time the application was deemed to be a BLA. We received several comments on this provision, most of which agree with this provision and the rationale provided in the proposed rule. A few comments disagree and several request clarification regarding certain aspects of this paragraph. For the reasons given below, we decline to make the changes suggested by the comments and are, therefore, finalizing this requirement without substantive change.

(Comment 8) One comment requests clarification regarding proposed § 601.2(h). The comment requests that FDA explain whether all biological products approved in NDAs will be permitted to continue incorporating by reference DS/DSI/DP information contained in DMFs or whether it is only a specific subset of biological products, because the preamble to the proposed rule notes that it would allow ''certain'' biological products originally approved in an NDA under the FD&C Act to continue relying on a DMF for information on DS/DSI/DP after the NDA is deemed to be a license for the biological product.

(Response 8) As explained in the preamble to the proposed rule and described in proposed § 601.2(h), a deemed BLA that was relying on DS/DSI/DP information in a DMF at the time the application was deemed a BLA may continue to incorporate by reference that DS/DSI/DP information contained in that DMF. The reference in the preamble to the proposed rule to ''certain'' applications refers to deemed BLAs that incorporated by reference DS/DSI/DP information contained in a DMF at the time the application was deemed a BLA. These are the same applications specified in § 601.2(g)(2) in this final rule.

(Comment 9) One comment requests clarification regarding whether applications that reference DMF information may continue referencing the DMF if changes are made to the DMF.

(Response 9) The preamble to the proposed rule explains that the rule is not intended to limit or restrict the changes that may be made to any master file, including a DMF containing DS/DSI/DP information. Changes made to such a DMF, including changes to previously referenced DS/DSI/DP information, do not restrict the ability of a deemed BLA to continue to incorporate by reference the DS/DSI/DP information in that DMF for the same purpose for which it was incorporated by reference at the time the application was deemed to be a BLA. For example, consider a former NDA that incorporated by reference information contained in a DMF regarding the manufacture of its drug substance and that, after the application was deemed to be a BLA, continues to incorporate by reference that drug substance information. If the DMF holder subsequently modifies drug substance manufacturing (for example, by making changes to the analytical methods or purification process for the drug substance), the deemed BLA may continue to incorporate by reference this modified drug substance information, provided that the BLA applicant informs the Agency of the change in the BLA in accordance with § 601.12 (21 CFR 601.12). Alternatively, if the DMF holder adds information about manufacturing of drug product to the same DMF, FDA does not intend to permit the deemed BLA to incorporate by reference that new drug product information because it is not the type of information that was referenced by the former NDA at the time it was deemed to be a BLA.

(Comment 10) One comment requests further information on the circumstances in which submission of a supplement to a BLA would not be sufficient and the submission of a new BLA would be required.

(Response 10) FDA notes that a description of the kinds of changes that cannot be addressed through a supplement is outside the scope of this rule. The Agency has generally described its thinking on what constitutes a separate original application, amendment, or supplement.[8]

(Comment 11) One comment suggests that deemed BLAs are best described as ''expected to transition.''

(Response 11) The applications described in § 601.2(g)(2) in this final rule have already been deemed to be BLAs by operation of the statute (section 7002(e)(4) of the BPCI Act, as amended by section 607 of the FCA Act). Therefore, referring to deemed BLAs as ''expected to transition'' would be inaccurate.

(Comment 12) One comment suggests that FDA change proposed § 601.2(h) to state that any new BLAs will not be allowed to incorporate by reference DS/DSI/DP information contained in master files after March 23, 2020.

(Response 12) The Agency declines to make the suggested change. Except as noted in final § 601.2(g)(2) and (3), final § 601.2(g)(1) applies to all BLAs, whether new or existing. Therefore, the suggested change is not needed because,

[8] For example, see the guidance for industry and FDA Staff ''Bundling Multiple Devices or Multiple Indications in a Single Submission'' (Ref. 3).

under the final codified, a new BLA may not incorporate by reference DS/DSI/DP information contained in any master file.

(Comment 13) One comment asserts that the BPCI Act was enacted to guarantee appropriate regulation of biological products to support public health and to ensure that only safe and effective products enter the market. The comment further maintains that the intent of the deemed BLA provision of section 7002(e)(4) of the BPCI Act is to ensure that scientific and technical complexities associated with the generally larger and typically more complex structure of biological products, as well as the processes by which such products are manufactured, are not overlooked. The comment asserts that it would therefore defeat the purpose of the BPCI Act to allow biological products initially approved in an NDA under the FD&C Act to continue to rely on a DMF for DS/DSI/DP information after the NDA is deemed to be a license for the biological product under the PHS Act. The comment recommends that deemed BLAs be regulated like other biological products with respect to use of master files.

(Response 13) FDA agrees that, in general, scientific and technical complexities associated with the typically more complex structures of biological products, as well as the processes by which such products are manufactured, must not be overlooked (see section V.B.1). However, with respect to deemed BLAs that previously, as former NDAs, referenced a DMF for DS/DSI/DP information at the time of the transition, FDA considered the intent underlying the BPCI Act and, as elaborated in the proposed rule, took into account the following considerations that are specific to such deemed BLAs: (1) these applications have already been approved, and the applicants have marketed the product, in certain instances for decades, without overt safety concerns; (2) the deemed BLAs that incorporate by reference DS/DSI/DP information comprise only a small subset of all BLAs and reference a very small number of DMFs; and (3) many of these BLA applicants have accumulated knowledge about the products and have been able to implement appropriate control strategies based on this product knowledge. In addition, prohibiting these deemed BLAs from continuing to incorporate by reference DS/DSI/DP information in these DMFs might have the effect of halting or curtailing production of these products, resulting in drug shortages. FDA interprets the applicable statutory provisions such that the transition was not meant to interrupt access to these products. Therefore, on balance, FDA believes that public health is best served by allowing the small number of deemed BLAs to continue referencing DS/DSI/DP information contained in DMFs on which they relied at the time of transition.

(Comment 14) One comment acknowledges that the general concern about fragmentation of DS/DSI/DP information associated with the use of DMFs is lessened for deemed BLAs by the existence of generally longstanding relationships between the deemed-BLA applicants and the DMF holders because the applicants may have accumulated knowledge about the quality of the DS/DSI/DP supplied by the DMF holder over an extended period. The comment agrees that this accumulated knowledge allows a deemed BLA applicant to implement a more robust control strategy to mitigate the risk to product quality posed by the applicant's limited knowledge of the manufacturing process described in the DMF. The comment questions how this approach would change if the contents of the DMF change or the holder of the DMF changes.

(Response 14) FDA does not consider that a change to the holder of the DMF or a change in previously referenced DS/DSI/DP information in the context of a DMF is inconsistent with the rationale for permitting deemed BLAs that previously referenced a master file for DS/DSI/DP information to continue referencing the DMF for the same type of information. The generally longstanding relationships between the deemed BLA applicant and the DMF holder, the knowledge accumulated by the deemed BLA applicant, and the knowledge accumulated by the DMF holder collectively provide some assurance about the quality of a product. When changes are made to a DMF, these assurances should continue to apply in most cases. In addition, the comparability studies required to demonstrate the safety, purity, and potency of post-change and pre-change material should provide further assurance of quality.

When the DMF remains the same but the DMF holder changes, the deemed BLA applicant's product and process knowledge still remains; the deemed BLA applicant will also have designed and implemented a control strategy that is independent of the identity of the holder of the DMF. These measures collectively should provide continued assurance of quality under such circumstances. Therefore, it is appropriate to permit deemed BLAs to continue to incorporate by reference the same type of DS/DSI/DP information contained in a DMF after a change in the content of the DMF or the holder of the DMF.

(Comment 15) One comment asserts that FDA's rationale for allowing deemed BLAs to continue incorporating by reference information on DS/DSI/DP contained in DMFs is insufficient because it is based on a small subset of the deemed BLAs and a very small number of DMFs.

(Response 15) This comment appears to misunderstand the set of deemed BLAs on which FDA's rationale is based. It is true that FDA's approach to deemed BLAs and their use of DMFs for DS/DSI/DP information applies to a small number of applications and DMFs. Deemed BLAs are a small subset of all BLAs, and deemed BLAs that reference a master file for DS/DSI/DP information are, in turn, a subset of all deemed BLAs. However, FDA's risk-based assessment of deemed BLAs' continued referencing of DMFs for DS/DSI/DP information is based on a consideration of the entire set of deemed BLAs that reference DMFs for such information, and it is only those deemed BLAs that will be able to continue referencing DS/DSI/DP information in a DMF. In other words, FDA considered the entire set of applications and DMFs that will be affected by final § 601.2(g)(2).

As elaborated in the preamble to the proposed rule, FDA considered the length of time these products have been marketed without being withdrawn or removed for reasons of safety or effectiveness; the acceptable quality of drug substances provided over decades through this incorporation by reference to DMFs; and the impact of disallowing use of DMFs for these deemed BLAs, which has the potential to curtail or halt production of some of these products, resulting in drug shortages with considerable negative impacts on public health. Based on these reasons, and the fact that there are a small number of deemed BLAs and a small number of master files referenced by these applications, the Agency has determined that it serves the public health best to permit these deemed BLAs to continue incorporating by reference the DS/DSI/DP information contained in this small set of master files.

(Comment 16) One comment proposes that a biosimilar product that references a deemed BLA that incorporates by reference DS/DSI/DP information contained in a master file should also be permitted to incorporate by reference

the same information to assist in demonstrating biosimilarity.

(Response 16) FDA recognizes that an applicant might submit a BLA for a biosimilar or interchangeable biosimilar product to a reference product that is approved in a deemed BLA and is permitted under the exception in final § 601.2(g)(2) to continue incorporating by reference DS/DSI/DP information contained in a DMF. However, for the reasons outlined below, FDA declines to amend the proposed rule to also except such BLAs for biosimilar or interchangeable biosimilar products from final § 601.2(g)(1).

Consistent with FDA's longstanding practice for BLAs, and as codified in final § 601.2(g)(1), a BLA may not reference a master file for DS/DSI/DP information because a BLA applicant needs to demonstrate knowledge of and direct control over the manufacture of the drug product, which includes manufacture of the drug substance and drug substance intermediate. For reasons discussed above, FDA believes that the public health is best served by allowing a small number of deemed BLAs—those that, in former approved applications under section 505 of the FD&C Act, relied on DMFs for DS/DSI/DP information—to continue referencing that information after being deemed a BLA. However, these reasons, such as avoiding disruptions in existing supply chains for products with deemed BLAs, do not apply to new BLAs, including BLAs for products that are biosimilar to or biosimilar and interchangeable with reference products in such deemed BLAs. We continue to consider that an approach which draws a clear distinction between deemed BLAs and other BLAs with regard to the referencing of master files for DS/DSI/DP information is the most appropriate.

FDA notes that the lack of ability to reference a master file for DS/DSI/DP information should not preclude the development of a biosimilar or interchangeable biosimilar product to a reference product in a deemed BLA that is permitted to continue incorporating by reference DS/DSI/DP information from a DMF. For example, an application for licensure as a biosimilar typically will include data derived from comparative analytical studies between the proposed biosimilar and the reference product, which should be feasible even if the biosimilar or interchangeable biosimilar product application does not reference DS/DSI/DP information that is incorporated by reference by the deemed BLA for the reference product. Moreover, data derived from comparative clinical studies, among other things, often will be included as part of a demonstration of biosimilarity. In general, a biosimilar applicant should be able to conduct such studies regardless of whether the biosimilar applicant can reference the same DMF for DS/DSI/DP information as the reference product.

Furthermore, an applicant for a biosimilar or interchangeable biosimilar product that is not permitted to incorporate DS/DSI/DP information by reference to the DMF is not required to manufacture the DS/DSI/DP; as noted above and in the preamble to the proposed rule, alternatives are available, including the use of cooperative manufacturing arrangements that ensure that the licensee for the final product assumes responsibility for compliance with the applicable product and establishment standards.

Overall, we do not believe that an applicant for a proposed biosimilar or interchangeable biosimilar product would face a barrier to generating the data necessary to demonstrate the biosimilarity or interchangeability of its proposed product to a reference product that incorporates by reference DS/DSI/DP information in a DMF, even if the biosimilar applicant is not permitted to incorporate by reference that same DS/DSI/DP information. Therefore, FDA declines to modify this provision as suggested.

We note that the Agency has taken steps to help create a more competitive market for biological products, including encouraging the development of biosimilar products, and is working to implement additional measures to maximize clarity and efficiency in biosimilar development.[9] The Agency invites prospective applicants who seek advice relating to the development and review of a biosimilar or interchangeable biosimilar product, including advice on the feasibility of licensure under section 351(k) of the PHS Act for a particular product, to contact the Agency. For Center for Drug Evaluation and Research (CDER)-regulated products, you may contact CDER-Biologics Biosimilars Inquiries at *CDER-BiologicsBiosimilarsInquiries@fda.hhs.gov;* for Center for Biologics Evaluation and Research (CBER)-regulated products, you may contact CBER at *industry.biologics@fda.hhs.gov.*

3. Final § 601.2(g)(4) (Proposed § 601.2(i))

Final § 601.2(g)(4) (proposed § 601.2(i)) codifies the Agency's practice of permitting BLAs to incorporate by reference information other than DS/DSI/DP information contained in master files, including in DMFs. Comments that address this proposed provision did not object to FDA's overall approach or the underlying rationale, and some focused on operational aspects of the provision. Therefore, we are finalizing § 601.2(g)(4) without substantive changes. Because this provision applies to a BLA regardless of submission type, we have removed the reference to amendments and supplements.

(Comment 17) Three comments request clarification or codification of the type of data and information that constitutes information other than DS/DSI/DP information that is contained in master files and can be leveraged by BLAs.

(Response 17) In the preamble to the proposed rule, we provided examples of the kinds of information that are not DS/DSI/DP information, including excipients, stabilizers, penetrants, container closure, and other materials. However, we decline to codify in this rule an exhaustive list of the specific types of information that are not DS/DSI/DP information and that can be included in a master file and incorporated by reference by a BLA. A potential applicant may seek additional guidance from the relevant review division if the applicant is unsure whether it is appropriate to incorporate by reference a particular type of information contained in a master file.

(Comment 18) One comment requests that FDA codify the tests and analyses that should be performed by the applicant when data or information is being incorporated by reference by the BLA.

(Response 18) FDA declines to codify the tests and analyses that the applicant should perform because these depend on, among other things, the nature of the data and information contained in the master file and incorporated by reference.

(Comment 19) One comment requests that FDA clarify whether proposed § 601.2(i) applies to master files held by contract manufacturing organizations (CMOs). The comment reasons that sponsors developing biological products frequently incorporate into BLAs information other than DS/DSI/DP (*e.g.,* for a fill or incorporation of a device, such as an autoinjector) by referencing a master file held by a CMO.

(Response 19) FDA clarifies that this final rule applies to all master files containing information that is being considered for incorporation by reference by a BLA, regardless of the ownership of the master file. Therefore, BLAs may incorporate by reference information (other than DS/DSI/DP

[9] See ''Biosimilars Action Plan: Balancing Innovation and Competition,'' pgs. 5–7 (Ref. 4).

information) that is contained in master files held by CMOs.

(Comment 20) One comment requests that FDA update the proposed rule to explicitly state that Type V DMFs can be used for certain non-product-specific equipment and facility information, including sterilization validation information, to support multiple NDAs/BLAs.

(Response 20) Final § 601.2(g)(4) codifies that BLAs may incorporate by reference information other than DS/DSI/DP information contained in master files. Information in Type V DMFs, like information in all master files, may be incorporated by reference by multiple applications, provided that the information is not DS/DSI/DP information. We do not consider it necessary to explicitly reference Type V DMFs in the codified language.

(Comment 21) One comment requests that FDA qualify proposed § 601.2(i) by adding that nothing in proposed § 601.2(g) limits or alters a license holder's ability to modify a product under § 601.12, nor is it intended to expand or reduce the changes allowed to a deemed BLA that incorporates by reference information contained in master files.

(Response 21) FDA declines to change proposed § 601.2(i) (final § 601.2(g)(4)) as the comment requests. As stated in the preamble to the proposed rule, this codification of current practice is not intended to alter an applicant's existing ability to modify a product under § 601.12. We further stated in the preamble to the proposed rule that the proposed rule is also not intended to expand or reduce the changes allowed to a deemed BLA that incorporates by reference information contained in master files.

4. Combination Products Approved in BLAs

The Agency recognized in the preamble for the proposed rule that there are combination products approved in BLAs. Although the proposed rule did not focus on combination products in BLAs, in the preamble, we stated our position that the rationale for the treatment of BLAs for biological products also applies to the biological product constituent part(s) of combination products licensed under the PHS Act (*i.e.,* BLAs should not be permitted to incorporate by reference DS/DSI/DP information contained in master files for a biological product constituent part of a combination product for the same reasons that BLAs for biological products should not be permitted to do so).[10] Additionally, the Agency specifically requested comments on whether BLAs should be permitted to incorporate by reference DS/DSI/DP information for any non-biological product constituent part of a combination product.

We received several comments disagreeing with our position that, since BLAs for biological products cannot incorporate by reference DS/DSI/DP information contained in a master file, then BLAs should also not be permitted to incorporate by reference such information for a biological product constituent part of a combination product. We also received comments both in support and not in support of permitting BLAs to incorporate by reference DS/DSI/DP information for the non-biological product constituent part(s) of a combination product. We did not receive any comments discussing whether BLAs should be able to reference master files for information other than DS/DSI/DP information for either the biological or non-biological product constituent parts of a combination product.

Based on our consideration of the comments regarding BLAs' incorporation by reference of information contained in master files for constituent parts of combination products, we are addressing combination products approved as BLAs under section 351 of the PHS Act in the final rule.

a. BLAs referencing a master file for DS/DSI/DP information for a biological product constituent part of a combination product: final § 601.2(g)(1) (proposed § 601.2(g)). We received several comments disagreeing with our position that BLAs will not be permitted to incorporate by reference DS/DSI/DP information contained in a master file for a biological product constituent part of a combination product.

(Comment 22) The comments disagreeing with FDA's proposal regarding biological product constituent parts of a combination product refer to the reasons that the commenters disagree with the Agency's rationale for not permitting BLAs generally to reference master files for DS/DSI/DP information but do not provide a reason for their disagreement that is specific to a biological product constituent part of a combination product.

(Response 22) The comments do not provide any reason why a BLA should be permitted to reference a master file for DS/DSI/DP information for a biological product constituent part of a combination product. Instead, the comments refer to the arguments they provide for why BLAs more generally should be permitted to incorporate by reference DS/DSI/DP information. In section V.B.1 of this preamble, we explain why we disagree with that position. None of the comments suggest that there is anything unique about a biological product constituent part of a combination product that warrants not extending the approach for BLAs to a biological product constituent part of a combination product in a BLA. Accordingly, we have modified final § 601.2(g)(1) to state that, except as provided, a BLA may not incorporate by reference DS/DSI/DP information contained in a master file, including for a biological product constituent part of a combination product.

b. BLAs referencing a master file for information other than DS/DSI/DP information for a constituent part of a combination product: final § 601.2(g)(4) (proposed § 601.2(i)). With regard to the referencing of a master file for information other than DS/DSI/DP information, we did not receive any comments objecting to BLAs' referencing this information for either a biological product constituent part or a non-biological product constituent part of a combination product. Therefore, FDA has decided that these BLAs, like all other BLAs, may incorporate by reference information other than DS/DSI/DP information contained in master files (see section V.B.3). Accordingly, final § 601.2(g)(4) covers the incorporation by reference of information contained in master files that is not DS/DSI/DP information by all BLAs, regardless of whether such information is incorporated by reference for the product or for a constituent part of a combination product.

c. BLAs referencing a master file for DS/DSI/DP information for a non-biological product constituent part of a combination product: final § 601.2(g)(3) (new). As discussed above, in the preamble of the proposed rule, the Agency specifically requested comments on whether applications for combination products submitted in BLAs should be permitted to incorporate by reference DS/DSI/DP information for any non-biological product constituent part of a combination product. FDA received numerous comments on this topic. Most

[10] The Agency intends to continue to take a consistent approach to biological product constituent parts of combination product applications subject to regulation under other (non-BLA) marketing applications (*i.e.,* non-BLA marketing applications for combination products should not be permitted to incorporate by reference DS/DSI/DP information contained in master files for biological product constituent parts).

of the comments support permitting BLAs to reference master files for DS/DSI/DP information with respect to the non-biological product constituent part(s) of a combination product, while a few comments are against such an approach. The comments we received helped inform our decision to clarify in this final rule that a BLA may incorporate by reference DS/DSI/DP information contained in any master file for any non-biological product constituent part of a combination product.

(Comment 23) Several comments support codifying in the final rule that BLAs are permitted to incorporate by reference DS/DSI/DP information contained in master files for the non-biological product constituent parts of combination products, but the comments do not provide a rationale. Another comment reasons that DMFs for drug products have been relied on for decades and enabling continued referencing of DS/DSI/DP information for the non-biological product constituent part(s) of a combination product in a BLA will allow further development of ''superior treatments.'' An additional comment suggests that permitting BLAs to reference a master file for DS/DSI/DP information for the non-biological product constituent part(s) of a combination product would enable biological product and small molecule manufacturers to collaborate more efficiently. Finally, one comment analogizes that, because a BLA would be permitted to incorporate any information from the device master file system for a medical device constituent part of a combination product, BLAs should also be able to reference DMFs for DS/DSI/DP information for drug constituent parts.

(Response 23) We agree that BLAs should be permitted to reference master files for DS/DSI/DP information with respect to the non-biological product constituent part(s) of combination products. As we explained in the preamble to the proposed rule, historically, the Agency has, as a scientific matter, expected applicants to submit information about DS/DSI/DP directly to the BLA for a biological product, rather than have the BLA incorporate it by reference to a master file. However, as a scientific matter, a similar expectation would not apply to applications for non-biological products regulated under the FD&C Act, which are permitted to incorporate by reference DS/DSI/DP information contained in a master file.

Much of the rationale for why a BLA is not permitted to reference a master file for DS/DSI/DP information does not apply in the case of a non-biological product constituent part of a combination product in a BLA. As we explained in the preamble to the proposed rule, the risk associated with the manufacture of biological products is generally significantly higher than that associated with the manufacture of products regulated under NDAs, which are often less complex.[11] This is because most biological products tend to have certain features (*e.g.,* amino acid sequence, glycosylation, folding, cellular phenotype) essential to their intended effect and can be very sensitive to changes to their manufacturing process, which makes them less amenable to characterization than small molecule chemical entities. While these considerations apply to biological product constituent parts of combination products, they generally do not apply to non-biological product constituent parts, which are often relatively simple, homogenous, and fully characterizable by extensive analytical testing. As such, the need for direct knowledge and control in the manufacturing of a non-biological product constituent part is generally mitigated by the ability to define the non-biological constituent part through analytical testing, and the risk associated with such manufacturing is generally lower than that associated with the manufacture of the biological product constituent part.

As two comments suggest, such an approach is consistent with how a non-biological product constituent part of a combination product, such as a drug constituent part, would be treated if it were a standalone product regulated under the FD&C Act. Additionally, we agree with the comment that permitting such referencing of information for non-biological product constituent part(s) could foster innovation by enabling more efficient collaboration between the manufacturer of the non-biological product constituent part and the manufacturer of the final product submitted in a BLA.

Accordingly, final § 601.2(g)(3) permits BLAs to incorporate by reference DS/DSI/DP information contained in a master file for the non-biological product constituent part(s) of a combination product.

(Comment 24) One comment does not support allowing BLAs to incorporate by reference DS/DSI/DP information for the non-biological product constituent part(s) of a combination product. The comment contends that the lack of knowledge and control over a drug constituent part for which a master file is referenced for DS/DSI/DP information introduces risk when that drug constituent part is combined with a biological product constituent part.

(Response 24) We understand that permitting a BLA to reference a master file for DS/DSI/DP information for a non-biological product constituent part, such as a drug constituent part, that is then combined with a biological product constituent part may introduce additional risk for the final combination product. However, the Agency considers it generally practical for the BLA applicant to confirm the DS/DSI/DP quality characteristics of the non-biological product constituent part through testing. This feasibility of testing and characterizing the non-biological product constituent part generally enables the BLA applicant to implement a robust control strategy for the final combination product that can mitigate the risks to quality arising from the applicant's lack of access to the DS/DSI/DP information for the non-biological product constituent part. Furthermore, the applicant would still be expected at the time of review of the BLA to have sufficient control strategies for the entire combination product, including an appropriate control strategy to mitigate the risk of the applicant not having access to the manufacturing information for the non-biological product constituent part.

(Comment 25) Another comment is concerned with non-biological product constituent parts categorically being permitted to reference a master file for DS/DSI/DP information because special controls may be necessary for drug constituent parts that are cytotoxic in nature, such as in the case of an antibody-drug conjugate combination product licensed in a BLA.

(Response 25) FDA acknowledges that the manufacture of cytotoxic drugs requires special expertise and controls to address the risks associated with the toxic nature of the drug, such as the implementation of special air-handling systems to reduce the risk of exposure to the cytotoxic drug by manufacturing personnel. We point out, however, that such controls to address toxicity-related risks differ from the controls that are discussed elsewhere throughout this rulemaking, which address the risks associated with the generally complex manufacturing of biological products. Permitting a BLA to incorporate by reference DS/DSI/DP information contained in a master file for a cytotoxic drug constituent part of a combination product does not increase the toxicity-related risks associated with either the

[11] As addressed in the preamble to the proposed rule, the Agency recognizes that, in limited circumstances, this may not always be the case.

manufacture of the cytotoxic drug constituent part or the manufacture of the combination product that contains the cytotoxic drug constituent part. Furthermore, the toxicity-related risks associated with the manufacture of a cytotoxic drug constituent part of a combination product licensed in a BLA are unlikely to differ significantly from the toxicity-related risks associated with the manufacture of cytotoxic drug products that are not constituent parts of combination products licensed in BLAs. Therefore, FDA declines to treat cytotoxic drug constituent parts differently from other non-biological product constituent parts and will permit BLAs to incorporate by reference DS/DSI/DP information contained in master files for cytotoxic drug constituent parts of combination products.

(Comment 26) One comment expresses concern that the BLA applicant would have a greater burden to establish a quality assurance program to mitigate the risk if the BLA incorporates by reference DS/DSI/DP information contained in a master file for the non-biological product constituent part of a combination product and this would be costlier and more complex than if the BLA is not permitted to rely on a master file for such information for the non-biological product constituent part.

(Response 26) To the extent that there is concern that an applicant would find it costlier and more complex to establish a quality assurance program to mitigate the risk associated with the use of a master file for DS/DSI/DP information for the non-biological product constituent part of a combination product than it would be to directly include such information in the BLA, we point out that FDA is not mandating the use of master files under such circumstances.

5. Final § 601.2(g)(5) (Proposed § 601.2(j))

FDA proposed in § 601.2(j) of the proposed rule that INDs for products that would be subject to licensure under the PHS Act not be restricted from incorporating by reference any information, including DS/DSI/DP information, contained in a master file, including a DMF submitted under § 314.420 (21 CFR 314.420). Several comments support the proposed approach. However, a few comments disagree and recommend that, as is the case for BLAs, an IND for a product that would be subject to licensure under the PHS Act not be permitted to incorporate by reference DS/DSI/DP information.

(Comment 27) One comment disagrees with FDA's proposed approach of permitting INDs for products that would be subject to licensure under the PHS Act to incorporate by reference DS/DSI/DP information contained in a master file. The comment contends that the approach is unreasonable because, while exposure to the biological product is limited during the IND stage, the IND should still ensure that clinical trial subjects are not exposed to what the comment considers unreasonable harm should the IND incorporate by reference DS/DSI/DP information contained in a master file.

(Response 27) FDA agrees that it is important to ensure that clinical trial subjects are not exposed to an unreasonable risk of harm but disagrees with the comment's assessment of FDA's approach.

During early preclinical development for a new product, the primary goal of FDA and sponsors is to ensure that the product is reasonably safe for initial use in humans and to determine whether the test product exhibits pharmacological activity that justifies commercial development. When a product is identified as a viable candidate for further development, the sponsor then focuses on collecting the data and information necessary to establish that the product will not expose humans to unreasonable risks when used in limited, early-stage clinical studies.

Clinical trials permit the assessment of the safety and efficacy of investigational products from early drug development through the approval process and beyond. To ensure that clinical trial subjects are not exposed to unreasonable risk of harm, FDA has issued numerous regulations governing human subject protection and the conduct of clinical trials, including regulations regarding informed consent (part 50 (21 CFR part 50)) and institutional review boards, which also participate in the oversight of clinical trials (21 CFR part 56).

All subjects in clinical trials under an IND receive appropriate informed consent that discusses the known benefits and risks. With limited exceptions, investigators must obtain the informed consent of subjects (or their legally authorized representatives) in clinical trials under IND (§ 50.20). In seeking informed consent, certain information is provided to subjects, including a description of reasonably foreseeable risks and a description of benefits that may reasonably be expected (§ 50.25).

Furthermore, safety monitoring is not static and continues to apply as product development progresses. IND regulations in part 312 (21 CFR part 312) set forth safeguards that are designed to ensure such safety. Sponsors are expected to continue to ensure the safety of subjects and, as new safety information is identified, to take appropriate steps, which may include incorporating additional safety monitoring and updating the informed consent form. FDA has authority to place an investigation on clinical hold (§ 312.42) if it finds that human subjects are or would be exposed to an unreasonable and significant risk of illness or injury. IND regulations at § 312.56 state that a sponsor who determines that its investigational drug presents an unreasonable and significant risk to subjects must discontinue those investigations that present the risk.

As explained above and in the preamble to the proposed rule, exposure to the investigational product is limited at the IND stage because the product is only administered to subjects enrolled in clinical trials, which are typically carried out in controlled settings. The controlled nature of a clinical trial allows for close safety monitoring of these subjects, rapid identification of any safety issues that may arise, and implementation of corresponding mitigation strategies.

For these reasons, FDA considers that the existing safeguards available in the IND process are sufficient to ensure that subjects participating in clinical trials, including those for products that would ultimately be regulated under BLAs and for which the INDs incorporate by reference DS/DS/DP information contained in master files, are not exposed to unreasonable risk of harm.

(Comment 28) Another comment expresses concern that the sponsor of an IND for a product that would be subject to licensure under the PHS Act that incorporates DS/DSI/DP information by reference to a master file may not be able to develop the necessary knowledge and control over the manufacturing process when product development reaches the BLA stage. Therefore, the comment suggests setting a deadline during the development stage by which time the sponsor needs to demonstrate knowledge and control over the manufacturing process and can no longer incorporate by reference DS/DSI/DP information from a master file.

(Response 28) FDA notes that a deadline to develop the requisite knowledge and direct control is not necessary because the submission of the BLA effectively serves as a deadline. As

noted in the preamble to the proposed rule, it has been FDA's practice to permit INDs for products that would be subject to licensure under the PHS Act to incorporate by reference DS/DSI/DP information contained in a master file. By later stages of development, however, FDA requires the sponsors to have knowledge of and direct control over the manufacturing process, and to be able to submit DS/DSI/DP information directly to the BLA. A sponsor can plan its product development to ensure that, at the time the BLA is submitted, the sponsor is able to meet these requirements.

(Comment 29) Several comments agree with the Agency's proposed approach with respect to INDs for products that would be subject to licensure under the PHS Act and the referencing of master files for information including DS/DSI/DP information. One comment suggests that allowing the referencing of DS/DSI/DP information at the IND stage could promote product development and proposes that this benefit be explicitly included in the corresponding codified section. Another comment advises that permitting INDs for products that would be subject to licensure under the PHS Act to reference master files for DS/DSI/DP information ensures that previous knowledge is leveraged.

(Response 29) We agree that not limiting the ability of INDs for products that would be subject to licensure under the PHS Act to reference a master file for DS/DSI/DP information may facilitate product development. As we explained in the preamble of the proposed rule, and as discussed above, without this option a sponsor might not choose to make the significant investment to manufacture the necessary DS/DSI/DP for a product at this early stage of development. However, we do not think it is necessary to add an explicit reference to the benefit of promoting product development to the codified language.

6. Other Issues Raised by Commenters

(Comment 30) One comment suggests that it would be helpful if the Agency defined the term ''drug substance intermediate,'' especially in reference to combination products.

(Response 30) FDA is not defining the term ''drug substance intermediate'' in this rule because such a definition would have implications beyond the scope of this rule. FDA will consider whether to provide a definition in rulemaking that has a broader scope since the term is used throughout the BLA regulations.[12]

(Comment 31) One comment requests that FDA outline any plans for publication of guidances that more clearly articulate the Agency's current thinking on specific kinds of master files (*e.g.,* those containing information on autoinjectors, on fillers, or those owned by CMOs) that may be referenced in BLAs, to enable appropriate referencing of relevant master files, thereby promoting improved compliance and reducing the risk of delays in application reviews.

(Response 31) FDA will take this suggestion under consideration with respect to the development of future guidances. FDA annually publishes nonbinding lists of new and revised draft guidance documents that it plans to publish in the upcoming calendar year. In addition, a potential applicant may also seek additional guidance from the relevant review division if the applicant is unsure whether it is appropriate to incorporate by reference a particular type of information contained in a master file.

(Comment 32) One comment encourages FDA to undertake modifications to internal processes and training of staff and revise the DMF guidance to implement this rule. Specifically, the comment requests that FDA: (1) update its internal training procedures and relevant procedural documents to ensure that Agency reviewers consistently implement and apply proposed § 601.2(i) during application assessment; (2) update the DMF guidance to improve the format and layout of a DMF to avoid duplicating the content of DMFs across multiple applications and supplements; (3) explore potential technological solutions to permit cross-linking between BLAs and DMFs; and (4) incorporate the feedback provided in this comment into the revised draft guidance ''Drug Master Files'' (Ref. 5).

(Response 32) FDA agrees that consistency in the implementation of final § 601.2(g)(4) (proposed § 601.2(i)) is important. As with any regulation, FDA will work to ensure correct and consistent implementation of this rule.

Regarding the DMF guidance, we note that the revised draft guidance was issued on October 21, 2019, and reflects additional information to assist sponsors in improving the format of DMFs. Comments to guidance documents may be submitted at any time.

Regarding technological solutions to permit cross-referencing between BLAs and DMFs, FDA believes that its recent efforts in the area of electronic submissions of DMFs may address some of the concerns.[13] [14]

(Comment 33) One comment requests that there should also be provisions established that would notify applicants referencing a DMF when that DMF has been altered (without disclosing proprietary information). The comment notes that such notification would be beneficial to regulators and applicants who would be aware of any changes made by the DMF holder that may improve quality or safety of the final product.

(Response 33) The purpose of this rule is to clarify when BLAs and INDs for products subject to licensure under the PHS Act can use master files. The operation of a DMF, which is addressed under § 314.420, falls outside the scope of this rule; accordingly, FDA declines to address this issue in this rule.

(Comment 34) One comment observes that, if a DMF were reviewed prior to submission of an NDA or abbreviated new drug application (ANDA), it would allow companies, especially less established ones, to avoid any issues with referencing an incomplete DMF for their NDA or ANDA filing. Additionally, the comment suggests that FDA should consider eliminating assessment fees to encourage smaller biotech and pharmaceutical companies to develop biosimilars.

(Response 34) FDA declines to make changes to this final rule that would address these suggestions because the process for incorporating by reference information contained in master files, the timing of such referencing, and the fees related to assessment of DMFs are outside the scope of this rule.

(Comment 35) One comment notes, without suggesting any changes, that in the description of the proposed rule for proposed paragraph § 601.2(h), FDA should include information on the impact of the transition of an NDA to a BLA on exclusivity of the product.

(Response 35) Exclusivity considerations are outside the scope of this rule. We note that FDA has issued guidance that, in part, addresses FDA's

[12] FDA notes that an applicant may seek guidance from the relevant review division at the Agency if the applicant is unsure whether information in a master file constitutes DS/DSI/DP information in the context of a particular BLA.

[13] See the revised draft guidance for industry ''Drug Master Files'' (Ref. 5).

[14] See the guidance for industry ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' (Ref. 6) for relevant discussion of FDA's current thinking on electronic submissions.

current thinking about its interpretation of section 7002(e) of the BPCI Act and exclusivity.[15]

(Comment 36) One comment requests that FDA approve stem cells as an alternative to surgery that can be covered by insurance; another comment relates to ''pandemic flu'' and acquired immunity.

(Response 36) These topics are outside the scope of this rule.

VI. Effective/Compliance Date

This final rule is effective 30 days after the date of publication in the **Federal Register**.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) 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 or communities.'' OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1).

Because this rule is not likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does not fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not impose new regulatory burden on small entities, other than administrative costs of reading and understanding the rule, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

Allowing deemed BLAs for biological products to continue referencing DMFs for DS/DSI/DP information will generate net cost-saving benefits for the private and government sectors. Furthermore, the final rule will provide certainty, promote continuity, and help avoid potential disruptions in the supply of certain biological products that were approved in applications under section 505 of the FD&C Act and deemed, pursuant to section 7004(e) of the BPCI Act, to be licenses for the biological products under section 351 of the PHS Act.

By allowing certain BLAs to continue referencing a DMF for DS/DSI/DP information, FDA avoids imposing a potential new regulatory burden. Affected entities will incur minimal costs to read and understand the rule. FDA estimates that over 10 years at a discount rate of 7 percent, the final rule will generate annualized net cost savings ranging from $0.40 million to $5.19 million with a primary estimate of $2.80 million; at a discount rate of 3 percent, the final rule will generate annualized net cost savings ranging from $0.37 million to $5.17 million with a primary estimate of $2.77 million. Table 1 summarizes our estimate of the annualized costs and the annualized cost-saving benefits of the final rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE

[Millions in 2022 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$2.81	$0.41	$5.20	2022	7	10	Cost savings.
	$2.78	$0.38	$5.18	2022	3	10	Cost savings.
Costs:							
Annualized Quantified					7		
					3		
Qualitative							
Annualized Monetized $millions/year	$0.01	$0.01	$0.01	2022	7	10	
	$0.01	$0.01	$0.01	2022	3	10	
Annualized Quantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year					7		
					3		
From/To	From:			To:			

[15] See the guidance for industry ''Interpretation of the 'Deemed to be a License' Provision of the Biologics Price Competition and Innovation Act of 2009'' (Ref.1).

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE—Continued
[Millions in 2022 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Other Annualized Monetized $millions/year					7 3		
From/To	From:			To:			
Effects:							
State, Local, or Tribal Government: None. Small Business: None. Wages: None. Growth: None.							

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 7) and at *https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria*.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that 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, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; they are also available electronically at *https://www.regulations.gov/*. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA, Guidance for Industry, ''Interpretation of the 'Deemed to be a License' Provision of the Biologics Price Competition and Innovation Act of 2009,'' December 2018. Available at *https://www.fda.gov/media/119272/download*. Accessed May 12, 2023.

2. FDA, Guidance for Industry, ''Cooperative Manufacturing Arrangements for Licensed Biologics,'' November 2008. Available at *https://www.fda.gov/media/70712/download*. Accessed May 12, 2023.

3. FDA, Guidance for Industry and FDA Staff, ''Bundling Multiple Devices or Multiple Indications in a Single Submission,'' June 2007. Available at *https://www.fda.gov/media/73500/download*. Accessed May 12, 2023.

4. FDA, ''Biosimilars Action Plan: Balancing Innovation and Competition,'' July 2018. Available at *https://www.fda.gov/media/114574/download*. Accessed May 12, 2023.

5. FDA, Draft Guidance for Industry, ''Drug Master Files (Rev.1),'' October 2019. Available at *https://www.fda.gov/media/131861/download*. Accessed May 12, 2023.

6. FDA, Guidance for Industry, ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Rev. 7),'' February 2020. Available at *https://www.fda.gov/media/135373/download*. Accessed May 12, 2023.

7. Final Regulatory Impact Analysis, ''Biologics License Applications and Master Files.''

List of Subjects in 21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

PART 601—LICENSING

■ 1. The authority citation for part 601 is revised to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c-360f, 360h-360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note), sec 7002(e), Pub. L. 111–148, 124 Stat. 817, as amended by sec. 607, Division N, Pub. L. 116–94, 133 Stat. 3127.

■ 2. In § 601.2, add paragraph (g) to read as follows:

§ 601.2 Applications for biologics licenses; procedures for filing.

* * * * *

(g) *Master files*—(1) *Biologics license applications under section 351 of the Public Health Service Act not permitted to incorporate by reference drug substance, drug substance intermediate, or drug product information contained in a master file.* Except as provided in paragraphs (g)(2) and (3) of this section, a biologics license application under section 351 of the Public Health Service Act may not incorporate by reference drug substance, drug substance

intermediate, or drug product information contained in a master file, including a drug master file submitted under § 314.420 of this chapter, for the product, including for a biological product constituent part of a combination product.

(2) *Former approved applications deemed to be licenses for biological products pursuant to section 7002(e)(4) of the Biologics Price Competition and Innovation Act of 2009.* An application for a biological product that:

(i) Is a former approved application under section 505 of the Federal Food, Drug, and Cosmetic Act that, pursuant to section 7002(e)(4) of the Biologics Price Competition and Innovation Act of 2009, has been deemed to be a license for the biological product under section 351 of the Public Health Service Act; and

(ii) At the time it was so deemed, incorporated by reference drug substance, drug substance intermediate, and/or drug product information contained in a drug master file submitted under § 314.420 of this chapter, may continue to incorporate by reference the information contained in that drug master file. Amendments and supplements to such applications may also continue to incorporate by reference the information contained in that drug master file.

(3) *Non-biological product constituent parts of combination products regulated under biologics license applications under section 351 of the Public Health Service Act.* A biologics license application under section 351 of the Public Health Service Act may incorporate by reference drug substance, drug substance intermediate, and/or drug product information contained in a master file, including a drug master file submitted under § 314.420 of this chapter, for any non-biological product constituent part of a combination product.

(4) *Biologics license applications under section 351 of the Public Health Service Act permitted to incorporate by reference information contained in a master file that is not drug substance, drug substance intermediate, or drug product information.* Nothing in paragraph (g)(1) of this section limits or restricts a biologics license application under section 351 of the Public Health Service Act from incorporating by reference information contained in any master file, including a drug master file submitted under § 314.420 of this chapter, that is not drug substance, drug substance intermediate, or drug product information.

(5) *Investigational new drug applications.* Nothing in paragraph (g)(1) of this section limits or restricts an investigational new drug application for a product that would be subject to licensure under section 351 of the Public Health Service Act from incorporating by reference any information, including drug substance, drug substance intermediate, and drug product information, contained in a master file, including a drug master file submitted under § 314.420 of this chapter.

Dated: January 30, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–02741 Filed 2–9–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1006

[Docket No. FR–6273–F–02]

RIN 2577–AD13

Implementing Rental Housing Assistance for the Native Hawaiian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule amends HUD's regulations covering rental housing assistance for the Native Hawaiian Housing Block Grant (NHHBG) program, consistent with the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The amendments clarify and improve consistency with NAHASDA's statutory requirements and HUD's Indian Housing Block Grant (IHBG) program regulations. This rule would also help to make affordable housing opportunities, in the form of NHHBG-assisted rental housing, more available to eligible Native Hawaiian families.

DATES: Effective March 13, 2024.

FOR FURTHER INFORMATION CONTACT: Claudine Allen, Lead Native Hawaiian Program Specialist, Office of Native American Programs, HUD Honolulu Field Office, 1003 Bishop Street, Suite 2100, Honolulu, HI 96813; telephone number 808–457–4674 (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 from individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Authority for the Native Hawaiian Housing Block Grant program

Section 513 of the Hawaiian Homelands Homeownership Act of 2000 (HHH Act),[1] Public Law 106–569, amended the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding to it a new ''Title VIII—Housing Assistance for Native Hawaiians.'' Title VIII of NAHASDA established the Native Hawaiian Housing Block Grant (NHHBG) program to provide block grant assistance for affordable housing for eligible Native Hawaiians, including rental assistance.[2]

The NHHBG program must primarily benefit low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands. 25 U.S.C. 4222(a); 25 U.S.C. 4228(a)(2)(A). These families experience more significant housing challenges compared to Native Hawaiian households overall, including other Hawaii residents and Native Hawaiians already residing on the Hawaiian Home Lands.

Interim Rule

On June 13, 2002, HUD published an interim rule (''interim rule'') adding new regulations at 24 CFR part 1006 to implement the NHHBG program. 67 FR 40773. HUD modeled the NHHBG regulations after the Indian Housing Block Grant (IHBG) regulations implemented at 24 CFR part 1000 because NAHASDA authorizes and applies overlapping requirements to both programs.[3]

[1] The HHH Act was enacted as both Title II of the Omnibus Indian Advancement Act (Pub. L. 106–568, 114 Stat. 2868, approved December 27, 2000) and Subtitle B of Title V of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000).

[2] Section 513 of the HHH Act adds sections 801 through 824 of NAHASDA's Title VIII, which authorize this NHHBG program. 25 U.S.C. 4221 *et seq.* Although NAHASDA may be referenced throughout this rule, NHHBG serves Native Hawaiians specifically.

[3] 67 FR 40773; *see* Native American Housing Assistance and Self-Determination Act of 1996 [hereinafter NAHASDA] sections 810–811, 25 U.S.C. 4229–30. There are also differences between the statutory authorities governing the IHBG and NHHBG programs. In 2008, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411) (NAHASDA Reauthorization Act), made several changes to, *inter alia,* statutory requirements governing HUD's IHBG program, and implemented statutory changes to NAHASDA made by several

Continued

The interim rule established program requirements pertaining to homeownership and rental assistance authorized under section 810 of Title VIII of NAHASDA.[4] The new 24 CFR part 1006 as implemented by the interim rule closely followed the statute with some differences for clarification.

Need To Amend NHHBG Regulations

HUD has not comprehensively reviewed or amended 24 CFR part 1006 since the interim rulemaking. Since then, Congress has amended statutory requirements, which HUD has implemented for the IHBG program through rulemaking, but not the NHHBG program.

Additionally, current NHHBG regulations do not adequately explain how NHHBG's sole funding recipient, the Department of Hawaiian Home Lands (DHHL), may use funds for rental assistance. Prior to fiscal year 2020, the DHHL used NHHBG funds primarily for homeownership housing assistance. In 2019, Hawaii changed administrative rules to allow the DHHL to expand residential lease offerings to include rental housing.[5] HUD received feedback from the DHHL about the DHHL's rental housing projects currently in development. HUD then reviewed its regulations and determined that additional regulatory details would be necessary to support a fully successful rental housing program administered by the DHHL.

II. The Proposed Rule

On January 4, 2023, HUD published a proposed rule in the **Federal Register** (88 FR 328) to amend the NHHBG program regulations at 24 CFR part 1006 to provide necessary updates to NHHBG regulations and clarify how the DHHL may use NHHBG program funds for rental housing assistance, as authorized by Title VIII of NAHASDA.

HUD's broad goals in proposing these changes were to decrease DHHL's burden in implementing rental assistance, improve low-income Native Hawaiian families' access to rental assistance, and clarify HUD's program requirement monitoring and enforcement tools. More specifically, the amendments to 24 CFR part 1006 were designed to achieve three outcomes: ensure compliance with the NHHBG program's statutory requirements; promote consistency between NHHBG and IHBG program regulations where the programs' statutory requirements overlap; and clarify the NHHBG regulatory rental assistance framework.

The preamble to the proposed rule at 88 FR 328 includes a thorough explanation and justification of amendments and new sections.

III. This Final Rule

This final rule adopts the proposed rule, published at 88 FR 328 (Jan. 4, 2023), with the following revisions, based on public comments.

First, HUD is striking the proposed definition of ''*Homeless Family*'' at § 1006.10 to allow DHHL to retain flexibility with respect to its approach to homeless families; and changing the definition of ''*project-based rental assistance*'' to add that project-based rental assistance may consist of rental assistance provided through an agreement for use of a DHHL property to account for situations where DHHL owns the building but contracts with an agency to manage the property as a facility where units are rented out.

Second, HUD is revising § 1006.215(f) to allow NHHBG funds to be used for management services not just for units developed with NHHBG funds, but for all units occupied by NHHBG eligible families, to account for the fact that some units occupied by NHHBG eligible families are not developed with NHHBG funds.

This rule also makes non-substantive changes to the definition of ''Person with a disability'' for clarity.

The public comments section further explains these revisions to the proposed rule.

IV. Public Comments

The public comment period for the proposed rule closed on March 6, 2023. HUD received three distinct comments on the proposed rule. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's responses to these issues, questions, and suggestions. The following sections summarize the comments received on the proposed rule and HUD's responses.

General Support

Commenters supported the proposed rule. Some commenters stated that they generally support the proposed rule and a commenter specifically supported HUD's proposed additions and revisions to 24 CFR part 1006 but suggested some changes to the proposed regulatory text.

One commenter stated that they support the effort, through this rulemaking, to reduce the burden on the recipient of NHHBG funds. This commenter stated that the proposed rule would increase availability of assisted rental housing through tenant-based rental assistance and offer Native Hawaiians more choice to reside in communities of their choosing. This commenter also noted that HUD's proposals allow qualifying families to enter into private tenancy agreements, and this would mean rental assistance would cover the initial deposit for eligible families.

HUD Response: HUD appreciates the participation and feedback of the public during the proposed rule's availability for comment.

§ 1006.10 Definitions

For the proposed definition of ''Homeless family'' in § 1006.10, one commenter noted that ''safe, sanitary and affordable housing'' is not defined, questioned the meaning of these terms, and recommended that HUD consider referencing the definition of ''homeless'' in other HUD regulations, such as 24 CFR 578.3.

For the proposed definition of ''Project-based rental assistance'' in § 1006.10, the commenter recommended clarifying the definition by adding ''an agreement for the use of a DHHL property'' as an alternative to a contract with the owner, such that the first sentence of the definition would read: ''*Project-based rental assistance* means rental assistance provided through an agreement for use of a DHHL property or contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants.'' The commenter reasoned that where DHHL owns the building but contracts with an agency to manage the property as a facility where units are rented out, an agreement may be required.

HUD Response: HUD appreciates the comment requesting clarification of ''safe, sanitary, and affordable housing'' within the proposed definition of ''Homeless family.'' The proposed definition was intended to codify existing policy and align the NHHBG regulations with the regulations for the IHBG program, not to introduce new requirements that may conflict with current practice. Because the proposed rule does not have any requirements related to the ''Homeless family'' definition, HUD has determined a definition for ''Homeless family'' is not necessary, will strike the proposed

laws enacted between 1998 and 2005. *See* 77 FR 71513. The NAHASDA Reauthorization Act did not amend statutory provisions governing block grant assistance for Native Hawaiians. *See* Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, Public Law 110–411, 122 Stat. 4319–35.

[4] NAHASDA section 810(a), 25 U.S.C. 4229(a).

[5] Dep't of Haw. Home Lands, Adoption of Chapter 10–7 Hawaii Administrative Rules (2019), *https://dhhl.hawaii.gov/wp-content/uploads/2020/02/HAR-Ch-10-7_Eff-Aug-17-2019-1.pdf.*

definition, and declines to adopt or reference the definition of ''homeless'' that appears at 24 CFR 578.3. This will allow DHHL to retain flexibility with respect to its approach to homeless families, without applying a definition that may prove limiting or incompatible with the unique nature of the NHHBG program. HUD appreciates the comment about the definition of ''Project-based rental assistance'' (PBRA) and acknowledges the suggested edit as it supports the different scenarios that could arise with project based rental assistance in the NHHBG program. HUD accepts the suggested edit to the definition of PBRA and has updated the regulatory text accordingly.

§ 1006.215 Housing Management Services

One commenter supported the proposed addition of costs of the operation and maintenance of units developed with NHHBG funds to § 1006.215 but recommended that the language ''units developed with NHHBG funds'' be replaced with ''units occupied by NHHBG eligible families'' because other funds received by DHHL (for example, from the state of Hawaii) may be used to construct units receiving NHHBG funds for operation and maintenance. The language at paragraph (f) would then read: ''The costs of operation and maintenance of units occupied by NHHBG eligible families.''

HUD Response: HUD supports allowing DHHL the ability to expand making affordable housing available to as many families as possible. HUD agrees with the commenter's suggested edit and has updated the regulatory text accordingly.

§ 1006.301 Eligible Families

For the income eligibility criteria proposed in § 1006.301(b)(3), one commenter expressed concern with using median income for eligibility criteria in the state of Hawaii because wealthy families' income can distort the median income of the population. Due to these distortions, this commenter is concerned that permitting DHHL to use 10 percent of its planned Housing Plan for families whose income is 81 to 100 percent of the median income will inaccurately represent income within the state.

HUD Response: Median income is the standard used in HUD programs to determine eligibility for assistance. HUD annually calculates median family income using Fair Market Rents to determine very low-income, low-income, and extremely low-income limits for programs across HUD, including the Section 8 program. Further, the proposed language aligns with the IHBG program, which publishes yearly income limits under NAHASDA based on median family income. Using median family income provides consistent interpretation of NAHASDA income limits within HUD and allows DHHL to use a small portion of funds to serve over-income families if it chooses to do so. It is not practicable or equitable for the NHHBG program to deviate from other HUD programs when determining income limits. As such, HUD will keep the proposed regulatory language.

§ 1006.307 Non-Low-Income Families

A commenter said that improved income situations should not disqualify families currently receiving assistance from receiving further assistance.

HUD Response: HUD appreciates the commenter's response. The proposed language allows families whose income circumstances improve to continue to participate in the program in accordance with DHHL's admission and occupancy policies. This is a long-standing policy that is being codified and is consistent with the IHBG program.

§ 1006.375 Other Federal Requirements: Housing Counseling

A commenter recommended changing HUD's proposed § 1006.375(d) by removing ''or provided in connection with,'' so that the paragraph reads: ''Housing counseling, as defined in § 5.100, that is funded with NHHBG funds must be carried out in accordance with 24 CFR 5.111.'' The commenter reasoned that limiting the federal requirements to housing counseling funded with NHHBG funds gives DHHL greater flexibility for the significant funding from the State.

HUD Response: HUD appreciates the commenter's suggestion, but HUD declines to accept it. The housing counseling requirements at 24 CFR part 5 are standard requirements applicable to all HUD programs unless inconsistent with the authorizing statute for that program. HUD's position is to maintain consistency in providing housing counseling via HUD-certified housing counselors across HUD programs. The commenter's suggested modification to 24 CFR 1006.375 conflicts with 24 CFR 5.111(a), which requires housing counseling from a HUD certified housing counselor when provided under, or in connection with, any program administered by HUD. Accordingly, any housing counseling provided in connection with NHHBG assistance must be provided by a HUD-certified housing counselor to comply with 24 CFR 5.111 and to maintain consistency with other HUD programs where housing counseling is involved.

§ 1006.377 Other Federal Requirements: Displacement, Relocation, and Acquisition

In HUD's proposed § 1006.377(c), outlining relocation assistance requirements for displaced persons, a commenter asked HUD to remove the requirement that wherever possible, minority persons shall be given reasonable opportunities to relocate to dwellings ''not located in an area of minority concentration, that are within their financial means'' (leaving the requirement that relocation be to ''comparable and suitable decent, safe, and sanitary replacement dwellings''). This commenter reasoned that the specified relocation requirements may be difficult to attain depending on the island and area where units may be found within a family's means.

HUD Response: HUD has considered the comment but declines to make the proposed change. The language the commenter highlights is directly from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) regulation at 49 CFR 24.205(c)(2)(ii)(D) and is not subject to changes under this rulemaking. HUD recognizes it may not always be feasible to relocate displaced individuals to areas not of a minority concentration. However, given that 49 CFR 24.205(c)(2)(ii)(D) already provides flexibility for when it is not possible to relocate individuals to areas not of a minority concentration, HUD does not agree that additional flexibility or removal of the requirement when feasible is necessary.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563 and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory

approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled ''Modernizing Regulatory Review'' amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

HUD's revisions to NHHBG program requirements and regulations would clarify that NHHBG funds can be used for certain affordable housing activities including project-based rental assistance, permit rental assistance to be provided off the Hawaiian Home Lands when Congress authorizes such use through appropriations acts, and add or change certain requirements for low-income and non-low-income families. However, there is no significant impact because DHHL is the sole recipient of NHHBG funds. This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866 and is not an economically significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will amend HUD regulations to implement rental housing assistance for the NHHBG program, consistent with title VIII of NAHASDA. These amendments impose no significant economic impact on a substantial number of small entities, and there is only a singular recipient of funding. Therefore, the undersigned certifies that this final rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. The FONSI is also available through the Federal eRulemaking Portal at *http://www.regulations.gov.*

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

List of Subjects in 24 CFR Part 1006

Community development block grants; Grant programs—housing and community development; Grant programs—Indians; Hawaiian Natives; Low- and moderate-income housing; Reporting and recordkeeping requirements.

For the reasons described in the preamble, the Department of Housing and Urban Development amends 24 CFR part 1006, as set forth below:

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

■ 1. The authority citation for part 1006 is revised to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 25 U.S.C. 4221 *et seq.;* 42 U.S.C. 3535(d), Pub. L. 115–141, Pub. L. 116–6, Pub. L. 116–94, Pub. L. 116–260, Pub. L. 117–103, Pub. L. 117–328.

■ 2. In § 1006.10, add alphabetically definitions for ''Annual income'', ''Income'', ''NAHASDA'', ''Person with a disability'', and ''Project-based rental assistance'' to read as follows:

§ 1006.10 Definitions.

* * * * *

Annual income has one or more of the following meanings, as determined by the Department of Hawaiian Home Lands:

(1) ''Annual income'' as defined for HUD's Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of net family assets); or

(2) The definition of income as used by the U.S. Census Bureau. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

* * * * *

Income means the term ''income'' as defined in Section 4(9) of NAHASDA.

* * * * *

NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

* * * * *

Person with a disability, as further explained in 28 CFR 35.108, is defined as follows:

(1) Definition of person with a disability. ''Person with a disability'' means a person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of having such an impairment;

(iii) Is regarded as having such an impairment;

(iv) Has a disability as defined in section 223 of the Social Security Act; or

(v) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

(2) Definition of physical or mental impairment. For the purposes of this definition, the term ''physical or mental impairment'' means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more

body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(3) *Nonexhaustive list of physical and mental impairments.* For the purposes of this definition, the term ''physical or mental impairment'' includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(4) *Nonexhaustive list of major life activities.* For the purposes of this definition, the term ''major life activities'' includes, but is not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

* * * * *

Project-based rental assistance means rental assistance provided through an agreement for use of a DHHL property or a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain the rental assistance if they move from the project.

* * * * *

■ 3. In § 1006.101, revise the introductory text and paragraphs (c) and (d) to read as follows:

§ 1006.101 Housing plans requirements.

The DHHL must submit a housing plan each year prior to the start of its fiscal year. The housing plan has two components, a five-year plan and a one-year plan, as follows:

* * * * *

(c) *Updates to plan*—(1) *In general.* Subject to paragraph (c)(2) of this section, after the housing plan has been submitted for a fiscal year, the DHHL may comply with the provisions of this section for any succeeding fiscal year with respect to information included for the 5-year period under paragraph (a) of this section by submitting only such information regarding such changes as may be necessary to update the 5-year period of the plan previously submitted. Information for the 1-year period under paragraph (b) of this section must be submitted each fiscal year.

(2) *Complete plans.* The DHHL shall submit a complete plan that includes a new five-year plan under this section not later than 4 years after submitting an initial plan, and not less frequently than every 4 years thereafter.

(d) *Amendments to plan.* The DHHL must submit any amendment to the one-year housing plan for HUD review before undertaking any new activities that are not addressed in the current plan that was reviewed by HUD and found to be in compliance with section 803 of NAHASDA and this part. The amendment must include a description of the new activity and a revised budget reflecting the changes. HUD will review the revised plan and will notify DHHL within 30 days whether the amendment complies with applicable requirements.

■ 4. Revise § 1006.201 to read as follows:

§ 1006.201 Eligible affordable housing activities.

Eligible affordable housing activities are development, housing services, housing management services, crime prevention and safety activities, and model activities. Affordable housing activities under this part are activities conducted in accordance with subpart D of this part to develop, operate, maintain, or support housing for rental or homeownership; or provide services with respect to affordable housing through the activities described in this subpart. NHHBG funds may only be used for eligible activities that are consistent with the DHHL's housing plan.

■ 5. In § 1006.205, revise paragraph (a)(9) to read as follows:

§ 1006.205 Development.

(a) * * *

(9) The development and rehabilitation of utilities, necessary infrastructure, and utility services;

* * * * *

§ 1006.210 [Amended]

■ 6. In § 1006.210, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

■ 7. In § 1006.215:

■ a. Revise paragraph (e);

■ b. Redesignate paragraph (f) as paragraph (g); and

■ c. Add new paragraph (f).

The revision and addition read as follows:

§ 1006.215 Housing management services.

* * * * *

(e) Management of tenant-based rental assistance;

(f) The costs of operation and maintenance of units occupied by NHHBG eligible families; and

* * * * *

■ 8. Add § 1006.227 to read as follows:

§ 1006.227 Tenant-based or project-based rental assistance.

NHHBG funds may be used for the provision of tenant-based rental assistance, which may include security deposits and first month's rent, and project-based rental assistance.

(a) Rental assistance must comply with the requirements of this part and be provided to eligible families.

(b) Rental assistance may be provided to eligible families both on and off the Hawaiian Home Lands provided such use is consistent with the applicable appropriations acts governing the use of the NHHBG funds.

§ 1006.230 [Amended]

■ 9. In § 1006.230, in paragraph (f), remove the citation ''§§ 1006.370 and 1006.375'' and add in its place the citation ''§§ 1006.370, 1006.375, and 1006.377''.

■ 10. In § 1006.235, revise the section heading to read as follows:

§ 1006.235 Types of investments and forms of assistance.

* * * * *

■ 11. Revise § 1006.301 to read as follows:

§ 1006.301 Eligible families.

(a) *General.* Assistance for eligible housing activities under the Act and this part is limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, except as provided under paragraphs (b) and (c) of this section.

(b) *Exception to low-income requirement*—(1) *Other Native Hawaiian families.* The DHHL may provide assistance for homeownership activities, which may include assistance in conjunction with loan guarantee activities to Native Hawaiian families who are not low-income families, as approved by HUD, to address a need for housing for those families that cannot be reasonably met without that assistance. DHHL must determine and document the need for housing for each family that cannot reasonably be met without such assistance.

(2) *HUD approval.* HUD approval is required, except as provided in paragraph (b)(3)(i) of this section, if the DHHL plans to use grant amounts provided under the Act for assistance in accordance with paragraph (b)(1) of this section. HUD approval shall be obtained by DHHL submitting proposals in its housing plan, by amendment of the housing plan, or by special request to HUD at any time.

(3) *Limitations.* (i) DHHL may use up to 10 percent of the amount planned in its Housing Plan for its fiscal year for families whose income is 81 to 100 percent of the median income without HUD approval. HUD approval is required if DHHL plans to use more than 10 percent of the amount planned for its fiscal year for such assistance or to provide housing for families with income over 100 percent of median income.

(ii) Non-low-income families cannot receive the same benefits provided low-income Native Hawaiian families. The amount of assistance non-low-income families may receive will be determined by DHHL as established in its written policies.

(iii) The requirements set forth in paragraphs 3(i) and (ii) of this section do not apply to other families who are non-low income that DHHL has determined to be essential under paragraph (c) of this section.

(c) *Other families.* The DHHL may provide housing or NHHBG assistance to a family that is not low-income and is not a Native Hawaiian family without HUD approval if the DHHL documents that:

(1) The presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(2) The need for housing for the family cannot be reasonably met without the assistance.

(d) *Written policies.* The DHHL must develop, follow, and have available for review by HUD written policies governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part.

■ 12. In § 1006.305, revise paragraphs (a) and (b) to read as follows:

§ 1006.305 Low-income requirement and income targeting.

(a) *In general.* Housing qualifies as affordable housing for purposes of the Act and this part, provided that the family occupying the unit is low-income at the following times:

(1) In the case of rental housing, at the time of the family's initial occupancy of such unit;

(2) In the case of housing for homeownership, at the time of purchase. When DHHL enters into a loan contract with the family for NHHBG assistance to purchase or construct a homeownership unit, the time of purchase means the time that loan contract is executed;

(3) In the case of owner-occupied housing units, at the time the family receives NHHBG assistance;

(4) In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the lease-purchase agreement is signed; and

(5) In the case of emergency assistance to prevent homelessness or foreclosure, at the time the family receives NHHBG assistance.

(b) *Affordability requirements.* NHHBG-assisted rental and homeownership units must meet the affordability requirements for the remaining useful life of the property, as determined by HUD, or such other period as HUD determines in accordance with section 813(a)(2)(B) of the Act.

* * * * *

■ 13. Add § 1006.306 to read as follows:

§ 1006.306 Income verification for receipt of NHHBG assistance.

(a) *Initial determination of eligibility.* DHHL must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. DHHL is required to maintain the documentation on which the determination of eligibility is based.

(b) *Periodic verification.* DHHL may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with DHHL's written policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by DHHL.

■ 14. Add § 1006.307 to read as follows:

§ 1006.307 Non-low-income families.

A family that was low-income at the times described in § 1006.305 but subsequently becomes a non-low-income family may continue to participate in the program in accordance with DHHL's admission and occupancy policies. The 10 percent limitation in § 1006.301(b)(3)(i) in this part shall not apply to such families. Such families may be made subject to the additional requirements in § 1006.301(b)(3)(ii) of this part based on those policies.

■ 15. Revise § 1006.310 to read as follows:

§ 1006.310 Rent and lease-purchase limitations.

(a) *Rents.* The DHHL must develop and follow written policies governing rents for rental housing units assisted with NHHBG funds, including methods by which rents are determined.

(1) *Maximum and minimum rent.* The maximum monthly tenant rent payment for a low-income family may not exceed 30 percent of the family's monthly adjusted income. DHHL may also decide to compute rental or homebuyer payments on any lesser percentage of the adjusted income of the family. The Act does not set minimum rent or homebuyer payments; however, DHHL may do so.

(2) *Flat or income-adjusted rent.* Flat rent means the tenant's rent payment is set at a specific dollar amount or specific percent of market rent. Income-adjusted rent means the tenant's rent payment varies based on the tenant's income (*i.e.,* 30 percent of monthly adjusted income). DHHL may charge flat or income-adjusted rents, provided the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

(3) *Utilities.* Utilities may be considered a part of rent or homebuyer payments if DHHL decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 811(a)(1) of NAHASDA. DHHL may define rents and homebuyer payments to exclude utilities.

(b) *Lease-purchase.* If DHHL assists low-income families to become homeowners of rental housing through a long-term lease (*i.e.,* 10 or more years) with an option to purchase the housing, DHHL must develop and follow written policies governing lease-purchase payments (*i.e.,* homebuyer payments) for rental housing units assisted with NHHBG funds, including methods by which payments are determined. The maximum monthly payment for a low-

income family may not exceed 30 percent of the family's monthly adjusted income.

(c) *Exception for certain homeownership payments.* Homeownership payments for families who are not low-income, as permitted under § 1006.301(b), are not subject to the requirement that homebuyer payments may not exceed 30 percent of the monthly adjusted income of that family.

(d) *Applicability.* Low-income families who receive homeownership assistance other than lease-purchase assistance are not subject to the limitations in paragraphs (a) and (b) of this section.

§ 1006.340 [Amended]

■ 16. In § 1006.340, in paragraph (a), remove the citation ''§ 1006.235'' and add in its place the citation ''section 812(b) of the Act''.

§ 1006.350 [Amended]

■ 17. In § 1006.350, in paragraph (a), remove the word ''decisionmaking'' and add in its place the word ''decision-making''.

■ 18. Revise § 1006.375 to read as follows:

§ 1006.375 Other Federal requirements.

(a) *Lead-based paint.* The following subparts of HUD's lead-based paint regulations at 24 CFR part 35, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), apply to the use of assistance under this part:

(1) Subpart A (§§ 35.80 through 35.98) for disclosures of known lead-based paint hazards upon sale or lease of residential property;

(2) Subpart B (§§ 35.100 through 35.175) for general lead-based paint requirements and definitions;

(3) Subpart H (§§ 35.700 through 35.830) for project-based rental assistance;

(4) Subpart J (§§ 35.900 through 35.940) for rehabilitation;

(5) Subpart K (§§ 35.1000 through 35.1020) for acquisition, leasing, support services, or operation;

(6) Subpart M (§§ 35.1200 through 35.1225) for tenant-based rental assistance; and

(7) Subpart R (§§ 35.1300 through 35.1355) for methods and standards for lead-based paint hazard evaluation and Reduction activities.

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 2 CFR part 2429 apply to the use of assistance under this part.

(c) *Audits.* The DHHL must comply with the requirements of the Single Audit Act and 2 CFR part 200, subpart F, with the audit report providing a schedule of expenditures for each grant. A copy of each audit must be submitted to the Federal Audit Clearinghouse.

(d) *Housing counseling.* Housing counseling, as defined in § 5.100, that is funded with or provided in connection with NHHBG funds must be carried out in accordance with 24 CFR 5.111.

(e) *Section 3.* Requirements under Section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 75 apply.

(f) *Debarment and suspension.* The nonprocurement, debarment, and suspension requirements at 2 CFR part 2424 are applicable.

■ 19. Add § 1006.377 to subpart D to read as follows:

§ 1006.377 Other Federal requirements: Displacement, Relocation, and Acquisition.

The following relocation and real property acquisition policies are applicable to programs developed or operated under the Act and this part:

(a) *Real property acquisition requirements.* The acquisition of real property for an assisted activity is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (URA) and the requirements of 49 CFR part 24, subpart B.

(b) *Minimize displacement.* Consistent with the other goals and objectives of the Act and this part, the DHHL shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under the Act and this part.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the URA and the requirements of 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. For a displaced person with a disability, a unit is not a comparable replacement dwelling under the URA unless it is free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such a displaced person in accordance with the definition of ''Decent, safe, and sanitary dwelling'' at 49 CFR 24.2. Furthermore, the unit must also meet the requirements of section 504 of the Rehabilitation Act (29 U.S.C. 794) as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(d) *Appeals to the DHHL.* A person who disagrees with the DHHL's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the DHHL in accordance with URA requirements of 49 CFR 24.10.

(e) *Responsibility of DHHL.* (1) The DHHL shall certify that it will comply with the URA requirements of 49 CFR part 24, and the requirements of this section. The DHHL shall ensure such compliance notwithstanding any third party's contractual obligation to the DHHL to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the DHHL from any other source.

(3) DHHL must provide proper and timely distribution of notices to residents in accordance with the URA regulations. This includes the General Information Notice (GIN), the Notice of Relocation Eligibility, the Notice to Owner, and the 90-Day Notice. All notices must be sent in accordance with 49 CFR 24.203 and 24.102. Notices of Relocation Eligibility are typically triggered by the Initiation of Negotiation (ION).

(4) The DHHL shall maintain records in sufficient detail to demonstrate compliance with this section.

(f) *Definition of displaced person.* (1) For purposes of this section, the term ''displaced person'' means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under the Act. The term ''displaced person'' includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of a housing plan that is later approved;

(ii) Any person, including a person who moves before the date the housing plan is submitted to HUD, that the DHHL determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project;

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after execution of the agreement between the DHHL and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) Thirty percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses;

(B) The tenant-occupant is required to temporarily relocate for more than one year; or

(C) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of this section for the definition of ''Displaced Person,'' a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the housing plan to HUD, but before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.,* the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' or for any assistance provided under this section as a result of the project;

(ii) The person meets the definition of ''persons not displaced'' as defined in 49 CFR 24.2; or

(iii) The DHHL determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination in accordance with 49 CFR 24.2.

(3) The DHHL may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced from a dwelling as a direct result of acquisition, rehabilitation, or demolition of the real property, the term Initiation of Negotiations (ION) date means the execution of the written agreement covering the acquisition, rehabilitation, or demolition (*See* 49 CFR 24.2).

■ 20. In § 1006.410, revise paragraph (a)(2), add paragraph (a)(3), and revise paragraph (c)(1) to read as follows:

§ 1006.410 Performance reports.

(a) * * *

(2) Submit a report in a form acceptable to HUD, within 90 days of the end of the DHHL's fiscal year, describing the conclusions of the review.

(3) DHHL may submit a written request for an extension of the deadline. HUD will establish a new date for submission if the extension is granted.

* * * * *

(c) * * *

(1) *Comments by Native Hawaiians.* In preparing a report under this section, the DHHL shall make the report publicly available to Native Hawaiians who are eligible to reside on the Hawaiian Home Lands and give a sufficient amount of time to permit them to comment on that report, in such manner and at such time as the DHHL may determine, before it is submitted to HUD.

* * * * *

■ 21. In § 1006.420, add a heading to paragraph (c) to read as follows:

§ 1006.420 Review of DHHL's performance.

* * * * *

(c) *Failure to maintain records.* * * *

Adrianne Todman,

Deputy Secretary for U.S. Department of Housing and Urban Development.

[FR Doc. 2024–02447 Filed 2–9–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OLP 176]

Civil Monetary Penalties Inflation Adjustments for 2024

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after February 12, 2024 with respect to violations occurring after November 2, 2015.

DATES: This rule is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (''BBA''), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the ''Inflation Adjustment Act''), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule (''June 2016 interim rule'') to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the **SUPPLEMENTARY INFORMATION** (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for

adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

The Department has continued to promulgate rules adjusting the civil money penalties for inflation thereafter. Most recently, the Department published a final rule on January 30, 2023 (88 FR 5776), to adjust the civil money penalties to account for inflation occurring since 2022.

II. Inflation Adjustments Made by This Rule

As required, the Department is publishing this final rule to adjust for 2024 the Department's current civil penalties. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for October 2023. The OMB Memorandum for the Heads of Executive Departments and Agencies M–24–07 (Dec. 19, 2023) *https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf* (last visited Dec. 21, 2023) instructs that the applicable inflation factor for this adjustment is 1.03241.

Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying the inflation factor of 1.03241 mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

Example:

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to $10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of $10,781 was multiplied by 1.01636 and revised to $10,957.
- Similar adjustments have been made in the following years, through 2023, where the applicable inflation factor was 1.07745, and the existing penalty of $12,537 was multiplied by 1.07745 and revised to $13,508.
- For this final rule in 2024, where the applicable inflation factor is 1.03241, the existing penalty of $13,508 is multiplied by 1.03241 and rounded to the nearest dollar. The revised penalty is now $13,946.

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

III. Effective Date of Adjusted Civil Penalty Amounts

Under this rule, the adjusted civil penalty amounts for 2024 are applicable only to civil penalties assessed after February 12, 2024, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing provisions of 28 CFR 85.5, and its accompanying table, are applicable to all covered civil penalties assessed after August 1, 2016, and on or before February 12, 2024, with respect to violations occurring after November 2, 2015.

The revised table in this rule lists the civil penalty amounts as adjusted in 2024, 2023, 2022, and 2021. For penalties assessed prior to the adjustment rule adopted in 2021, section 85.5(c) of this rule directs readers back to the 2020 version of the rule, as published in the **Federal Register**, which sets forth the adjusted civil penalty amounts for penalties assessed prior to the 2021 adjustments. 85 FR 37004 (June 19, 2020).

Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016). See Civil Monetary Penalties Inflation Adjustment, 83 FR 3944 (Jan. 29, 2018).

IV. Statutory and Regulatory Analyses

A. Administrative Procedure Act

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

B. Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. *See* 5 U.S.C. 603(a).

C. Executive Orders 12866, 13563, and 14094—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1, General Principles of Regulation, and in accordance with section 1(b), General Principles of Regulation; and Executive Order 14094, ''Modernizing Regulatory Review''. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board, mechanical adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department's final rule published on January 30, 2023 (88 FR 5776).

D. Executive Order 13132—Federalism

This rule 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. Therefore, in accordance with Executive Order 13132,

it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (as adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 85

Administrative practice and procedure, Penalties.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Assistant Attorney General, Office of Legal Policy, by A.G. Order No. 5328–2022, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Section 85.5 is revised to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

(a) For civil penalties assessed after February 12, 2024, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the seventh column of table 1 to this section.

(b) For civil penalties assessed after January 30, 2023, and on or before February 12, 2024 whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in the sixth column of table 1 to this section. For civil penalties assessed after May 9, 2022, and on or before January 30, 2023, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in the fifth column of table 1 to this section. For civil penalties assessed after December 13, 2021, and on or before May 9, 2022, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in the fourth column of table 1 to this section.

(c) For civil penalties assessed on or before December 13, 2021, the civil monetary penalties provided by law within the jurisdiction of the Department are set forth in 28 CFR 85.5 (July 1, 2020).

(d) All figures set forth in table 1 to this section are maximum penalties, unless otherwise indicated.

TABLE 1 TO § 85.5

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 ($)	DOJ penalty assessed after 1/30/2023 FN1 ($)	DOJ penalty assessed after 2/12/2024 FN2 ($)
		ATF				
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System (NICS); Transfer of firearm without checking NICS.		8,935	9,491	10,226	10,557
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.		3,268	3,471	3,740	3,861
		Civil Division				
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	2,073,133	2,202,123	2,372,677	2,449,575
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	2,073,133	2,202,123	2,372,677	2,449,575
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	10,365,668	11,010,620	11,863,393	12,247,886
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	6,021	6,396	6,891	7,114
31 U.S.C. 3729(a)	False Claims Act; FN3 Violations	28 CFR 85.3(a)(9)	Min 11,803, Max 23,607	Min 12,537, Max 25,076	Min 13,508, Max 27,018	Min 13,946, Max 27,894
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	11,803	12,537	13,508	13,946
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	11,803	12,537	13,508	13,946
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	6,021	6,396	6,891	7,114
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks FN4 (per occurrence).	28 CFR 85.3(a)(13)	23,607	25,076	27,018	27,894
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).		8,708	9,250	9,966	10,289

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 ($)	DOJ penalty assessed after 1/30/2023 FN1 ($)	DOJ penalty assessed after 2/12/2024 FN2 ($)
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes FN5 (per violation).	28 CFR 85.3(c)	103,657	110,107	118,635	122,480
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; FN6 Violation by an individual (per violation).		108,315	115,054	123,965	127,983
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; FN6 Violation by an organization (per violation).		1,083,140	1,150,533	1,239,642	1,279,819
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; FN7 Violation (per violation).		13,685	14,536	15,662	16,170
Civil Rights Division (excluding immigration-related penalties)						
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 (''FACE Act''); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i)	17,364	18,444	19,872	20,516
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii)	26,125	27,750	29,899	30,868
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i)	26,125	27,750	29,899	30,868
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a nonviolent physical violation).	28 CFR 85.3(b)(2)(ii)	43,543	46,252	49,834	51,449
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i)	108,315	115,054	123,965	127,983
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation.	28 CFR 85.3(b)(3)(ii)	216,628	230,107	247,929	255,964
42 U.S.C. 12188(b)(2)(C)(i).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i).	97,523	103,591	111,614	115,231
42 U.S.C. 12188(b)(2)(C)(ii).	Americans With Disabilities Act; Public accommodations for individuals with disabilities subsequent violation.	28 CFR 36.504(a)(3)(ii).	195,047	207,183	223,229	230,464
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i)	65,480	69,554	74,941	77,370
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii)	130,961	139,109	149,883	154,741
Criminal Division						
18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.		Min 374, Max 7,482	Min 397, Max 7,948	Min 428, Max 8,564	Min 442, Max 8,842
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation FN8.		23,607	25,076	27,018	27,894
DEA						
21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	21,663	23,011	24,793	25,597
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	75,267	79,950	86,142	88,934
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act (''CSA''); Violations of 842(a)—other than (5), (10), (16) and (17)—Prohibited acts re: controlled substances (per violation).		68,426	72,683	78,312	80,850
21 U.S.C. 842(c)(1)(B)(i)	CSA; Violations of 842(a)(5), (10), and (17)—Prohibited acts re: controlled substances.		15,876	16,864	18,170	18,759
21 U.S.C. 842(c)(1)(B)(ii)–	SUPPORT for Patients and Communities Act; FN9 Violations of 842(b)(ii)—Failures re: opioids.		102,967	109,374	117,845	121,664
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).		548,339	582,457	627,568	647,907
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).		1,097	1,165	1,255	1,296
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard FN10.		411,223	436,809	470,640	485,893
21 U.S.C. 842(c)(2)(D)	SUPPORT for Patients and Communities Act; FN9 Violations of 842(a)(5), (10) and (17) by a registered manufacture or distributor of opioids. Failures re: opioids.		514,834	546,867	589,222	608,319

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 12/13/2021 ($)	DOJ penalty assessed after 5/9/2022 ($)	DOJ penalty assessed after 1/30/2023 FN1 ($)	DOJ penalty assessed after 2/12/2024 FN2 ($)
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises FN11.		379,193	402,786	433,982	448,047
Immigration-Related Penalties FN12						
8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 (''IRCA''); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i)	Min 590, Max 4,722	Min 627, Max 5,016	Min 676, Max 5,404	Min 698, Max 5,579
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii).	Min 4,722, Max 11,803	Min 5,016, Max 12,537	Min 5,404, Max 13,508	Min 5,579, Max 13,946
8 U.S.C. 1324a(e)(4)(A)(iii).	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii).	Min 7,082, Max 23,607	Min 7,523, Max 25,076	Min 8,106, Max 27,018	Min 8,369, Max 27,894
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5)	Min 237, Max 2,360	Min 252, Max 2,507	Min 272, Max 2,701	Min 281, Max 2,789
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	Min 823, Max 1,644	Min 874, Max 1,746	Min 942, Max 1,881	Min 973, Max 1,942
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	2,360	2,507	2,701	2,789
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii).	Min 487, Max 3,901	Min 517, Max 4,144	Min 557, Max 4,465	Min 575, Max 4,610
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix).	Min 3,901, Max 9,753	Min 4,144, Max 10,360	Min 4,465, Max 11,162	Min 4,610, Max 11,524
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x).	Min 5,851, Max 19,505	Min 6,215, Max 20,719	Min 6,696, Max 22,324	Min 6,913, Max 23,048
8 U.S.C. 1324b(g)(2)(B)(iv)(I V).	IRCA; Unfair immigration-related employment practices, unfair documentary practices (per individual discriminated against).	28 CFR 68.52(d)(1)(xii).	Min 195, Max 1,951	Min 207, Max 2,072	Min 223, Max 2,232	Min 230, Max 2,304
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i)	Min 487, Max 3,901	Min 517, Max 4,144	Min 557, Max 4,465	Min 575, Max 4,610
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii).	Min 3,901, Max 9,753	Min 4,144, Max 10,360	Min 4,465, Max 11,162	Min 4,610, Max 11,524
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii).	Min 412, Max 3,289	Min 438, Max 3,494	Min 472, Max 3,765	Min 487, Max 3,887
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv).	Min 3,289, Max 8,224	Min 3,494, Max 8,736	Min 3,765, Max 9,413	Min 3,887, Max 9,718
FBI						
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).		1,742	1,850	1,993	2,058
Office of Justice Programs						
34 U.S.C. 10231(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR 20.25	30,107	31,980	34,457	35,574

[1] The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on January 30, 2023.

[2] All figures set forth in this table are maximum penalties, unless otherwise indicated.

[3] Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. Id. section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

[4] Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than $10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

[5] Section 216(b) of Title 18 provides that the civil penalty should be no more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

[6] Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. Id. section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

[7] The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

[8] Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or $10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

[9] The SUPPORT for Patients and Communities Act, Public Law 115–221 was enacted Oct. 24, 2018.

[10] Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

[11] Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of $250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

[12] The date of assessment for purposes of calculating the minimum and maximum civil money penalties for violations of 8 U.S.C. 1324a under 28 CFR 85.5 is the date of the OCAHO final order, rather than the date of service of the Notice of Intent to Fine. *United States* v. *Edgemont Group, LLC,* 17 OCAHO no. 1470e (2023).

Dated: February 5, 2024.

Susan M. Davies,

Acting Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2024–02829 Filed 2–9–24; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0130]

RIN 1625–AA00

Safety Zone; Fireworks Scattering; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay, off Treasure Island, CA in support of a fireworks display on February 10, 2024. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards caused by pyrotechnics. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 10:30 a.m. until 11:35 a.m. on February 10, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0130 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways management Division, at telephone (415) 399–7443, or email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until January 30, 2024. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by February 10, 2024, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display off Treasure Island, CA on February 10, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the scheduled Fireworks Scattering display on February 10, 2024, will be a safety concern for anyone within a 400-foot radius of the fireworks display starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 10:30 a.m. until 11:35 a.m. on February 10, 2024, from 30 minutes prior to the start of the fireworks display, and until 30 minutes after the completion of the fireworks display. At 10:30 a.m., which is 30 minutes prior to the commencement of the 5-minute fireworks display, the safety zone will encompass the navigable waters around the fireworks vessel, from surface to bottom, within a circle formed by connecting all points 400-feet out from the coordinates at approximately 37°50′17.9″ N, 122°21′16.5″ W (NAD 83). The safety zone will terminate at 11:35 a.m. on February 10, 2024, or as announced via Marine Information Broadcast.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks scattering site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in a restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer

designated by or assisting the COTP in the enforcement of the Safety Zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restrict access to the water encompassed by the safety zone, the effect of this rule will not be significant because local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters surrounding the fireworks vessel within the San Francisco Bay off Treasure Island, CA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–157 to read as follows:

§ 165.T11–157 Safety Zone; Fireworks Scattering; San Francisco Bay, San Francisco, CA

(a) *Locations.* The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 400-feet out from 37°50′17.9″ N, 122°21′16.5″ W (NAD 83) between 10:30 a.m. and 11:35 a.m. on February 10, 2024, or as announced by Marine Information Bulletin.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

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

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone through the 24-hour Command Center at telephone (415) 399–3432.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. until 11:35 a.m. on February 10, 2024.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: February 3, 2024.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port Sector San Francisco.

[FR Doc. 2024–02701 Filed 2–8–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R01–OAR–2023–0353; FRL–11161–02–R1]

Air Plan Approval and Operating Permit Program Approval; Connecticut; Revision to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve, through parallel processing, a revised definition in the State Implementation Plan (SIP) and the Title V Operating Permit Program for the State of Connecticut. On November 30, 2023, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted to EPA the State's adopted regulatory amendments to the definition of ''severe non-attainment area for ozone'' for inclusion in the EPA-approved SIP and Title V Operating Permit Program. The revision is necessary to fully implement these programs based on a nonattainment reclassification to a portion of Connecticut for the 2008 ozone National Ambient Air Quality Standard. EPA is approving these revisions pursuant to the Clean Air Act (CAA) and implementing federal regulations.

DATES: This rule is effective on March 13, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2023–0353. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, tel. (617) 918–1660, email *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On July 17, 2023 (88 FR 45373), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of a revised definition in the SIP and the Title V Operating Permit Program for the State of Connecticut. On June 9, 2023, CT DEEP requested parallel processing of the revised definition of ''severe non-attainment area for ozone'' within the Regulations of Connecticut State Agencies (RCSA) 22a–174–1 for approval into the SIP and as a program revision to the State's Title V operating permitting program. Under the parallel processing procedure, EPA proposed approval of the revised definition before the State's final adoption of the definition. Connecticut subsequently adopted the revised definition which became effective on November 13, 2023. The formal revisions to the SIP and the Title V operating permitting program were submitted by Connecticut on November 30, 2023.

The rationale for EPA's proposed approval of the revised definition in the SIP and the Title V operating permitting program are explained in the NPRM and will not be restated here. EPA is proceeding with our final approval of the November 30, 2023 submitted revisions to the Connecticut SIP and Title V Operating Permit Program, consistent with the parallel processing provisions in 40 CFR part 51, Appendix V. EPA has reviewed Connecticut's adopted definition of ''severe non-attainment area for ozone'' contained in RCSA 22a–174–1, and it does not differ from the proposed regulation submitted as part of the parallel processing request on June 9, 2023. That is, CT DEEP adopted the revisions as they were proposed, *i.e.* no changes were made.

II. Response to Comments

EPA received two comments during the comment period; both comments are supportive. As such, these comments do not require further response to finalize the action as proposed. Nevertheless, EPA is including these comments in the docket for this rule.

III. Final Action

EPA is approving Connecticut's revised definition of ''severe non-attainment area for ozone,'' contained in RCSA 22a–174–1 as amended by the State of Connecticut on November 13, 2023, as a revision to the Connecticut SIP and Title V Operating Permit Program.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revised definition of ''severe non-attainment area for ozone'' within Connecticut's RCSA section 22a–174–1, *Definitions,* (106), as described in Section I of this preamble. Background and Purpose of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP and Title V submissions that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k) and 7661a(d); 40 CFR 52.02(a) and 70.4(e). Thus, in reviewing SIP and Title V submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

CT DEEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Dated: February 6, 2024.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(130) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on November 30, 2023.

(i) *Incorporation by reference.*

(A) Regulations of Connecticut State Agencies Section 22a–174–1, ''Definitions,'' (106), definition of ''Severe non-attainment area for ozone.''

(B) Reserved.

(ii) *Additional materials.*

(A) Letter from CT DEEP submitted to EPA on November 30, 2023, entitled ''State Implementation Plan Revision Concerning the Definition of Severe Non-Attainment Area for Ozone.''

(B) Reserved.

■ 3. In § 52.385 amended Table 52.385 by adding a sixth entry for ''22a–174–1'' before the entry for ''22a–174–2'' to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*		*	*	*
22a–174–1	Definitions	11/13/2023	2/12/2024	[Insert **Federal Register** citation].	(c)(130)	Modified definition of ''severe non-attainment area for ozone''.
*	*	*		*	*	*

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 4. The authority citation for part 70 continues to read as follows:

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

■ 5. Amend Appendix A to Part 70 under ''Connecticut'' by adding paragraph (b) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs * * *

Connecticut

* * * * *

(b) Connecticut Department of Environmental Protection submitted revisions on November 30, 2023 to Regulations of Connecticut State Agencies Section 22a–174–1, ''Definitions,'' definition of ''Severe non-attainment area for ozone.'' This rule amendment contained in this submittal is necessary to make the current definition as stringent as the reclassified severe nonattainment area in the State of Connecticut. The State is hereby granted approval effective on March 13, 2024.

[FR Doc. 2024–02700 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0781; FRL–11563–01–OCSPP]

U1-AGTX-Ta1b-QA Protein; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the U1-AGTX-Ta1b-QA protein in or on all food commodities when used in accordance with label directions and good agricultural practices. Vestaron Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance for residues of the U1-AGTX-Ta1b-QA protein in and on all food commodities. This regulation eliminates the need to establish a maximum permissible level for residues of U1-AGTX-Ta1b-QA protein under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective February 12, 2024. Objections and requests for hearings must be received on or before April 12, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0781, is available at *https://www.regulations.gov.* Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Federal Register Office's e-CFR site at *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-180?toc=1.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0781 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 12, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0781, by one of the following methods:

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

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

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2022 (87 FR 16133) (FRL–9410–11–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F8923) by Vestaron Corporation, 600 Park Offices Dr., Suite 117, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of U1-AGTX-Ta1b-QA protein. That document referenced a summary of the petition prepared by the petitioner Vestaron Corporation, which is available in the docket, *https://www.regulations.gov.* EPA received one comment on the notice of filing. EPA's response to this comment is discussed in Unit VII.C.

III. Final Rule

A. EPA's Safety Determination

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

EPA evaluated the available toxicological and exposure data on U1-AGTX-Ta1b-QA protein and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Human Health Risk Assessment in Support of the Registration of 'Basin' End Use Product Containing the New Active Ingredient U1-AGTX-Ta1b-QA (8.5%) and Associated Petition to Establish a Permanent Tolerance Exemption'' (Human Health Risk Assessment). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Available data have demonstrated that, with regard to humans, U1-AGTX-Ta1b-QA protein is not anticipated to be toxic or allergenic via any reasonably foreseeable route of exposure. U1-AGTX-Ta1b-QA protein is a modified form of agatoxin protein derived from the venom of the hobo spider (*Eratigena agrestis*) that is intended for control of insects and mites. In insects, the reported mode-of-action of U1-AGTX-Ta1b-QA is allosteric inhibition of a non-desensitizing nicotinic acetylcholine receptor, a neural receptor responsible for signal transduction and function. The U1-AGTX-Ta1b-QA protein binds to a non-signaling portion of the target (allosteric) site, altering the three-dimensional structure of the neural receptor. According to the Center of Disease Control (*https://www.cdc.gov/niosh/topics/spiders/types.html*), the venom, from which the active ingredient is derived, is not recognized as toxic to humans. Products formulated with U1AGTX-Ta1b-QA will be used for foliar applications to plants or as a dip/immersion for roots or cuttings.

Toxicological data provided by the petitioner indicate that U1-AGTX-Ta1b-QA has low acute toxicity via the oral, dermal, inhalation, route and it is not a dermal or eye irritant. This conclusion is further supported by the results of the 90-day oral toxicity study, prenatal development toxicity studies, and the absence of genotoxicity in a bacterial

reverse mutation test. In addition, the protein sequence of U1-AGTX-Ta1b-QA does not show significant homology to known allergens and thus there is no indication of allergenic cross-reactivity.

Dietary exposure could occur if U1-AGTX-Ta1b-QA is used on crops used for food. However, any risks associated with dietary exposures are expected to be negligible due to the following hazard and exposure considerations: U1-AGTX-Ta1b-QA (1) has a low overall toxicity profile including low toxicity via the oral route of exposure; (2) does not exhibit protein homology to putative or known allergens; (3) does not show any prenatal developmental toxicity or genetic toxicity; and (4) as described, was derived from the venom of the hobo spider, which is not recognized as toxic to humans. In addition, food crops undergo a post-harvest washing process to remove soil and surface residues, which will therefore reduce the amounts of U1-AGTX-Ta1b-QA on the treated crops. Root dip and cutting immersions, specifically, are expected to result in negligible exposure of above-ground grown plant parts used for food since these applications occur prior to planting and residues are not expected to persist on the growing plant. Exposure through drinking water is expected to be negligible as U1-AGTX-Ta1b-QA, as a protein, is expected to be susceptible to biodegradation in the environment as well as water treatment processes.

Non-occupational exposure could occur if bystanders are present in areas treated with products containing U1-AGTX-Ta1b-QA protein. However, submitted data have shown that U1-AGTX-Ta1b-QA is expected to have low toxicity via the oral, dermal, and inhalation routes of exposure, is minimally irritating to the eyes and skin, and is not a dermal sensitizer; therefore, any risks from non-occupational exposure are expected to be negligible.

Based upon the evaluation in the Human Health Risk Assessment, which found no risk of concern from aggregate exposure to U1-AGTX-Ta1b-QA, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of U1-AGTX-Ta1b-QA. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. In addition, because no threshold effects have been identified for infants and children, EPA determined that an additional Food Quality Protection Act (FQPA) safety factor is not necessary to protect infants and children from anticipated residues of U1-AGTX-Ta1b-QA.

B. Analytical Enforcement Methodology

An analytical method is not required for U1-AGTX-Ta1b-QA since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation based on a lack of adverse effects.

C. Response To Comment

One comment was received during the public comment period for the notice of filing. The commentor provided general objections to EPA establishing exemptions from tolerance for pesticides but did not provide any specific or substantive objections to the petition to exempt U1-AGTX-Ta1b-QA protein. Based on its review of the data and other information submitted in support of the tolerance exemption petition (as described above in Unit III.A), EPA has determined that a tolerance exemption for U1-AGTX-Ta1b-QA protein is safe under the FFDCA. Therefore, EPA is establishing a tolerance exemption for residues of U1-AGTX-Ta1b-QA protein applied to food commodities.

D. Conclusion

Based on the conclusions detailed in Unit III.A., an exemption from the requirement of a tolerance is established for residues of U1-AGTX-Ta1b-QA protein in or on all food commodities when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

This action establishes an exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA 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 prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: January 29, 2024.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

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

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

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

■ 2. Add § 180.1406 to subpart D to read as follows:

§ 180.1406 U1-AGTX-Ta1b-QA protein; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of U1-AGTX-Ta1b-QA protein in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2024–02787 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 411, 414, 415, 418, 422, 423, 424, 425, 455, 489, 491, 495, 498, and 600

[CMS–1784–F2]

RIN 0938–AV07

Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction and correcting amendment.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the November 16, 2023 issue of the **Federal Register**, entitled ''Medicare and Medicaid Programs; CY 2024 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; Medicare Advantage; Medicare and Medicaid Provider and Supplier Enrollment Policies; and Basic Health Program'' (referred to hereafter as the ''CY 2024 PFS final rule''). The effective date was January 1, 2024.

DATES: This correcting document is effective February 12, 2024 and is applicable beginning January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

MedicarePhysicianFeeSchedule@cms.hhs.gov, for any issues not identified below. Please indicate the specific issue in the subject line of the email.

MedicarePhysicianFeeSchedule@cms.hhs.gov, for the following issues: caregiver training services, community health integration services, and principal illness navigation services; telehealth and other services involving communications technology; PFS conversion factor; and PFS payment for evaluation and management services.

Sabrina Ahmed, (410) 786–7499, or *SharedSavingsProgram@cms.hhs.gov,* for issues related to the Medicare Shared Savings Program (Shared Savings Program) Quality performance standard and quality reporting requirements.

Janae James, (410) 786–0801, or *SharedSavingsProgram@cms.hhs.gov,* for issues related to Shared Savings Program beneficiary assignment.

Frank Whelan (410) 786–1302, for issues related to Medicare and Medicaid Provider and Supplier Enrollment

Renee O'Neill, (410) 786–8821, *MIPSEngagementTeam@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2023–24184 of November 16, 2023, the CY 2024 PFS final rule (88 FR 78818), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the CY 2024 PFS final rule, which was effective January 1, 2024.

II. Summary of Errors

A. Summary of Errors in the Preamble

1. On page 78867, in the table titled ''TABLE 11: CY 2024 Medicare Telehealth Services List'' which continues through page 78871, we inadvertently omitted four rows of services.

2. On page 78876, second column, fourth full paragraph, line 2, we inadvertently omitted qualifying language before the reference to telehealth services and neglected to include a reference to further background information.

3. On page 78918, third column, second full paragraph, second sentence, we neglected to include a clarifying phrase.

4. On page 78920, first column, first full paragraph, we inadvertently omitted a clarifying phrase.

5. On page 78944, first column, first full paragraph we inadvertently included incorrect language in the final code descriptor for HCPCS code G0023.

6. On page 78949, first column, first full paragraph, we made a typographical error when finalizing limitations on PIN services.

7. On pages 78956 through 78957 in the table titled ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes,'' the code descriptor listed for HCPCS code G0019 inadvertently was not updated to reflect the final code descriptors as stated in the preamble text.

8. On pages 78958 through 78959 in the table titled ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes,'' the code descriptors listed for HCPCS codes G0022 and G0023 inadvertently were not updated to reflect the final code descriptors as stated in the preamble text.

9. On pages 78959 through 78960 in the table titled ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes,'' the code descriptor listed for HCPCS code G0140 inadvertently was not updated to reflect the final code descriptor as stated in the preamble text.

10. On page 78975, we inadvertently omitted a sentence to restate the final policy we adopted for the inherent complexity add-on code (G2211).

11. On page 79075, third column, first full paragraph, line 19, two G-codes for PIN services were inadvertently omitted.

12. On page 79112 in the table titled, ''TABLE 28: Final APP Reporting Requirements and Quality Performance Standard for Performance Year 2024 and Subsequent Performance Years'', we inadvertently included language regarding a MIPS Quality performance category score.

13. On page 79112 in the table titled, ''TABLE 28: Final APP Reporting Requirements and Quality Performance Standard for Performance Year 2024 and Subsequent Performance Years'', we made a typographical error in identifying the APP measure.

14. On page 79113 in the table titled, ''TABLE 29: Measures included in the APP Measure Set for Performance Year 2024 and Subsequent Performance

Years'', we made a typographical error in identifying the Quality ID#: 321 for the Measure Type. We also inadvertently included a related incorrect footnote.

15. On page 79121, we inadvertently included language referencing Table 30: 40th Percentile MIPS Quality Performance Category Scores Using Current and Finalized Methodology.

16. On page 79121 in the table titled, ''TABLE 30: 40th Percentile MIPS Quality Performance Category Scores Using Current and Finalized Methodology'', the last row of the table for Performance Year 2022 is incorrect due to a formatting error.

17. On page 79131, we made a typographical error in reference to 42 CFR part 414, subpart O.

18. On page 79144, we made a typographical error in the section reference to the Regulatory Impact Analysis in the CY 2024 PFS proposed rule.

19. On page 79172, there is an error in the description of the definition of ACO professional in section 1899(c)(1)(A) of the Act.

20. On page 79189, there are typographical errors in the references to Table numbers in the final rule.

21. On page 79240, we inadvertently included language that referenced Tables.

22. On page 79379, in the table titled ''TABLE 60: Illustration of Point System and Associated Adjustments Comparison between the CY 2023 Performance Period/2025 MIPS Payment Year and the CY 2024 Performance Period/2026 MIPS Payment Year'', we made typographical errors in the MIPS Adjustment columns for the 2023 and 2024 Performance Periods.

23. On page 79437, in the table titled ''TABLE 83: Summary of Quality Measure Inventory Finalized for the CY 2024 Performance Period'',

a. We made typographical errors in the # Measures heading titles.

b. We made typographical errors in the number of eCQM Specifications measures finalized for CY 2024.

24. On page 79467, there are two typographical errors in the table titled ''TABLE 116: Calculation of the CY 2024 PFS Conversion Factor''.

25. On page 79506, there is a typographical error in the title of ''TABLE 131: Description of MIPS Eligibility Status for CY 2023 Performance Period/2025 MIPS Payment Year Using CY 2023 PFS Final Rule Assumptions''.

26. On page 79506, there is a typographical error in two footnotes of the table titled ''TABLE 131: Description of MIPS Eligibility Status for CY 2023 Performance Period/2025 MIPS Payment Year Using CY 2023 PFS Final Rule Assumptions''.

27. On page 79519, we made a typographical error in the reference to the MIPS payment year.

28. On page 79522, in the table titled ''TABLE 143: Accounting Statement for Provisions for Medicare Shared Savings Program (CYs 2024–2033)'', there are typographical errors in the references to Table numbers.

B. Summary of Errors in the Regulations Text

1. On page 79538, at § 414.1405(b)(9)(iii), there is a typographical error in the reference to the MIPS payment year.

2. On page 79542, third column, lines 19, 23, and 26 contain typographical errors.

C. Summary of Errors in the Addenda

1. On page 79939 of APPENDIX 1: MIPS QUALITY MEASURES, TABLE D.45: One-Time Screening for Hepatitis C Virus (HCV) for all Patients includes incorrect language to be removed in the substantive changes row.

2. On page 80015 of APPENDIX 3: MVP INVENTORY, TABLE B.2: Optimal Care for Kidney Health MVP we inadvertently omitted language in the last paragraph of the Comments and Responses section.

3. On pages 80013, 80016, and 80026 of APPENDIX 3: MVP INVENTORY, corresponding to TABLE B.2: Optimal Care for Kidney Health MVP, TABLE B.3: Optimal Care for Patients with Episodic Neurological Conditions MVP, and TABLE B.6: Advancing Rheumatology Patient Care MVP, respectively, we included an incorrect collection type for measure Q130: Documentation of Current Medications in the Medical Record.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice, 60-day comment period, and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the CY 2024 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2024 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2024 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors

In FR Doc. 2023–24184 of November 16, 2023 (88 FR 78818), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 78867, the table titled ''TABLE 11: CY 2024 Medicare Telehealth Services List'', the table is corrected to insert the following additional rows after the row for HCPCS code 0373T:

HCPCS	Short Descriptor	Audio-Only?	Category
0591T	Hlth&wb coaching indiv 1st	Yes	provisional
0592T	Hlth&wb coaching indiv f-up	Yes	provisional
0593T	Hlth&wb coaching indiv group	Yes	provisional
77427	Radiation tx management x5	No	provisional

2. On page 78876, second column, fourth full paragraph,

a. Line 2, the phrase ''telehealth services'' is corrected to read ''DSMT and therapy telehealth services''.

b. Line 6, the language ''modifier '95.' '' is corrected to read ''modifier '95.' For further background, we refer readers to pgs. 44–45, 80–81 of our FAQ available at *https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf.*''

3. On page 78918, third column, second full paragraph, second sentence that reads ''If caregivers are trained in a group, practitioners would not bill individually for each caregiver''. is corrected to read: ''If caregivers for the same beneficiary are trained in a group, practitioners would not bill individually for each caregiver''.

4. On page 78920, first column, first full paragraph, line 9, that reads ''a median group size of five caregivers'' is corrected to read ''a median group size of caregivers for five beneficiaries''.

5. On page 78944, first column, first full paragraph for code G0023, lines 5 and 6, the phrase ''certified peer specialist'' is deleted.

6. On page 78949, first column, first full paragraph, line 3 that reads ''services can be provided more than'' is corrected to read ''services cannot be provided more than''.

7. Beginning on page 78956, in the last row and continuing on page 78957, in the table titled, ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes'', the entry for HCPCS code G0019 is replaced in its entirety with the following:

BILLING CODE P

G0019	Community health integration services performed by certified or trained auxiliary personnel, including a community health worker, under the direction of a physician or other practitioner; 60 minutes per calendar month, in the following activities to address social determinants of health (SDOH) need(s) that are significantly limiting the ability to diagnose or treat problem(s) addressed in an initiating visit: • Person-centered assessment, performed to better understand the individualized context of the intersection between the SDOH need(s) and the problem(s) addressed in the initiating visit. ++ Conducting a person-centered assessment to understand patient's life story, strengths, needs, goals, preferences and desired outcomes, including understanding cultural and linguistic factors and including unmet SDOH needs (that are not separately billed). ++ Facilitating patient-driven goalsetting and establishing an action plan. ++ Providing tailored support to the patient as needed to accomplish the practitioner's treatment plan. • Practitioner, Home-, and Community-Based Care Coordination ++ Coordinating receipt of needed services from healthcare practitioners, providers, and facilities; and from home- and community-based service providers, social service providers, and caregiver (if applicable). ++ Communication with practitioners, home- and community-based service providers, hospitals, and skilled nursing facilities (or other health care facilities) regarding the patient's psychosocial strengths and needs, functional deficits, goals, preferences, and desired outcomes, including cultural and linguistic factors. ++ Coordination of care transitions between and among health care practitioners and settings, including transitions involving referral to other clinicians; follow-up after an emergency department visit; or follow-up after discharges from hospitals, skilled nursing facilities or other health care facilities. ++ Facilitating access to community based social services (e.g., housing, utilities, transportation, food assistance) to address the SDOH need(s). • Health education—Helping the patient contextualize health education provided by the patient's treatment team with the patient's individual needs, goals, and preferences, in the context of the SDOH need(s), and educating the patient on how to best participate in medical decision-making. • Building patient self-advocacy skills, so that the patient can interact with members of the health care team and related community-based services addressing the SDOH need(s), in ways that are more likely to promote personalized and effective diagnosis or treatment. • Health care access/health system navigation ++ Helping the patient access healthcare, including identifying appropriate practitioners or providers for clinical care and helping secure appointments with them. • Facilitating behavioral change as necessary for meeting diagnosis and treatment goals, including promoting patient motivation to participate in care and reach person-centered diagnosis or treatment goals. • Facilitating and providing social and emotional support to help the patient cope with the problem(s) addressed in the initiating visit, the SDOH need(s), and adjust daily routines to better meet diagnosis and treatment goals. • Leveraging lived experience when applicable to provide support, mentorship, or inspiration to meet treatment goals.	NEW	1.00	1.00	No

8. Beginning on page 78958, in the second and third rows and continuing on page 78959, in the table titled, ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes'', the entries for HCPCS codes G0022 and G0023 are replaced in their entirety with the following:

G0022	Community health integration services, each additional 30 minutes per calendar month (List separately in addition to G0019).	NEW	0.70	0.70	No
G0023	Principal Illness Navigation services by certified or trained auxiliary personnel under the direction of a physician or other practitioner, including a patient navigator; 60 minutes per calendar month, in the following activities: • Person-centered assessment, performed to better understand the individual context of the serious, high-risk condition. ++ Conducting a person-centered assessment to understand the patient's life story, strengths, needs, goals, preferences, and desired outcomes, including understanding cultural and linguistic factors and including unmet SDOH needs (that are not separately billed). ++ Facilitating patient-driven goal setting and establishing an action plan. ++ Providing tailored support as needed to accomplish the practitioner's treatment plan. • Identifying or referring patient (and caregiver or family, if applicable) to appropriate supportive services. • Practitioner, Home, and Community-Based Care Coordination. ++ Coordinating receipt of needed services from healthcare practitioners, providers, and facilities; home- and community-based service providers; and caregiver (if applicable). ++ Communication with practitioners, home-, and community-based service providers, hospitals, and skilled nursing facilities (or other health care facilities) regarding the patient's psychosocial strengths and needs, functional deficits, goals, preferences, and desired outcomes, including cultural and linguistic factors. ++ Coordination of care transitions between and among health care practitioners and settings, including transitions involving referral to other clinicians; follow-up after an emergency department visit; or follow-up after discharges from hospitals, skilled nursing facilities or other health care facilities. ++ Facilitating access to community-based social services (e.g., housing, utilities, transportation, food assistance) as needed to address SDOH need(s). • Health education—Helping the patient contextualize health education provided by the patient's treatment team with the patient's individual needs, goals, preferences, and SDOH need(s), and educating the patient (and caregiver if applicable) on how to best participate in medical decision-making. • Building patient self-advocacy skills, so that the patient can interact with members of the health care team and related community-based services (as needed), in ways that are more likely to promote personalized and effective treatment of their condition. • Health care access/health system navigation. ++ Helping the patient access healthcare, including identifying appropriate practitioners or providers for clinical care, and helping secure appointments with them. ++ Providing the patient with information/resources to consider participation in clinical trials or clinical research as applicable. • Facilitating behavioral change as necessary for meeting diagnosis and treatment goals, including promoting patient motivation to participate in care and reach person-centered diagnosis or treatment goals. • Facilitating and providing social and emotional support to help the patient cope with the condition, SDOH need(s), and adjust daily routines to better meet diagnosis and treatment goals. • Leverage knowledge of the serious, high-risk condition and/or lived experience when applicable to provide support, mentorship, or inspiration to meet treatment goals.	NEW	1.00	1.00	No

9. Beginning on page 78959, in the last row and continuing on page 78960, in the table titled, ''TABLE 14: CY 2024 Work RVUs for New, Revised, and Potentially Misvalued Codes'', the entry for HCPCS code G0140 is replaced in its entirety with the following:

G0140	Principal Illness Navigation—Peer Support by certified or trained auxiliary personnel under the direction of a physician or other practitioner, including a certified peer specialist; 60 minutes per calendar month, in the following activities: • Person-centered interview, performed to better understand the individual context of the serious, high-risk condition. ++ Conducting a person-centered interview to understand the patient's life story, strengths, needs, goals, preferences, and desired outcomes, including understanding cultural and linguistic factors, and including unmet SDOH needs (that are not billed separately). ++ Facilitating patient-driven goal setting and establishing an action plan. ++ Providing tailored support as needed to accomplish the person-centered goals in the practitioner's treatment plan. • Identifying or referring patient (and caregiver or family, if applicable) to appropriate supportive services. • Practitioner, Home, and Community-Based Care Communication ++ Assist the patient in communicating with their practitioners, home-, and community-based service providers, hospitals, and skilled nursing facilities (or other health care facilities) regarding the patient's psychosocial strengths and needs, goals, preferences, and desired outcomes, including cultural and linguistic factors. ++ Facilitating access to community-based social services (e.g., housing, utilities, transportation, food assistance) as needed to address SDOH need(s). • Health education—Helping the patient contextualize health education provided by the patient's treatment team with the patient's individual needs, goals, preferences, and SDOH need(s), and educating the patient (and caregiver if applicable) on how to best participate in medical decision-making. • Building patient self-advocacy skills, so that the patient can interact with members of the health care team and related community-based services (as needed), in ways that are more likely to promote personalized and effective treatment of their condition. • Developing and proposing strategies to help meet person-centered treatment goals and supporting the patient in using chosen strategies to reach person-centered treatment goals. • Facilitating and providing social and emotional support to help the patient cope with the condition, SDOH need(s), and adjust daily routines to better meet person-centered diagnosis and treatment goals. • Leverage knowledge of the serious, high-risk condition and/or lived experience when applicable to provide support, mentorship, or inspiration to meet treatment goals.	NEW	1.00	1.00	No

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10. On page 78975, first column, first full paragraph, line 26, the phrase that reads ''this policy is implemented.'' is corrected to read, ''this policy is implemented. We are finalizing as proposed that payment will not be made for the inherent complexity add-on code (G2211) when billed with an O/O E/M service reported with modifier −25.''

11. On page 79075, third column, first full paragraph, line 19 that reads ''G0022, G0023, and G0024 respectively'' is corrected to read ''G0022, G0023, G0024, G0140 and G0146, respectively.''

12. On page 79112, in the table titled, ''TABLE 28: Final APP Reporting Requirements and Quality Performance Standard for Performance Year 2024 and Subsequent Performance Years'', second column, third row, second paragraph, lines 4 through 6, the phrase that reads ''and receives a MIPS Quality performance category score under § 414.1380(b)(1)'' is removed.

13. On page 79112, in the table titled ''TABLE 28: Final APP Reporting Requirements and Quality Performance Standard for Performance Year 2024 and Subsequent Performance Years'', second column, third row, third paragraph, line 6, the phrase that reads ''in the APP measure would'' is corrected to read ''in the APP measure set would''.

14. On page 79113, in the table titled ''TABLE 29: Measures included in the APP Measure Set for Performance Year 2024 and Subsequent Performance Years'', sixth column, second row, the identifier ''PRO–PM *'' is corrected to read ''Patient Engagement/Experience''.

The related footnote ''* Patient-reported outcome-based performance measure (PRO–PM) is a performance measure that is based on patient-reported outcome measure (PROM) data aggregated for an accountable healthcare entity.'' is removed.

15. On page 79121, third column, lines 4 through 6, the sentence that reads ''We note that Table 30 is same as Table 29 that was included in the CY 2024 PFS proposed rule (88 FR 52432).'' is removed.

16. On page 79121, in the table titled ''TABLE 30: 40th Percentile MIPS Quality Performance Category Scores Using Current and Finalized Methodology'', that reads:

TABLE 30: 40th Percentile MIPS Quality Performance Category Scores Using Current and Finalized Methodology

Performance Year		Actual 40th percentile MIPS Quality performance category score*	40th percentile MIPS Quality performance category score using historical methodology
2018		70.80*	--
2019		70.82*	--
2020		75.59*	--
2021		77.83*	--
2022	77.73^	72.40 (estimated for illustrative purposes) **	

is corrected to read:

TABLE 30: 40th Percentile MIPS Quality Performance Category Scores Using Current and Finalized Methodology

Performance Year	Actual 40th percentile MIPS Quality performance category score*	40th percentile MIPS Quality performance category score using historical methodology
2018	70.80*	--
2019	70.82*	--
2020	75.59*	--
2021	77.83*	--
2022	77.73^	72.40 (estimated for illustrative purposes) **

17. On page 79131, second column, second full paragraph, first bullet, line 5 that reads ''subpart Oat the individual, group,'' is corrected to read ''subpart O at the individual, group,''.

18. On page 79144, third column, line 23, the reference that reads ''section VI.E.'' is corrected to read ''section VII.E.''.

19. On page 79172, third column, second full paragraph, lines 10 through 14, that reads ''furnished by an ACO professional who is a physician (as defined in section 1861(r)(1)) of the Act), or a practitioner that is a PA, NP, CNS (as defined in section 1842(b)(18)(C)(i) of the Act).'' is corrected to read ''furnished by an ACO professional who is a physician.''

20. On page 79189:

a. The third column, first full paragraph, line 1 the phrase that reads ''Tables 41 and 42'' is corrected to read ''Tables 42 and 43''.

b. The third column, first full paragraph, line 8, the phrase that reads ''Tables 39 and 40'' is corrected to read ''Tables 40 and 41''.

21. On page 79240, the first column, first paragraph, lines 8 and 9 the phrase that reads ''as displayed in Tables 46A and 46B'' is deleted.

22. On page 79379, in the table titled ''TABLE 60: Illustration of Point System and Associated Adjustments Comparison between the CY 2023 Performance Period/2025 MIPS Payment Year and the CY 2024 Performance Period/2026 MIPS Payment Year'':

a. Second column, fourth row, line 3 that reads ''sliding scale ranges from 0 to 9% for scores from 75.00 to 100.00'' is corrected to read ''sliding scale ranges from greater than 0% to 9% for scores from 75.01 to 100.00.''; and

b. Fourth column, fourth row, line 3 that reads ''linear sliding scale ranges from 0 to 9% for scores from 86.00 to 100.00'' is corrected to read ''linear sliding scale ranges from greater than 0% to 9% for scores from 75.01 to 100.00.''.

23. On page 79437, in the table titled ''TABLE 83: Summary of Quality Measure Inventory Finalized for the CY 2024 Performance Period'', fifth column, row 4, that reads:

Collection Type	# Measures as New	# Measures for Removal*	# Measures with a Substantive Change*	# Measures for CY 2024*
eCQM Specifications	0	-3	26	44

is corrected to read:

Collection Type	# Measures Finalized as New	# Measures Finalized for Removal*	# Measures Finalized with a Substantive Change*	# Measures Finalized for CY 2024*
eCQM Specifications	0	-3	26	46

24. On page 79467, in the table titled ''TABLE 116: Calculation of the CY 2024 PFS Conversion Factor'', that reads:

CY 2023 Conversion Factor		33.8872
Conversion Factor without the CAA, 2023 (2.5 Percent Increase for CY 2023)		33.0607
CY 2024 RVU Budget Neutrality Adjustment	-2.20 percent (0.9780)	
CY 2024 1.25 Percent Increase Provided by the CAA, 2023	1.25 percent (1.0125)	
CY 2024 Conversion Factor		**32.7375**

is corrected to read:

CY 2023 Conversion Factor		33.8872
Conversion Factor without the CAA, 2023 (2.5 Percent Increase for CY 2023)		33.0607
CY 2024 RVU Budget Neutrality Adjustment	-2.18 percent (0.9782)	
CY 2024 1.25 Percent Increase Provided by the CAA, 2023	1.25 percent (1.0125)	
CY 2024 Conversion Factor		**32.7442**

25. On page 79506, in the table titled ''TABLE 131: Description of MIPS Eligibility Status for CY 2023 Performance Period/2025 MIPS Payment Year Using CY 2023 PFS Final Rule Assumptions'', the title of the table is corrected to read ''TABLE 131: Description of MIPS Eligibility Status for CY 2024 Performance Period/2026 MIPS Payment Year Using CY 2023 PFS Final Rule Assumptions''.

26. On page 79506, in the table titled ''TABLE 131: Description of MIPS Eligibility Status for CY 2023 Performance Period/2025 MIPS Payment Year Using CY 2023 PFS Final Rule Assumptions'', the first and second footnotes which read:

''* Participation excludes facility-based clinicians who do not have scores in the 2021 MIPS submission data.

** Allowed charges estimated in 2021 dollars. Low-volume threshold is calculated using allowed charges. MIPS payment adjustments are applied to the paid amount.''

are corrected to read:

''* Participation excludes facility-based clinicians who do not have scores in 2022 MIPS submission data.

** Allowed charges estimated in 2022 dollars. Low-volume threshold is calculated using allowed charges. MIPS payment adjustments are applied to the paid amount.''

27. On page 79519, third column, first full paragraph, line 7, the phrase that reads ''2025 MIPS payment year.'' is corrected to read ''2026 MIPS payment year.''

28. On page 79522, in the table titled ''TABLE 143: Accounting Statement for Provisions for Medicare Shared Savings Program (CYs 2024–2033)'', fifth column, third and fourth full rows, the phrase that reads ''Tables 120 through 123'' is corrected to read ''Tables 123 through 126''.

B. Correction of Errors in the Addenda

29. On page 79939 of APPENDIX 1: MIPS QUALITY MEASURES, TABLE D.45: One-Time Screening for Hepatitis C Virus (HCV) for all Patients, row 6, Substantive Change: in the section titled:

Updated denominator: Updated:

THERE ARE TWO SUBMISSION CRITERIA FOR THIS MEASURE:

First full paragraph, lines 6 through 8 that read: ''For accountability reporting in the CMS MIPS program, the rate for submission criteria 2 is used for performance, however, both performance rates must be submitted.'' is to be removed.

30. On page 80015 of APPENDIX 3: MVP INVENTORY, TABLE B.2: Optimal Care for Kidney Health MVP language in the last paragraph of the Comments and Responses section should read: ''After consideration of public comments, we are finalizing the *Optimal Care for Kidney Health MVP* with modifications in Table B.2 for the CY 2024 performance period/2026 MIPS payment year and future years.''

31. On pages 80013, 80016, and 80026 of APPENDIX 3: MVP INVENTORY, corresponding to TABLE B.2: Optimal Care for Kidney Health MVP, TABLE B.3: Optimal Care for Patients with Episodic Neurological Conditions MVP, and TABLE B.6: Advancing Rheumatology Patient Care MVP, respectively, the Collection Type for measure Q130 is corrected by removing ''Medicare Part B Claims Measure Specifications'' and reads ''eCQM Specifications, MIPS CQMs Specifications)''.

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS corrects 42 CFR parts 414 and 424 by making the following correcting amendments:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(1).

§ 414.1405 [Amended]

■ 2. Amend § 414.1405 in paragraph (b)(9)(iii) by removing the phrase ''2025 MIPS payment year'' and adding in its place the phrase ''2026 MIPS payment year''.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 3. The authority citation for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 4. Amend § 424.541 by—

■ a. Removing paragraphs (a)(2)(ii)(B)(*3*) through (*5*); and

■ b. Adding paragraphs (a)(3) through (5).

The additions read as follows:

§ 424.541 Stay of enrollment.

(a) * * *

(3) A stay of enrollment lasts no longer than 60 days from the postmark date of the notification letter, which is the effective date of the stay.

(4) CMS notifies the affected provider or supplier in writing of the imposition of the stay.

(5) A stay of enrollment ends on the date on which CMS or its contractor determines that the provider or supplier has resumed compliance with all Medicare enrollment requirements in Title 42 or the day after the 60-day stay period expires, whichever occurs first.

* * * * *

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2024–02705 Filed 2–8–24; 4:15 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 170

Health Information Technology Standards, Implementation Specifications, and Certification Criteria and Certification Programs for Health Information Technology

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 45 of the Code of Federal Regulations, Parts 140 to 199, revised as of October 1, 2023, amend section 170.580 by reinstating paragraph (a)(3)(ii) to read as follows:

§ 170.580 ONC review of certified health IT.

* * * * *

(a) * * *

(3) * * *

(ii) ONC may assert exclusive review of certified health IT as to any matters under review by ONC and any similar matters under surveillance by an ONC–ACB.

* * * * *

[FR Doc. 2024–02940 Filed 2–9–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Chapter III

RIN 0970–AC99

Elimination of the Tribal Non-Federal Share Requirement

AGENCY: Office of Child Support Services (OCSS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: OCSS eliminates the non-Federal share of program expenditures requirement for Tribal child support programs, including the 90/10 and 80/20 cost sharing rates. Based upon the experiences of and consultations with Tribes and Tribal organizations, we have determined that the non-Federal share requirement limits growth, causes disruptions, and creates instability.

DATES: This rule is effective October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Janice McDaniel, Program Specialist, Division of Policy and Training, OCSS, telephone (202) 969–3874. Email inquiries to *ocss.dpt@acf.hhs.gov.* Telecommunications Relay users may dial 711 first.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is published in accordance with section 455(f) of the Social Security Act (the Act) (42 U.S.C. 655(f)). Section 455(f) of the Act requires the Secretary to issue regulations governing the grants to Tribes and Tribal organizations operating child support programs.

This final rule is also published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Act (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

II. Public Consultation

Since the inception of the Tribal child support program, OCSS has conducted numerous face-to-face and virtual Tribal Consultations and listening sessions to discuss the longstanding issue of the non-Federal share requirement and the cost sharing rates.

In fact, even before drafting regulations to implement direct funding for Tribal Child Support Enforcement Programs, OCSS conducted a series of Tribal consultations during which OCSS received many questions about how funding levels would be set. The notice of proposed rulemaking (NPRM), published in August 2000, indicated that ''if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly'' (65 FR 50823).

Since then, Tribal leaders and Tribal child support directors have submitted oral and written feedback, testimony, and blanket waiver requests describing the barriers they face in meeting the non-Federal share requirement and requesting relief by modifying, suspending, or eliminating the requirement.

Most recently, on April 6, 2023, OCSS held a Tribal Consultation for the NPRM issued on April 21, 2023 (88 FR 24526). Several Tribal leaders or their designees provided oral testimony about the difficulties Tribes and Tribal organizations face in meeting the non-Federal share requirement and the adverse impacts. For example, meeting the non-Federal share forces Tribal child support programs to cut staff, limit services, defer systems or equipment purchases, and compete with other Tribal programs for scarce Tribal funds and resources. They specifically mentioned the importance of Tribal monies to support self-governance functions like public safety, health, and natural resources. Oftentimes, Tribe-Tribes and Tribal organizations must underfund critical self-governance functions and services to meet the non-Federal share. They indicated that Tribal Nations have limited ways to increase revenue, are more susceptible to losses and economic downturns, and do not have the same taxing authorities as state governments. Many discussed the administrative burden of documenting, tracking, and reporting on non-Federal share contributions and how dedicating staff time and resources to that makes their child support programs less efficient and effective. They thought the non-Federal share waiver provision was overly restrictive and unnecessary since the non-Federal share was not imposed by Congress in section 455(f) the Social Security Act but by OCSS through regulation despite the objections of Tribes. They also thought that revising the non-Federal share waiver requirement was not an adequate, long-term solution, especially because that would not remove the financial barrier that prevents prospective Tribes from administering a child support program and places existing Tribal child support programs at risk of closing. All the oral and written testimony supported the elimination of the non-Federal share requirement because it will create stability, promote growth, and ensure Tribal families and communities have access to Tribal child support program services. It also reaffirms the government-to-government relationship between Indian Tribes and the Federal Government. The April 6, 2023, Tribal Consultation Session Summary Report is available on the OCSS website, *https://www.acf.hhs.gov/css.*

The NPRM issued on April 21, 2023, includes a discussion on prior Tribal Consultations and OCSS listening sessions on the non-Federal share requirement (88 FR 24527). These consultations and sessions demonstrate that Tribes and Tribal organizations have consistently and repeatedly objected to the non-Federal share requirement and expressed the hardship and harm it causes.

III. Background

In the 2000 NPRM for the Tribal Child Support Enforcement Programs, OCSS estimated that within 3 years, 150 Tribes and Tribal organizations would operate a child support program (65 FR 50801). As one commenter pointed out, the expansion of the Tribal child support program has fallen significantly short of those earlier projections. To date, few Tribes and Tribal organizations operate child support programs, although funding was authorized 19 years ago. Out of the 574 federally recognized Tribes, only 60 operate Tribal child support programs despite the flexible eligibility requirements to receive program funding.[1]

Eliminating the non-Federal share requirement, including the 90/10 and 80/20 cost sharing rates, removes a significant financial barrier for current and prospective Tribal child support programs. Many Tribes and Tribal organizations face systemic, historical, and ongoing issues that impact their ability to meet the non-Federal share.[2] For example, some Tribes have high rates of unemployment and families living below the poverty level, have limited and vulnerable Tribal enterprises that generate revenue, are in rural, communities that have faced disinvestment, are exposed to greater environmental threats, and lack robust economies. One comment indicated that many Tribes are shut out of the opportunity to provide federally funded child support services precisely because of long-term problems like high unemployment rates, limited economic development, a subsistence economy remote from employment centers, and no tax base. The non-Federal share requirement not only discourages prospective Tribes, it also increases the risk of current Tribal child support programs shutting down.

Several Tribal commenters expressed their fears of being forced to shut down their Tribal child support programs if the non-Federal share is not eliminated. In fact, in fiscal year (FY) 2017, a Tribe had to shut down their child support program because they were unable to meet the non-Federal share of program expenditures, indicating that the requirement is a barrier for any Tribe to be successful.

Additionally, the current economic conditions in Tribal Nations have made their situations even more precarious. Several Tribal commenters indicated that their enterprises and revenues have not fully returned to pre-pandemic levels, and they are still dealing with other issues like the opioid epidemic and natural disasters that require Tribal resources and funds to mitigate. Yet, the non-Federal share requirement forces Tribal child support programs to compete with other Tribal departments and programs to obtain limited Tribal government funding.

The elimination of the non-Federal share requirement will enable Tribal child support programs to grow and expand. Meeting the non-Federal share has disproportionately and negatively driven programmatic and fiscal decisions. As one commenter mentioned, it forces Tribes and Tribal organizations to make decisions to meet the non-Federal share instead of meeting the needs of their Tribal families and communities. Many commenters indicated that their Tribal child support programs had to defer paying for required security assessments to access the Federal Parent Locator Service (FPLS), which helps in locating noncustodial parents and their assets. They also indicated that the non-Federal share requirement made their programs less efficient and effective because they had no funds or time to spend on wraparound services, employment referrals for noncustodial parents, robust outreach, intensive case

[1] See U.S. Department of Interior Indian Affairs Tribal Leader Directory at *https://www.bia.gov/service/tribal-leaders-directory.*

[2] See U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans (December 2018), available at *https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf.*

management, fatherhood programs, and parenting initiatives.

The National Association of Tribal Child Support Directors included the results of their 2022 survey in their comments. Out of the 46 respondents, the survey found that if the non-Federal share were eliminated 63 percent expected to have more time to focus on efforts to increase service quality, 50 percent would be interested in offering a fatherhood program, and 67 percent would be interested in expanding outreach.

Eliminating the non-Federal share will help to ensure that Tribal Nations can offer culturally appropriate and affirming child support services to their communities. Native American children in Tribal areas with child support programs are in great need of child support, especially since 53 percent of Native American children in these areas lived in single-parent families.[3] According to data from the 2015 American Community Survey, nearly one-third of Native Americans living in Tribal areas with a child support program lived below the poverty line in 2015 (that year, the poverty line for a family of three was $20,090).[4] This poverty rate was more than twice the poverty rate for Americans in general (15 percent). Particularly stark was the poverty rate among Native American children living in these areas, which was 40 percent.[5]

In FY 2022, Tribal child support programs collected $51 million in child support payments, and 97 percent went to families.[6] These child support payments help to reduce the need for other supportive services such as Temporary Assistance for Needy Families (TANF). Additionally, Tribal child support programs offer unique services like non-cash support, parenting classes that reflect Tribal culture and traditions, and intensive and family-centered case management. A Tribal commenter who is receiving child support services stated, ''My Tribal IV–D program treated me as a person, not just a child support case number.'' The commenter also indicated that when the state was unable to locate her child's father, the Tribal child support program found him and established and enforced a child support order, which resulted in the receipt of regular child support payments. Tribal child support directors have indicated that many Tribal parents have had similar experiences and value the Tribal child support services they receive.

The elimination of the non-Federal share will also ensure that state child support programs continue to receive assistance from Tribal child support programs to enforce state child support orders and collect child support payments in intergovernmental cases in accordance with 45 CFR 309.120(a). For example, when a Tribal child support program receives a request for assistance from a state, they register the state child support order in Tribal court and enforce it. Then, the tribe collects the child support payment from the noncustodial parent and sends it to the state in accordance with 45 CFR 309.115(d). Without this assistance from Tribal child support programs, states are, for the most part, unable to collect child support payments in these intergovernmental cases because they lack jurisdiction to enforce their child support orders in Tribal Nations. In FY 2022, Tribal child support programs collected and sent $10 million in child support payments to states, other tribes, and countries.[7] Comments from five states acknowledged the importance of Tribal child support programs, reiterated the difficulties they face in meeting the non-Federal share requirement, and supported the elimination.

Eliminating the non-Federal share promotes equity and honors Tribal sovereignty and the trust relationship between the Federal Government and Tribal Nations. This regulation also aligns with President Biden's Executive order on *Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination,* Executive Order 14112, 88 FR 86021 (December 6, 2023). As set out by the 1977 Senate report of the American Indian Policy Review Commission, ''The purpose behind the trust is and always has been to insure the survival and welfare of Indian Tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.''[8] As several commenters mentioned, Tribal governments have substantially less funds and revenue generating options than state governments. Yet the needs and disparities are greater in Tribal communities. For example, they continue to face inequalities and structural barriers that limit their opportunities, negatively impact their well-being and economic mobility, and contribute to their higher rates of poverty.[9] Instead of competing, these programs and services should collaborate to use both Federal and Tribal funds efficiently and effectively to improve the economic and social well-being of Tribal children, families, and communities. Therefore, eliminating the requirement reduces the competition for scarce resources and makes the Tribal child support program funding more equitable and obtainable for Tribal Nations. As one state commenter indicated, it helps put Tribes on more equal footing with state child support programs.

From the start, the Tribal child support program regulations recognized and honored Tribal sovereignty and attempted to convey flexibilities in Tribal child support programs as stated in the NPRM published in 2000 (65 FR 50805). The 2000 NPRM stated that the regulation recognizes the government-to-government relationship by supporting Tribe's right to exercise self-determination and decide whether or not to operate a Tribal child support program (65 FR 50805). Many commenters to this final rule also recognized and reiterated the importance of exercising Tribal sovereignty by operating a Tribal child support program. Child support services help Tribal communities promote parental responsibility, so children receive support from both parents even when they live in separate households. Tribes and Tribal organizations exercising their sovereignty to operate their own child support programs is, in fact, what Congress intended when it authorized funding under Personal Responsibility and Work Opportunity

[3] See OCSS Exploring Tribal Demographic Data: Part Two at *https://www.acf.hhs.gov/css/ocsedatablog/2023/01/exploring-tribal-demographic-data-part-two.*

[4] See OCSS Exploring Tribal Demographic Data: Part One at *https://www.acf.hhs.gov/css/ocsedatablog/2022/11/exploring-tribal-demographic-data-part-one.*

[5] Id.

[6] See OCSS 2022 Tribal Infographic at FY 2022 Tribal Child Support Providing Support for Our Families (*hhs.gov*).

[7] See OCSS 2021 Tribal Infographic at FY 2022 Tribal Child Support Providing Support for Our Families (*hhs.gov*).

[8] See American Indian Policy Review Commission Final Report (May 1977), page 130 available at *https://files.eric.ed.gov/fulltext/ED164229.pdf.*

[9] See Joint Economic Committee Democrats, Native American Communities Continue to Face Barriers to Opportunity that Stifle Economic Mobility (May 2022) available at *https://www.jec.senate.gov/public/_cache/files/9a6bd201-d9ed-4615-bc32-9b899faf5627/nativeamericanscontinuetofacepervasiveeconomicdisparaties-final.pdf.*

Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193).

Eliminating the non-Federal share requirement helps to achieve this and to ensure the sustainability and expansion of the program by providing the adequate and appropriate Federal financial participation. This is important because many Federal programs that assist Tribal Nations and promote Tribal sovereignty are underfunded, according to the 2018 U.S. Commission on Civil Rights report on Federal funding for Native Americans.[10] Additionally, this rule honors and reflects the trust relationship and doctrine, which requires the Federal Government to support Tribal self-government and economic prosperity.[11] And it also fulfills the 2000 NPRM directive that indicated ''if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly'' (65 FR 50823).

Nevertheless, OCSS considered whether a change in policy might negatively impact Tribal child support programs, which have structured their operations based on the existing matching requirement and determined that any potential negative impact is far outweighed by the benefit of not using scarce Tribal funds for the non-Federal share.

In the NPRM published in 2000, OCSS considered several different funding approaches that controlled costs, including performance-based funding, funding based on cost per child to operate the program, capping certain costs, and state-cost based funding (65 FR 50823). OCSS engaged in extensive deliberations over the issue of funding for Tribal child support programs. After careful consideration of the advantages and disadvantages of each cost control funding approach, ultimately, the Secretary proposed open-ended funding with a Tribal match (65 FR 50823). The NPRM proposed that Tribes and Tribal organizations provide a 10 percent match during the start-up period and first 3 years of operating a Tribal child support program, with the match increasing to 20 percent thereafter (65 FR 50823). The NPRM also included a waiver provision allowing the Secretary to waive the non-Federal share for Tribes and Tribal organizations that lacked sufficient resources and met certain specific criteria (65 FR 50823).

The Tribal Child Support Enforcement Program final rule was promulgated on March 30, 2004 (hereinafter final rule) and included revisions to the cost sharing provision for start-up funding and the non-Federal share waiver provisions at 45 CFR 309.130(e) (69 FR 16638 and 16646). In the final rule, OCSS indicated that it received numerous comments from Tribes objecting to the cost sharing requirement. In response, OCSS again expressed concern regarding the control of costs in the Tribal child support program, stating that ''unlike other Tribal grant programs, the funding for Tribal IV–D programs is not sum certain grants,'' meaning a specified and set amount of funds (69 FR 16667). OCSS further stated that the cost sharing requirement was maintained after determining ''that a non-Federal share in expenditures is necessary, based on the principle that better programs and better management result when local resources are invested'' (69 FR 16667). However, in response to comments, the match requirement was changed to allow 100 percent funding during the start-up period, not to exceed 2 years, and, capped at $500,000 per 45 CFR 309.130(c)(1). OCSS noted that the non-Federal match for start-up costs was eliminated in recognition that ''Tribes just beginning title IV–D child support enforcement may have very limited funds for this activity'' (69 FR 16646).

The 2004 final rule also revised the non-Federal share waiver provisions and made them more prescriptive and restrictive (69 FR 16646). For example, OCSS noted that denied waiver requests were not subject to administrative appeal (69 FR 16646). The regulation at 45 CFR 309.130(e) permits, under certain circumstances, a temporary waiver of part or all of the non-Federal share of program expenditures. This provision includes the following two types of temporary waiver requests that a Tribe or Tribal organization may submit for consideration: ''anticipated temporary waiver request'' and ''emergency waiver request.'' Both waiver requests must be submitted in accordance with the procedures specified in 45 CFR 309.130(e)(2) through (4). These procedures require the submission of extensive information and documentation to demonstrate the temporary lack of resources and justify the waiver request.

Under 45 CFR 309.130(e)(1)(i), when Tribes or Tribal organizations anticipate that they will be temporarily unable to contribute part or all of the required non-Federal share of program funding, they must submit an anticipated temporary waiver request. The anticipated waiver, due no later than 60 days before the start of the funding period, is more restrictive because untimely or incomplete requests will not be considered, in accordance with 45 CFR 309.130(e)(1)(i). Many Tribal child support programs have been denied anticipated waivers because of untimely or incomplete requests. An untimely anticipated waiver request means a Tribe submitted the request after the deadline of August 1 pursuant to 45 CFR 309.130(e)(1)(i). An incomplete anticipated waiver request means a Tribe did not include all the information required by 45 CFR 309.130(e)(2) through (4), such as portions of the Tribal budget sufficient to demonstrate the extent of the funding shortfall and uncommitted funds.

Under 45 CFR 309.130(e)(1)(ii), after the start of the funding period, if an emergency situation occurs, such as a hurricane or flood, that warrants a waiver of the non-Federal share of program expenditures, Tribes or Tribal organizations may submit an emergency waiver request.

Although OCSS previously determined during drafting of the Tribal Child Support Enforcement Program regulations that a non-Federal match was important to ensure ''better programs and better management'' (69 FR 16667), it has now reconsidered that conclusion after seeing the Tribal child support program in practice during the past two decades. Based on its experience, OCSS now concludes that its oversight tools are sufficient, without the non-Federal share match, to monitor use of funds for IV–D expenditures and consider cost containment. Tribes and Tribal organizations show in their budget submissions and communications with OCSS that they are engaged in operating successful programs and using Federal funds properly, efficiently, and effectively, in accordance with 45 CFR 309.60(b). A non-Federal share is also not necessary to ensure Tribal investment in the program. Tribes and Tribal organizations are inherently invested in operating a child support program because they can exercise their Tribal sovereignty and incorporate their Tribal traditions and customs. Most importantly, they are invested in the Tribal members who staff their programs and the Tribal families and children who benefit from child support services. They will continue to provide Tribal resources, such as Tribal

[10] See U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans (December 2018) at *https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf.*

[11] See Administration for Children and Families, American Indians and Alaska Natives—The Trust Responsibility Fact Sheet at *https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-trust-responsibility.*

buildings and courts, to ensure their programs are successful and efficient.

The Tribal child support program regulations provide OCSS with sufficient authority to control costs and monitor compliance without the non-Federal share requirement. The primary method for evaluating and ensuring allowable and appropriate costs is through the budget submission, review, and approval process. The regulation at 45 CFR 309.15(c) requires Tribal child support programs to submit a budget to receive Title IV–D funding to administer their child support programs. Budgets must include the detailed information specified in 45 CFR 309.130(b) and OCSS guidance, such as quarterly estimate of expenditures, narrative justification for each cost category, and copies of contracts (see Tribal Child Support Budget Toolbox and OCSS PIQT–21–01). OCSS and Office of Grants Management (OGM) review Tribal budget submissions for compliance with 45 CFR parts 309, 310, and 75 and other applicable Federal laws. During the review of Tribal budgets, OCSS and OGM examine the estimates of program expenditures, determine whether the budget narratives and documentation justify costs, and approve allowable costs charged to the Title IV–D grant. OCSS reviews the entire budget in detail to ensure the costs are reasonable and necessary given the caseload size and other demographic and geographic factors. OCSS compares contract costs to industry standards and similar contracts from other child support programs. For questionable costs, OCSS works with the Tribe to obtain additional information or revise or remove those costs when warranted. For example, OCSS determined that a Tribe's contract costs for information technology development were higher than the industry standard and worked with the Tribe to secure a reduction in the costs before approving the contract.

OCSS must approve a Tribe's budget before OGM issues a notice of grant award, which provides OCSS with direct oversight over Tribal expenditures before Tribal child support programs drawdown and use Title IV–D funds at the start of the fiscal year. After OCSS approves a Tribe's budget, a Tribe may request additional funds by submitting the information specified in 45 CFR 309.130(f)(1). If the increase in funds impacts the Tribal IV–D plan, the Tribe must also submit a plan amendment in accordance with 45 CFR 309.130(f)(2). A Tribe must provide the required information and documentation and the costs must comply with the Federal regulations before OCSS approves the request for an increase in funds. This ensures that increases in approved Tribal budgets are reasonable, necessary, allowable, and allocable. Additionally, OCSS uses a variety of methods to provide technical assistance and assess needs so that Tribal child support programs comply with the program regulations, uniform grant requirements, and cost principles. These methods include conducting training, national webinars, conference workshops, regional meetings, and site visits. As a result, the overall Tribal child support program expenditures of existing Tribes are not expected to rise substantially beyond normal cost increases due to factors like inflation, filling vacancies, or upgrading equipment and systems.

Even with the elimination of the non-Federal share, OCSS does not expect that every federally recognized Tribe or Tribal organization will request funding to operate a Tribal child support program, meaning that OCSS expects only a modest and gradual increase in program expenditures. Prospective Tribes and Tribal organizations may not have the required administrative capacity or infrastructure to operate a child support program. For example, they may not have 100 children under the age of majority, as referenced in 45 CFR 309.10(a). Although they may request a waiver of this requirement (45 CFR 309.10(c)), the waiver must demonstrate that their prospective Tribal child support program will be cost effective (45 CFR 309.10(c)(1)(iii)). Additionally, prospective Tribes and Tribal organizations may not want to comply with the extensive requirements and procedures required to receive funding (45 CFR 309.65). A Tribal court can hear child support cases without the Tribe administering a child support program. Administering a Tribal child support program and working with parents on such a vulnerable and sensitive subject is complex and demanding. As previously mentioned, instead of operating their own Tribal child support program, they may jointly operate a program or may receive child support services from an existing Tribal child support program.

As a policy alternative to eliminating the non-Federal share, OCSS considered revising the non-Federal share waiver requirements to make waivers easier to request and receive. In fact, the non-Federal share waiver requirements proposed in the 2000 NPRM were less restrictive and burdensome than the requirements in the 2004 final rule under 45 CFR 309.130(e) (65 FR 50837). Only one commenter suggested this policy alternative. Reducing the burden and criteria for requesting non-Federal share waivers does not change the fact that they are temporary and must be requested each time a Tribe needs one. The underlying issues that make meeting the non-Federal share difficult or impossible for Tribes and Tribal organizations are persistent, intractable, and systemic such as high rates of unemployment, little or no economic development, or lack of or a decline in revenue. As one commenter pointed out, Tribal communities have been historically underserved, marginalized, or subject to discrimination or systemic disadvantage. These issues not only hinder current Tribal child support programs from meeting the non-Federal share and potentially shutting down, but they also prevent prospective Tribes from even applying for funding. Therefore, OCSS does not think revising the non-Federal share waiver requirements would increase Tribal participation or reduce the risks of program closures as much as eliminating the requirement entirely. Nor would it reduce the administrative burden associated with tracking and reporting on non-Federal share contributions and submitting waiver requests. Most importantly, revising the non-Federal share waiver provision recognizes the need to implement the 2000 NPRM directive for the Secretary to revise the regulations when the 80/20 match rate is disruptive to the program and imposes hardship to Tribes (65 FR 50823). Accordingly, the time has come to revise the regulation. The overwhelming majority of commenters agreed with this decision.

In 1996, Congress was compelled to pass PRWORA and authorize direct funding of Tribes and Tribal organizations for operating child support programs. And now, OCSS issues this final rule that eliminates the non-Federal share requirement, helping to ensure that new Tribal child support programs are established, and current ones continue to operate and thrive, as Congress intended. As a result, more Tribal communities will receive child support services that reflect and affirm their Tribal cultures and traditions, increase family economic well-being, and help lift Tribal families out of poverty.

IV. Summary Description of the Regulatory Provisions

The following is a summary of the regulatory provisions included in the final rule and, where appropriate, how these provisions differ from what was initially included in the NPRM. The NPRM was published in the **Federal Register** on April 21, 2023 (88 FR 24526 through 24535). The comment period

ended June 20, 2023. OCSS received 51 sets of comments from 48 entities as follows: 28 Tribes, 5 Tribal child support programs, 5 states, 5 organizations, and 5 individuals. Three Tribes submitted 2 sets of comments. Comments were posted on *www.regulations.gov*.

Overwhelmingly, the comments received on the NPRM supported the elimination of the non-Federal share requirement for Tribal child support programs. Several commenters indicated that they had no objections to the regulatory revisions, as discussed below, resulting from the elimination of the non-Federal share. Only one comment disagreed with the elimination and recommended allocating funds by the size of the Tribal child support program or revising the non-Federal share waiver provision instead.

Section 309.15 What is a Tribal IV–D program application?

In § 309.15(a)(2)(iii), OCSS proposed removing the language ''; and either:'' at the end of that provision and inserting a period in its place. Section 309.15(a)(2)(iv) requires the initial application for funding to include a statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available. Section 309.15(a)(2)(v) permits a request for a waiver of the non-Federal share in accordance with § 309.130(e). OCSS proposed removing § 309.15(a)(2)(iv) and (v) due to the elimination of the non-Federal share. There were no objections to the proposed regulatory amendments.

Section 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

Section 309.45(g) indicates that disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal. OCSS proposed amending § 309.45(g) by removing '', and a request for waiver of the non-Federal Tribal share.'' Revised paragraph (g) will read as follows: ''Disapproval of start-up funding and a request for waiver of the 100-child rule is not subject to administrative appeal.'' There were no objections to the proposed regulatory amendments.

Section 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

Section 309.75(e) describes the requirements for a Tribe and Tribal organization that intends to charge an application fee or recover costs in excess of the fee. Collected fees and recovered costs are considered program income and deducted from total allowable costs in accordance with 45 CFR 309.75(e)(4) and 75.307(e)(1). Due to the proposed elimination of the non-Federal share requirement, we proposed revising § 309.75(e) and modified the proposed language in the NPRM, requiring Tribal child support programs to provide that charging fees and recovering costs will not be permitted. We also proposed removing paragraphs (e)(1) through (4). There were no objections to the proposed regulatory amendments.

Section 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?

Section 309.85(a)(6) requires a Tribe or Tribal organization to maintain records on any fees charged and collected, if applicable. As previously stated, collected fees and recovered costs are considered program income and deducted from total allowable costs in accordance with 45 CFR 309.75(e)(4) and 75.307(e)(1). Due to the proposed elimination of the non-Federal share requirement, we proposed removing § 309.85(a)(6) and redesignating § 309.85(a)(7) to § 309.85(a)(6). There were no objections to the proposed regulatory amendments.

Section 309.130 How will Tribal IV–D programs be funded and what forms are required?

In § 309.130(b)(2)(iii), we proposed removing the language ''and for funding under § 309.65(a) either:'' at the end of that provision and replacing it with a period. Section 309.130(b)(2)(iv) requires the annual Tribal budget submissions to include a statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures. Section 309.130(b)(2)(v) permits a request for a waiver of the non-Federal share in accordance with paragraph (e) of the section. We proposed removing § 309.130(b)(2)(iv) and (v) due to the elimination of the non-Federal share requirement.

Section 309.130(c) describes the Federal share of program expenditures for start-up funding and for initial and ongoing grant funding to administer a Tribal child support program. We proposed amending § 309.130(c)(2) by removing ''during a 3-year period,'' replacing ''90'' with ''100'', and adding ''and thereafter'' following ''made during that period.'' We proposed amending § 309.130(c)(3) by removing § 309.130(c)(3)(i), redesignating paragraph (c)(3)(ii) to paragraph (c)(3), and replacing ''90'' with ''100''. We proposed these revisions to indicate that the Federal share of program expenditures will be 100 percent due to the elimination of the non-Federal share requirement.

Section 309.130(d) describes the requirements for the non-Federal share of program expenditures. We proposed removing § 309.130(d) due to the elimination of the non-Federal share requirement.

Section 309.130(e) describes the requirements for permitting a temporary waiver of part or all of the non-Federal share of program expenditures. We proposed removing § 309.130(e) due to the elimination of the non-Federal share requirement.

Section 309.130(f) describes the requirements for requesting increases in the approved Tribal budget and § 309.130(f)(3) addresses how budget increases impact the non-Federal share. We proposed redesignating § 309.130(f) to § 309.130(d) and removing § 309.130(f)(3).

Section 309.130(g) describes how to obtain Federal funds and § 309.130(h) requires compliance with the uniform administrative requirements and cost principles. We proposed redesignating § 309.130(g) and (h) to § 309.130(e) and (f), respectively.

The overwhelming majority of comments supported the elimination of the non-Federal share requirement. Only one comment disagreed with the elimination and recommended allocating funds by the size of the Tribal child support program or revising the non-Federal share waiver provision instead.

Section 309.155 What uses of Tribal IV–D program funds are not allowable?

Section 309.155(c) prohibits a Tribe or Tribal organization from using Federal IV–D funds for any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a state. We proposed removing § 309.155(c) and redesignating § 309.155(d), (e), (f), and (g) to § 309.155(c), (d), (e), and (f), respectively. There were no objections to the proposed regulatory amendments.

Section 309.170 What statistical and narrative reporting requirements apply to Tribal IV–D programs?

Section 309.170(b)(8) requires a Tribe or Tribal organization to provide annual information and statistics on the total amount of fees and costs recovered. We proposed removing § 309.170(b)(8) and redesignating § 309.170(b)(9) to § 309.170(b)(8). There were no

objections to the proposed regulatory amendments.

Section 310.10 What are the functional requirements for the Model Tribal IV–D System?

Section 310.10(c) requires the Model Tribal IV–D System to record and report any fees collected, either directly or by interfacing with state or Tribal financial management and expenditure information. Although we proposed removing § 310.10(c) and redesignating § 310.10(d), (e), (f), (g), and (h) to § 310.10(c), (d), (e), (f), and (g), respectively, OCSS has reconsidered these amendments, despite not receiving any objections to them. After further consideration, OCSS has decided it is necessary to maintain the Model Tribal Systems (MTS) requirements described in § 310.10(c) because a Tribal child support program may collect fees to assist a state child support program in an intergovernmental case. If so, they would need to record and report any fees collected along with expenditure information as per § 310.10(c). Because we are retaining § 310.10(c), we also no longer need to redesignate the other subsections.

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

Section 310.20(a) describes the conditions that must be met for Federal financial participation for Computerized Tribal IV–D Systems. We proposed replacing ''90'' with ''100'' for installation of the Model Tribal IV–D System.

V. Response to Comments

Comment 1: The majority of commenters indicated that they had no objections to the regulatory revisions proposed in 45 CFR 309.15, 309.45, 309.75, 309.85, 309.155, 309.170, and 310.20.

Response 1: Based on the overwhelming support for the elimination of the non-Federal share of program expenditure requirement for Tribal child support programs, including the 90/10 and 80/20 cost sharing rates, OCSS agrees that the relief should be provided.

For the reasons described in the proposed rule and above, OCSS revises 45 CFR 309.15, 309.45, 309.75, 309.83, 309.155, 309.170, and 310.20 as proposed.

Comment 2: Overwhelmingly, Tribes, Tribal child support programs, states, organizations, and individuals who submitted comments were unequivocal in their support of the proposed elimination of the non-Federal share requirement.

Most commenters indicated that the non-Federal share limits growth, causes disruptions, creates instability, and imposes hardships for Tribal child support programs.

Many Tribal commenters stated that meeting the non-Federal share forced their Tribal child support program to reduce services, cut travel and training, and forgo hiring staff, modernizing, digitizing, accessing FPLS, and participating in the Federal Tax Refund Offset Program (FTRO). Several Tribal commenters also indicated that these forced cuts and reductions made their programs less efficient and effective. For example, one Tribal commenter indicated that their program was unable to afford their non-Federal share to access enforcement remedies like FPLS and FTRO to locate noncustodial parents and to offset Federal tax returns for overdue support.

Many commenters indicated that Tribes had limited resources. Several Tribal commenters described how meeting the non-Federal share diverted their limited Tribal funds from essential self-governance services and functions for the elderly, youth, Tribal courts, public safety, natural resources, natural disasters, and crisis mitigation like the opioid crisis and coronavirus disease pandemic. Some Tribal commenters also stated that it forced Tribal programs to compete for those limited funds and make difficult decisions about how to allocate resources to address the needs and issues of Tribal members and which programs to underfund. Two commenters indicated how Tribal governments do not have taxing authorities like state governments.

Some Tribal commenters stated that finding, tracking, calculating, and documenting non-Federal share contributions was time consuming and that their efforts could be better used on providing needed child support services to families, such as parenting classes and fatherhood programs. Some Tribal commenters also indicated that the non-Federal share waiver requirements were burdensome and impossible to meet. And two Tribal commenters stated that Congress did not impose the non-Federal share requirement in the authorizing legislation.

One Tribal commenter indicated that they may have to shut down their Tribal child support program if OCSS does not eliminate the non-Federal share requirement. And two commenters mentioned how one Tribe had to close their program because of the difficulty with providing the non-Federal share.

Many commenters indicated that the elimination of non-Federal share would be beneficial for Tribal child support programs. Several commenters specified that they would increase child support services, update their systems, and fill vacancies. Several commenters also stated that the elimination would help to ensure that existing programs continue operating and new ones are established, creating stability and growth. Additionally, several commenters emphasized the importance of Tribes and Tribal organizations exercising their Tribal sovereignty by administering a child support program.

One commenter stated that the elimination promotes equity by removing a substantial financial burden for Tribal communities that have been historically underserved, marginalized, or subject to discrimination or systemic disadvantage. Two commenters indicated that it honors the trust relationship the Federal Government has with Tribal Nations. And another two commenters stated that it would reduce bureaucratic barriers faced by Tribes and Tribal organizations.

One commenter agreed that OCSS still has sufficient oversight and cost containment tools without the non-Federal share requirement. Another commenter indicated that many Tribes and Tribal organizations will continue to invest in their programs by contributing Tribal facilities and using Tribal members as staff. Many commenters indicated how Tribes and Tribal organizations are invested in their children, helping noncustodial and custodial parents support them financially and emotionally.

A few Tribal commenters indicated that the elimination demonstrates that OCSS is listening to Tribes and Tribal organizations.

Many commenters expressed the need for child support services in Tribal communities to help lift Tribal families and children out of poverty.

Response 2: Based on the overwhelming support for the proposed elimination of the non-Federal share requirement, for the reasons described in the NPRM and by the majority of commenters, OCSS agrees that the non-Federal share requirement should be eliminated for Tribal child support programs.

Comment 3: One individual opposed the elimination of the non-Federal share requirement without replacing with another cost containment mechanism. The commenter thought OCSS could not reasonably expect to apply the level of oversight or impartiality to fiscally

manage a program where an unlimited amount of money can be requested without financial participation by grantees. The commenter indicated that cost sharing ensures a grantee considers cost-to-benefit proposition and that the principle has never been questioned for states and is a solid principle for Tribes. In lieu of cost sharing, the commenter recommended allocating funds by the size of the Tribal program based upon historical caseload data. The commenter also recommended revising the non-Federal share waiver provision. The commenter indicated that Tribes are not all in the same financial position and some have limited resources while others are thriving.

Response 3: OCSS disagrees. As discussed previously, the Tribal child support program regulations provide OCSS with sufficient authority to control costs and monitor compliance without the non-Federal share requirement. Unlike state child support programs, Tribal child support programs must submit a budget to receive Title IV–D funding in accordance with 45 CFR 309.15(c). Budgets must include the detailed information specified in 45 CFR 309.130(b) and OCSS guidance, such as quarterly estimate of expenditures, narrative justification for each cost category, and copies of contracts (see Tribal Child Support Budget Toolbox and OCSS PIQT–21–01). OCSS and OGM review Tribal budget submissions for compliance with 45 CFR parts 309, 310, and 75 and other applicable Federal laws. During the review of Tribal budgets, OCSS and OGM examine the estimates of program expenditures, and determine whether the budget narratives and documentation justify costs. Many factors impact a Tribe's caseload. For example, some Tribal child support programs receive cases transferred from a state child support program, others do not and must conduct intensive outreach to get parents to apply for services, a few Tribal child support programs receive referrals from the Tribal TANF programs, and at least one Tribal child support program provides services to other Tribes. Several Tribal child support programs have parents who do not live locally and reaching them is costly. As indicated by the feedback from Tribes and Tribal organizations, meeting the non-Federal share has limited their ability of conduct outreach to increase their caseloads. Therefore, using historical data is problematic and may not be a valid predictor for prospective Tribes and Tribal organizations since they have unique characteristics, histories, and relationships with their states.

Additionally, OCSS considered but decided against capping certain costs for Tribal child support programs in the 2000 NPRM (65 FR 50823). OCSS also disagrees with that option now. Capping costs limits Tribes and Tribal organizations to self-govern, grow their program as they determine, and innovate to meet the evolving needs and circumstances of Tribal parents and children.

Comment 4: Several commenters indicated that they had no objections to the regulatory revisions proposed in § 310.10.

Response 4: Although commenters indicated that they had no objection to the regulatory revisions proposed in § 310.10, OCSS has decided not to revise 45 CFR 310.10 as originally proposed in the Notice of Proposed Rulemaking. Specifically, OCSS has determined, as noted above, it is necessary to maintain the Model Tribal Systems (MTS) requirements described in § 310.10(c) because a Tribal child support program may collect fees to assist a state child support program in an intergovernmental case. If so, they would need to record and report any fees collected along with expenditure information as per § 310.10(c). And, because we are retaining § 310.10(c), we no longer need to redesignate the other paragraphs.

VI. Regulatory Review

Paperwork Reduction Act

Under the Paperwork Reduction Act (Pub. L. 104–13), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. For this final rule, Tribal child support programs that charge fees and recover costs must submit a plan amendment, providing that charging fees and recovering costs will not be permitted. Only three Tribal programs report data on the collection of fees and recovered costs. The description and total estimated burden on the ''Tribal Child Support Enforcement Direct Funding Request'' (OMB #0907–0218) is described in the chart below.

Section and purpose	Instrument	Number of respondents	Average burden hour per response	Total cost	National Federal share	National Tribal share
Added requirement § 309.75(e) regarding charging fees and recovering costs.	Tribal plan amendment.	One time for 3 Tribes.	3 hours × $73.84 × 3 Tribes	$664.56	$664.56	$0

In accordance 45 CFR 309.35(d), after approval of the original Tribal IV–D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on Tribal governments. Tribal governments are not considered small entities under the Regulatory Flexibility Act.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review major rules issued by Federal agencies before the rules take effect (see 5 U.S.C. 801(a)). The CRA defines a ''major rule'' as one that has resulted, or is likely to result, in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets (see 5 U.S.C. Chapter 8). Based on our estimates of the impact of this rule, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has designated this rule as 'not major' under the CRA.

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094

Executive Orders 12866, as amended by Executive Order 14094, and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule meets the standards of Executive Order 12866, as amended by Executive Order 14094, and Executive Order 13563 because it creates equity, promotes predictability, and reduces burdens and hardships for Tribal child support programs. The non-Federal share requirement limits growth, causes disruptions, and creates instability. Eliminating it encourages expansion of services and enforcement remedies, removes a financial barrier for prospective Tribes and Tribal organizations, prevents closure of existing Tribal child support programs, and provides a permanent solution to longstanding problems. This will ensure Tribal families receive child support services that reflect and affirm their cultures and traditions and that promote parental responsibility and increase disposable family income and financial stability.

Executive Order 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that OIRA at OMB will review all significant rules. Section 3(f) of E.O. 12866, as modified by 14094, defines ''a significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $200 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, and Tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this final rule is significant, and it was accordingly reviewed by OMB.

Based upon the increase in program expenditures from existing Tribal child support programs and the modest growth of new programs due to the elimination of the non-Federal share, we anticipate that the costs associated with this rule will be the following: FY 2025 $17.2M; FY 2026 $19M; FY 2027 $26.4M; FY 2028 34.3M; and FY 2029 $42.6M.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $164 million. This rule does not impose any mandates on State, local, or Tribal governments, or the private sector, that will result in an annual expenditure of $164 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. We certify that we have assessed this proposed rule's impact on the well-being of families. The purpose of the Tribal child support program is to strengthen the financial and social stability of families. This rule eliminates the burden and hardships imposed by the non-Federal share requirement for Tribal child support programs, which limits growth, causes disruptions, and creates instability. Eliminating it encourages expansion of services and enforcement remedies, removes a financial barrier for prospective Tribes and Tribal organizations, and prevents closure of existing Tribal child support programs. The proposed rule will have a positive effect on family well-being. It will ensure Tribal families receive child support services that reflect and affirm their cultures and traditions and that promote parental responsibility and increase disposable family income and financial stability.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism impact as defined in the Executive order.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families, approved this document on January 18, 2024.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

List of Subjects

45 CFR Part 309

Child support, Grant programs—social programs, Indians—Tribal government, Reporting and recordkeeping requirements.

45 CFR Part 310

Child support, Grant programs—social programs, Indians.

Dated: January 30, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR chapter III as set forth below:

■ 1. Under the authority provided in FR Doc. 2023–11815 (88 FR 36587, June 5, 2023), revise the heading for chapter III to read as follows:

CHAPTER III—OFFICE OF CHILD SUPPORT SERVICES, ADMINISTRATION OF FAMILIES AND SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D PROGRAM)

■ 2. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

■ 3. Section 309.15 is amended by:
■ a. Revising paragraph (a)(2)(iii); and
■ b. Removing paragraphs (a)(2)(iv) and (v).

The revision reads as follows:

§ 309.15 What is a Tribal IV–D program application?

(a) * * *

(2) * * *

(iii) A narrative justification for each cost category on the form.

* * * * *

■ 4. Section 309.45 is amended by revising paragraph (g) to read as follows:

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

* * * * *

(g) Disapproval of start-up funding and a request for waiver of the 100-child rule is not subject to administrative appeal.

* * * * *

■ 5. Section 309.75 is amended by revising paragraph (e) to read as follows:

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

* * * * *

(e) Provide that charging fees and recovering costs will not be permitted.

§ 309.85 [Amended]

■ 6. Section 309.85 is amended by:
■ a. Adding the word ''and'' at the end of paragraph (a)(5);
■ b. Removing paragraph (a)(6); and
■ c. Redesignating paragraph (a)(7) as paragraph (a)(6).

■ 7. Section 309.130 is amended by:
■ a. Revising paragraph (b)(2)(iii);
■ b. Removing paragraphs (b)(2)(iv) and (v);
■ c. Revising paragraphs (c)(2) and (3);
■ d. Removing paragraphs (d) and (e);
■ e. Redesignating paragraphs (f) through (h) as paragraph (d) through (f); and
■ f. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 309.130 How will Tribal IV–D programs be funded and what forms are required?

* * * * *

(b) * * *

(2) * * *

(iii) A narrative justification for each cost category on the form.

* * * * *

(c) * * *

(2) Beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of the total amount of approved and allowable expenditures made during that period and thereafter for the administration of the Tribal child support enforcement program.

(3) A Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of pre-approved costs of installing the Model Tribal IV–D System.

(d) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV–D budget estimate results from a change in the Tribal IV–D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e), a revised SF 424, and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f). The Secretary must approve the plan amendment before approving any additional funding.

* * * * *

§ 309.155 [Amended]

■ 8. Section 309.155 is amended by removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

§ 309.170 [Amended]

■ 9. Section 309.170 is amended by:
■ a. Adding the word ''and'' at the end of paragraph (b)(7);
■ b. Removing paragraph (b)(8); and
■ c. Redesignating paragraph (b)(9) as paragraph (b)(8).

PART 310—COMPUTERIZED TRIBAL IV–D SYSTEMS AND OFFICE AUTOMATION

■ 10. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

■ 11. Section 310.20 is amended by:
■ a. Revising paragraph (a) introductory text; and
■ b. Removing the semicolons at the ends of paragraphs (a)(1), (a)(2)(v), and (a)(5) and (6) and adding periods in their places.

The revision reads as follows:

§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

(a) *Conditions that must be met for FFP at the applicable matching rate in § 309.130(c) of this chapter for Computerized Tribal IV–D Systems.* The following conditions must be met to obtain 100 percent FFP in the costs of installation of the Model Tribal IV–D System and FFP at the applicable matching rate under § 309.130(c) of this chapter in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV–D System:

* * * * *

[FR Doc. 2024–02110 Filed 2–9–24; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231215–0305; RTID 0648–XD718]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From North Carolina to Virginia

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2024 commercial summer flounder quota to the Commonwealth of Virginia. This adjustment to the 2024 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial quotas for North Carolina and Virginia.

DATES: Effective February 9, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2024 allocations were published on December 21, 2023 (88 FR 88266).

The final rule implementing amendment 5 to the Summer Flounder FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to

another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 14,280 pounds (lb; 6,477 kilograms (kg)) to Virginia through a mutual agreement between the states. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2024 are North Carolina, 2,398,163 lb (1,087,788 kg), and Virginia, 1,887,987 lb (856,376 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: February 6, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–02795 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 29
Monday, February 12, 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–2024–0223; Project Identifier MCAI–2023–00996–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–800, and A330–900 series airplanes; Model A330–301, –302, –303, –323, –342, and –343 *airplanes; and Model A340–312 and –313 airplanes.* This proposed AD was prompted by reports of quality non-conformity on main landing gear (MLG) axles where the high velocity oxygen-fuel (HVOF) coating on the bearing journal runout areas had a coating that was thicker than allowable limits. This proposed AD would require repetitive inspections of the affected parts (MLG axles) for any discrepancy, corrective actions, and eventual replacement of affected parts, and would prohibit the installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 28, 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–2024–0223; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0223.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *vladimir.ulyanov@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–2024–0223; Project Identifier MCAI–2023–00996–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 Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0167, dated August 30, 2023 (EASA AD 2023–0167) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–200, A330–200 Freighter, A330–800, and A330–900 series airplanes; Model A330–301, –302, –303, –323, –342, –343, and –743L airplanes; and Model A340–312 and –313 airplanes. Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states there are reports of quality non-

conformity on MLG axles where the HVOF coating on the bearing journal runout areas had a coating thicker than allowable limits. This over-thickness could lead to damage, cracking, or spalling of the protective coating, which could expose the base material and allow corrosion to develop. This condition, if not detected and corrected, could lead to a MLG axle failure, possibly resulting in a MLG collapse, with consequent damage to the airplane and injury to occupants.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0223.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0167 specifies, for certain airplanes, procedures for repetitive inspections of the affected parts (MLG axles) for any discrepancy (damage, cracking, or spalling of HVOF coating, or corrosion), doing corrective actions including obtaining and following repair instructions and replacement of affected parts. EASA AD 2023–0167 also prohibits the installation of affected parts, and installation of MLG having an affected part installed. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **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 accomplishing the actions specified in EASA AD 2023–0167 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0167 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0167 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0167 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0167. Service information required by EASA AD 2023–0167 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0223 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part and serial number inspection.	0.5 work-hours × $85 per hour = $42.50 per airplane.	$0	$42.50	$298.
Inspection of affected axle	Up to 16 work-hours × $85 per hour = $1,360 per axle, per inspection cycle.	0	Up to $1,360 per axle, per inspection cycle.	Up to $9,520 per axle, per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 16 work-hours × $85 per hour = $1,360.	$0	$1,360.
Axle replacement	Up to 88 work-hours × $85 per hour = $7,480.	47,126	$54,606.
Optional replacement of MLG	Up to 48 work-hours × $85 per hour = $4,080.	(*)	Up to $4,080.

*The FAA has received no definitive data on which to base the cost estimates for a replacement MLG. The parts cost must be obtained through SAFRAN.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–0223; Project Identifier MCAI–2023–00996–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F, and –243F airplanes.

(3) Model A330–301, –302, –303, –323, –342, –343, –841, and –941 airplanes.

(4) Model A340–312 and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of quality non-conformity on main landing gear (MLG) axles where the high velocity oxygen-fuel (HVOF) coating on the bearing journal runout areas had excessive coating compared to the drawing limits. The FAA is issuing this AD to address damage, cracking, or spalling of the protective HVOF coating and exposure of the base material, which could allow corrosion to develop. The unsafe condition, if not addressed, could result in a MLG axle failure, possibly resulting in a MLG collapse, with consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0167, dated August 30. 2023 (EASA AD 2023–0167).

(h) Exceptions to EASA AD 2023–0167

(1) Where EASA AD 2023–0167 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0167 specifies to inspect within 24 months after the part entry into service, this AD requires inspecting within 30 months after the part entry into service or 30 days after the effective date of this AD, whichever occurs later.

(3) Paragraph (3) of EASA AD 2023–0167 specifies ''If, during any inspection as required by paragraph (1) of this AD, any discrepancy, as defined in the SB, is detected, before next flight, contact SAFRAN Landing Systems for approved corrective action instructions and, within the compliance time specified therein, accomplish those instructions accordingly. If no compliance time is identified in those instructions, accomplish the applicable corrective action(s) before next flight.'' This AD, however, requires replacing those words with ''If, during any inspection as required by paragraph (1) of this AD, any discrepancy, as defined in the SB, is detected, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; Airbus SAS's EASA Design Organization Approval (DOA); or SAFRAN Landing Systems' DOA. If approved by the DOA, the approval must include the DOA-authorized signature.''

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0167.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0167 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0167, dated August 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0167, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 February 1, 2024.

Victor Wicklund,

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

[FR Doc. 2024–02443 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0225; Project Identifier MCAI–2023–00725–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This proposed AD was prompted by a design review of aircraft structural and stress reports that resulted in a revision of operational loads for some aircraft flight phases. This proposed AD would require using a certain version of the aircraft structural repair manual (ASRP) and a review and disposition of repairs based on previous versions, 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 March 28, 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–2024–0225; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact 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.* You may find this material on the Transport Canada website at *tc.canada.ca/en/aviation.* It is also available at *regulations.gov* under Docket No. FAA–2024–0225.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, 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–2024–0225; Project Identifier MCAI–2023–00725–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 Yaser Osman, 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 Transport Canada AD CF–2023–

37, dated May 30, 2023 (Transport Canada AD CF–2023–37) (also referred to as the MCAI), to correct an unsafe condition for all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The MCAI states that a design review of aircraft structural and stress reports has resulted in a revision of operational loads for some aircraft flight phases, affecting certain aircraft sections. As a result, repairs and damage assessments accomplished on aircraft to date may have exceeded the available structural margins and require review to ensure they comply with the revised stress data for the affected sections. This AD mandates that ASRP 136.01 or later approved versions, or Airbus Canada source data approved at the time of the disposition, is to be used for any new structural assessments, repairs and dispositions for all model BD–500–1A10 and model BD–500–1A11 airplanes. Additionally, this AD mandates the review and disposition of all repairs and damage assessments for affected structure and prohibits use of previously authorized repairs as source data to generate new repairs for affected structure for model BD–500–1A10 airplanes.

There is an ongoing review of affected areas for model BD–500–1A11 airplanes which may result in additional corrective action for assessment and disposition of existing and new structural repairs and damage assessments.

The FAA is proposing this AD to address in-service repairs in some structural areas that require verification, and possibly further repair, because, if not addressed, they can cause negative margins for the load envelopes.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0225.

Related Service Information Under 1 CFR Part 51

Transport Canada AD CF–2023–37 specifies procedures for doing a verification/record check of previous aircraft damage and repairs and determining if previous repairs require further action based on revised limits and damage assessments. Transport Canada AD CF–2023–37 further prohibits the use of ASRPs prior to 136.01 and certain repair engineering orders, and instead mandates, for damage assessment, the use of ASRP 136.01 or later, or Airbus Canada source data approved as of the effective date of the AD. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES.**

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in Transport Canada AD CF–2023–37 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate Transport Canada AD CF–2023–37 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2023–37 in its entirety 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–2023–37 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0225 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 45 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$7,650

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2024–0225; Project Identifier MCAI–2023–00725–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard practices/structures.

(e) Unsafe Condition

This AD was prompted by a design review of aircraft structural and stress reports that resulted in a revision of operational loads for some aircraft flight phases. The FAA is issuing this AD to address in-service repairs in some structural areas that require verification, and possibly further repair. The unsafe condition, if not addressed, could result in negative margins for the load envelopes.

(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–2023–37, dated May 30, 2023 (Transport Canada AD CF–2023–37).

(h) Exceptions to Transport Canada AD CF–2023–37

(1) Where Transport Canada AD CF–2023–37 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Part I of Transport Canada AD CF–2023–37 specifies operators may use Airbus Canada source data, for this AD, any repair using Airbus Canada source data must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) Where the definition of ''Affected Structure'' in Transport Canada AD CF–2023–37 specifies ''as identified in Service Bulletin (SB) BD500–530011, Issue 002, dated 06 December 2022 or later revisions approved by the Chief, Continuing Airworthiness, Transport Canada,'' this AD requires replacing those words with ''as identified in Airbus Canada Service Bulletin (SB) BD500–530011, Issue 002, dated 06 December.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (i)(2) 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 Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

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

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (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–2023–37, dated May 30, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–37, 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.* You may find this Transport Canada AD on the Transport Canada website at *tc.canada.ca/en/aviation.*

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

(5) You may view this material 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 February 6, 2024.

Victor Wicklund,

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

[FR Doc. 2024–02724 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0715]

1625–AA00

Safety Zone; Biscayne Bay, Homestead, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone for certain waters of the Biscayne Bay. This action is necessary to provide for the safety of life on these navigable waters near Homestead, FL, during a recurring military exercises that would be enforced approximately 8–12 times per year. The exercises will include military aircraft and watercraft that may pose a

danger to the public. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Miami or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 13, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0715 using the Federal Decision-Making Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call, or email LT Benjamin Adrien Waterways division, U.S. Coast Guard; telephone 305–535–4307, email *Benjamin.D.Adrien@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MSIB Marine Safety Information Bulletin
NPRM Notice of proposed rulemaking
NOE Notice of Enforcement
§ Section
SOCSO Special Operations Command South
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On February 6, 2023, the U.S. Special Operations Command South (SOCSO) notified the Coast Guard that it would be conducting recurring military training exercises 8–12 times per year. The training exercises would take place within the Biscayne Bay Northeast of Turkey Point Power Plant. The Captain of the Port Sector Miami (COTP) has determined that potential hazards associated with the military training exercises would be a safety concern for persons and vessels within a 1,000-yard radius of the center point of the exercises. The exercises would include military aircraft and watercraft operating in active military scenarios. The actions undertaken in these exercises may pose a danger to the public.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1,000-yard radius of the military training exercises before, during, and after the military training exercises. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone that would be enforced 8–12 times per year. The safety zone would cover all navigable waters within a 1,000-yard radius of the center point at N 25′28.506 W 80′13.842 in the Biscayne Bay located approximately 1,000 yards Northeast of the Turkey Point Power Plant in Homestead, FL. The duration of the zone would be identified prior to each military training exercise to ensure the safety of persons and vessels, and navigable waters before, during, and after the scheduled times for the exercise. No person or vessel would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

Members of the public would be notified that the safety zone is being enforced by the presence of military helicopter with the insignia of the U.S. Army, the U.S. Air Force, the U.S. Navy, or the U.S. Marine Corps, in the direct vicinity of the safety zone. Leading up to its enforcement the Coast Guard will publish a Notice of Enforcement (NOE) in addition to a Marine Safety Information Bulletin (MSIB) and a Broadcast Notice to Mariners (BNM).

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which impacts a designated area of the Biscayne Bay for a period of time chosen when vessel traffic is normally low. Moreover, the Coast Guard would issue a NOE, a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone to protect persons and vessels operating in the area adjacent to the safety zone. This zone will only be enforced for a few hours at a time, 8–12 times per year. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG–2023–0715 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.715 to read as follows:

§ 165.715 Safety Zone; Biscayne Bay, Homestead, FL.

(a) *Location.* The following area is a safety zone: All waters of Biscayne Bay, from surface to bottom within a 1,000-yard radius of 25°28′506″ N, 080°13′842″, creating a circular zone.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Miami in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by contacting Sector Miami's Command Center at 305–535–4300. Those in the safety zone must comply with all lawful orders or

directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* The safety zone described in paragraph (a) of this section would be enforced by the COTP only upon notice. Notice of enforcement by the COTP will be provided prior to execution of the exercise by all appropriate means, in accordance with 33 CFR 165.7(a). Such means will include publication of a Notification of Enforcement in the **Federal Register**, and by the presence of military helicopter with the insignia of the U.S. Army, the U.S. Air Force, the U.S. Navy, or the U.S. Marine Corps, and may also include Broadcast Notice to Mariners, Local Notice to Mariners, or both.

Dated: January 31, 2024.

C.R. Cederholm,

Captain, U.S. Coast Guard, Captain of the Port Sector Miami.

[FR Doc. 2024–02703 Filed 2–9–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR10

Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to certain herbicide agents to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act), specifically by extending the presumed area of exposure to the offshore waters of the Republic of Vietnam, defining the boundaries of the offshore waters, expanding the date ranges for presumption of exposure in the Korean Demilitarized Zone (DMZ) and establishing entitlement to spina bifida benefits for children of certain Veterans who served in Thailand. This rule also proposes to codify a presumption of exposure to certain herbicide agents for locations published on the Department of Defense's (DoD) record of locations where certain herbicide agents were used, tested or stored outside of Vietnam. In addition, this rule also proposes to codify longstanding procedures for searching for payees entitled to class action settlement payments aligned with *Nehmer* v. *U.S. Department of Veterans Affairs* and proposes to apply the definition of the Republic of Vietnam's offshore waters to claims for presumptive service connection for non-Hodgkin's lymphoma. VA is also proposing to amend its adjudication regulations concerning presumptive service connection for diseases associated with exposure to certain herbicide agents. This amendment implements provisions of the Fiscal Year (FY) 2021 National Defense Authorization Act (NDAA), which added bladder cancer, hypothyroidism and Parkinsonism as medical conditions eligible for presumptive service connection. Finally, this rulemaking proposes to implement certain provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), specifically by recognizing hypertension and monoclonal gammopathy of undetermined significance (MGUS) as diseases eligible for a presumption of exposure to certain herbicides and adding new locations as eligible for a presumption of exposure to certain herbicides during specific timeframes.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the **Federal Register**].

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at *Regulations.gov*, under RIN 2900–AR10.

FOR FURTHER INFORMATION CONTACT: Jane Allen, Regulations Analyst; Robert Parks, Chief, Regulations Staff (211C), Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

The spraying of herbicides as tactical defoliants during the Vietnam War began in 1962 and continued until 1971. Public concern over the military's use of herbicides began to grow following requests by scientists to evaluate possible toxic effects of widespread herbicide spraying. To respond to public concern about possible long-term health effects of exposure to herbicides, Congress passed the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542. The Act required VA to create guidelines and criteria for deciding claims for benefits based on a Veteran's exposure to herbicides during service in the Republic of Vietnam and established the first presumptions of service connection based on exposure to certain herbicides. The Act also established the Veterans' Advisory Committee on Environmental Hazards to provide findings and evaluations regarding the scientific evidence related to possible adverse health hazards due to exposure to herbicides.

The results of these studies prompted the Agent Orange Act of 1991, Public Law 102–4, codified in part at 38 U.S.C. 1116. This Act established presumptive service connection for non-Hodgkins lymphoma, soft-tissue sarcoma (with certain exceptions) and chloracne or other consistent acneform diseases. In addition, the Act directed the VA to enter into an agreement with the National Academy of Sciences to review and evaluate the scientific evidence concerning the association between exposure to certain herbicide agents during service in the Republic of Vietnam and each disease suspected to be associated with such exposure. The Act further established guidelines for the evidentiary support needed to create new presumptions of service connection. The Act required that ''Whenever the Secretary determines, on the basis of sound medical and scientific evidence, that a positive association exists between (A) the exposure of humans to an herbicide agent, and (B) the occurrence of a disease in humans, the Secretary shall prescribe regulations providing that a

presumption of service connection is warranted for that disease for the purposes of this section.'' Public Law 102–4, § 2(a). Since passage of the Act, Congress and VA have established 13 additional presumptions of service connection based on exposure to certain herbicides.

a. The BWN Act of 2019

Prior to the BWN Act, VA interpreted the presumption of exposure to certain herbicide agents for service connection purposes under the Agent Orange Act of 1991, codified in relevant part at 38 U.S.C. 1116(a)(1), to require service within the borders of the Republic of Vietnam, either ''boots on the ground'' land-based service or service within the inland waterways. If there was evidence that a Veteran went ashore or docked in the Republic of Vietnam, however briefly, the Veteran would be entitled to the presumption of exposure. VA's interpretation was upheld in court until 2019. *See Haas* v. *Peake,* 525 F.3d 1168, 1197 (Fed. Cir. 2008), *cert. denied,* 555 U.S. 1149 (2009), *overruled by Procopio* v. *Wilkie,* 913 F.3d 1371, 1380 (Fed. Cir. 2019) (en banc). In 2019, the U.S. Court of Appeals for the Federal Circuit held that Congress intended the term ''Republic of Vietnam'' to include the ''territorial sea'' of the Republic of Vietnam. The court ruled that by using the formal name of the country, ''the Republic of Vietnam,'' Congress referred to both its landmass and its 12 nautical mile territorial sea. *Procopio,* 913 F.3d at 1375. Vietnam's offshore waters were not defined by statute, and the Federal Circuit rejected the distinction between service within the landmass and in the territorial waters when it invalidated the foot-on-land requirement for the Agent Orange presumptions. *Id.* at 1378. The court cited international legal authorities to support its holding but did not further attempt to define where the boundaries of the territorial sea of the Republic of Vietnam must be drawn beyond its holding regarding the 12 nautical mile territorial sea. *See id.* at 1375–76. While VA was working to implement the *Procopio* ruling, Congress enacted the BWN Act. The BWN Act provides a description and table of coordinates to define the Republic of Vietnam's offshore waters.

b. The NDAA of 2021

On January 1, 2021, Congress enacted Public Law 116–283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA). In relevant part, this law amended 38 U.S.C. 1116(a)(2) by adding bladder cancer, hypothyroidism and Parkinsonism to the list of conditions presumptively associated with exposure to certain herbicide agents. The amendment to 38 U.S.C. 1116(a) was based on the 2018 National Academies of Sciences, Engineering, and Medicine report, Veterans and Agent Orange: Update 11, which found limited or suggestive evidence of an association between exposure to certain herbicide agents and bladder cancer, hypothyroidism and Parkinsonism.[1]

c. The PACT Act

On August 10, 2022, Congress enacted the PACT Act, Public Law 117–168, to improve access to VA benefits and health care for Veterans who were exposed to toxic substances during military service. Section 403 of the PACT Act amended section 1116 of title 38, United States Code by adding new locations as eligible for a presumption of exposure to certain herbicide agents: Thailand (at any United States or Royal Thai base), Laos, Cambodia at Mimot or Krek, Kampong Cham Province, Johnston Atoll, Guam, and American Samoa, during certain timeframes. Prior to the PACT Act, the only location subject to a statuory presumption of exposure to certain herbicides was the Republic of Vietnam. Therefore, VA is proposing to add these additional locations to VA's Part 3 Regulations at 38 CFR 3.307.

Section 404 of the PACT Act added hypertension and MGUS as diseases associated with exposure to certain herbicide agents under 38 U.S.C. 1116(a)(2). Therefore, VA is proposing to add these diseases to 38 CFR 3.309, disease subject to presumptive service connection.

II. Proposed Changes to § 3.307 Diseases Associated With Exposure to Certain Herbicide Agents

a. Amendments to § 3.307(a)(6) Based on the BWN Act of 2019

38 CFR 3.307(a)(6) outlines the service requirements and other circumstances required for the presumption of exposure to certain herbicide agents to apply. 38 CFR 3.307(a)(6)(iii) establishes a presumption of exposure to certain herbicide agents for Vietnam Veterans with active-duty service during a specific period. Prior to *Procopio* and the BWN Act, Veterans who served in the ''offshore waters'' were only presumed to have been exposed to certain herbicide agents if there was evidence that the conditions of their service involved duty or visitation in the Republic of Vietnam. VA proposes to amend 38 CFR 3.307(a)(6) to clarify that service in the offshore waters of the Republic of Vietnam—without an additional foot-on-land requirement—is considered service in Vietnam for the purpose of establishing presumption of in-service exposure to certain herbicide agents. Service in other locations will continue to constitute service in Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

VA also proposes to amend 38 CFR 3.307(a)(6) by adding the parameters of what constitutes ''offshore waters'' from the BWN Act. *See* 38 U.S.C. 1116A(d). The Act includes a list of geographic points with their names and coordinates of latitude and longitude which, when connected by a series of lines, create the baseline from which the 12 nautical miles that define the offshore waters of the Republic of Vietnam are measured.

The BWN Act does not direct how the southwestern-most and northern-most points of the offshore waters are to be connected to land, which would be necessary to create a fully defined geographic area. To define the offshore water of the Republic of Vietnam, the law provides 11 geographic points located 12 miles seaward from the coast of the Republic of Vietnam. The law does not dictate how the end points connect to land. Initially, VA considered using straight lines to define where the end points connect to land. However, using a straight line to connect the westernmost point to land would bisect the southern tip of Vietnam's Phu Quoc Island. VA now proposes to have this line include the entire island. This Veteran-centric approach would help avoid denials of service connection for Veterans who may have been exposed in the coastal and inland waters of Phu Quoc. Further, VA views the inclusion of the offshore waters of Phu Quoc island to be consistent with Congress's intent that VA extend the presumption of in-service exposure to certain herbicide agents to all applicable BWN veterans in a ''broad and comprehensive'' manner. *See* H.R. Rep. No. 116–58, at 11 (2019) (discussing purpose of BWN Act vis-à-vis *Procopio*). As such, VA proposes to include the offshore areas of Phu Quoc Island to ensure that veterans who served in the offshore waters surrounding Phu Quoc Island are entitled to the same presumption.

VA proposes to define the southwest demarcation of the offshore waters as a line extending from where the border of Cambodia and the Republic of Vietnam meet the shoreline (10°30′54.42″ N,

[1] National Academies of Sciences, Engineering, and Medicine. 2018. *Veterans and Agent Orange: Update 11 (2018).* Washington, DC: The National Academies Press. *https://doi.org/10.17226/25137.*

104°35′48.10″ E), to the points described as Phu Quoc Extension points A through E and on to Hon Nhan Island, Tho Chu Archipelago Kien Giang Province. The northern demarcation is proposed to be described as a line from the mid-point of the Ben Hai River, which denotes the demilitarized zone between the former North Vietnam and the Republic of Vietnam (17°0′42.19″ N, 107°6′35.47″ E), to the point described as Con Co Island, Binh Tri Thien Province.

The proposed area that comprises the offshore waters of the Republic of Vietnam is designated solely for the purpose of determining presumption of in-service exposure to certain herbicide agents in order to establish entitlement to benefits under title 38 of the United States Code. The proposed rulemaking is not an endorsement of any state's sovereignty rights or jurisdiction under international law. The status of some of the waters in and around the area addressed in the proposed regulation was in dispute during the Vietnam Era and may still be in dispute. Because of this, the proposed rule includes a note in 38 CFR 3.307 that clarifies that the purpose of the regulation is for claim adjudication purposes and is not a statement or endorsement of international boundaries.

VA also proposes to amend 38 CFR 3.307(a)(6) for exposures related to service in the Korean demilitarized zone (DMZ) by proposing to expand the date range for presumption of exposure to certain herbicide agents for Veterans who served in units operating in or near the Korean DMZ. Currently, the date range contained in section 3.307(a)(6)(iv) is April 1, 1968, through August 31, 1971. The BWN Act expanded the date range to September 1, 1967, through August 31, 1971. 38 U.S.C. 1116B(a)(2).

Over the past few years, VA has received several requests to engage in rulemaking with regard to presumptive exposure to certain herbicide agents. Some of the requests have pertained to the Republic of Vietnam and its surrounds, such as Da Nang Harbor and Phu Quoc Island, and seem to be resolved by the BWN Act and this rulemaking, with the proposed changes to 38 CFR 3.307(a)(6) described above. That said, VA still welcomes any and all comments on these issues.

There have also been requests to extend a presumption of exposure to certain herbicide agents to Veterans who served at additional locations outside Vietnam, such as Panama and Okinawa. In response to some of these requests, VA committed to open a rulemaking that would consider extending the presumption of exposure to certain herbicide agents beyond the categories of Veterans currently listed in 38 CFR 3.307(a)(6)(iii)–(v). This is that rulemaking and, after serious consideration, VA is proposing to extend a presumption of exposure to certain herbicide agents by adding new paragraph 38 CFR 3.307(a)(6)(xi), which would presume exposure to certain herbicide agents for Veterans who served in locations not otherwise listed under section 3.307(a)(6) where certain herbicides and their chemical components were tested, used or stored, based on information received from DoD.

From 2018 to 2019, DoD reviewed thousands of government documents from a variety of sources to include the National Archives and Records Administration, Air Force Historical Research Agency, United States Department of Agriculture National Agricultural Library and Defense Technical Information Center. Information obtained from these documents was assessed against criteria developed jointly by VA and DoD to identify specific locations inside and outside the United States where certain herbicide agents and their chemical components were tested, used, or stored. The record of locations is a ''living document,'' and the Armed Forces Pest Management Board (AFPMB) has been assigned responsibility by the Under Secretary of Defense for Acquisition and Sustainment to maintain and update this list and ensure that it is current and accurate. The AFPMB conducts a review of the DoD list of locations annually and accepts submissions from members of the public in furtherance of updating the list.

Because DoD's list is premised on a comprehensive review of thousands of government documents, and the list will continue to be informed and updated through the submission of evidence by members of the public as well as internal research, VA utilizes the list as the most reliable source of information informing the question of where to establish regulatory presumptions of exposure to certain herbicide agents. VA believes that the list's acknowledgment of certain herbicide agent usage, testing or storage at particular sites on particular dates warrants a presumption of exposure to certain herbicide agents that lessens the ordinary burden of proof for Veterans who reasonably would have visited those sites on those dates. *See* 38 U.S.C. 5107(a); 38 U.S.C. 501(a)(1).

In August 2019, DoD conveyed to VA its updated list of locations where certain herbicide agents were used, tested or stored. The list references (1) each location where certain herbicide agents were present, (2) the specific site of that presence, (3) the dates of that presence, (4) the purpose of that presence, (5) the personnel involved, and (6) the name of the herbicide agent or component involved. The list (and links to the criteria informing its creation) can be found at: *https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/index.asp.* While DoD is the lead agency for producing and updating the list of locations where certain herbicide agents were used, tested or stored, VA is the lead agency responsible for making this information easily accessible to Veterans and keeping them informed of the benefits to which they may be entitled based on their service. VA keeps the public informed by publishing the list on the VA public health website and updating the published list as locations are added or removed. In addition, VA will provide notice in the **Federal Register** whenever updates are made to the DoD list.

Given that DoD will continue to maintain and update the list of locations where certain herbicide agents were used, tested or stored, VA proposes to implement a regulatory presumption of exposure that can evolve with the most current DoD list. Thus, VA proposes an additional paragraph to 38 CFR 3.307 that would presume exposure to certain herbicide agents for Veterans (who do not qualify for the presumption under paragraphs (a)(6)(iii)–(v) or new paragraphs (a)(6)(vi)–(x) discussed below in Section II.b.) whose circumstances of service reasonably would have placed them at a site of certain herbicide agent testing, use or storage on a date of certain herbicide testing, use or storage. The authoritative source regarding where and when certain herbicide agents were tested, used or stored, for purposes of this additional paragraph, would be the information provided by DoD that is publicly available on VA's website and through VA's notices in the **Federal Register**.

This presumption would alleviate the need for a Veteran to have to prove actual involvement with certain herbicide agents, so long as that Veteran's circumstances of service would reasonably have placed the Veteran at certain sites on certain dates. For veterans who do not qualify for the presumption, VA will continue to consider and decide claims on a case-by-case basis considering all the evidence of record. Such Veterans will have the opportunity to present

evidence that they were exposed to certain herbicide agents, VA will consider all evidence of record (including lay statements) in rendering a determination on exposure, and VA will give the benefit of the doubt to the Veteran; but a presumption that lessens the ordinary burden of proof under 38 U.S.C. 5107 will not apply. Otherwise stated, Veterans in such a position will have the opportunity to establish in-service exposure to certain herbicide agents on a direct basis, but not a presumptive basis.

The purpose of this regulatory change is to ensure consistency across VA adjudications, in accord with the most up-to-date information garnered by DoD. Structuring the regulation in this way will also eliminate the need for adjudicators to continually rely on sub-regulatory guidance or the need for VA to amend its regulations every time DoD updates its list.

For several reasons, VA decided not to propose to extend a regulatory presumption beyond the statutory requirements and the DoD list at this time. First, any official declaration by VA that a certain herbicide agent was presumably present in a particular location should be based on a comprehensive review of all available records, not based on speculation, assumption or limited evidence. While individual Veteran recollections, photographs and soil samples decades after the fact can provide relevant evidence in support of an individual's pursuit of direct service connection, it is most appropriate to rely on the most comprehensive review—from the agency that has access to the most relevant documents—when establishing a regulatory presumption. Second, as noted above, direct service connection remains available for any Veteran who alleges exposure to certain herbicide agents (no matter the Veteran's location of service), and due consideration will be given to all the evidence that veteran submits, with the benefit of the doubt given to the Veteran. Tailoring the presumption in this way does not at all foreclose any Veteran alleging exposure to certain herbicide agents from obtaining benefits. Third, there is reason for VA to be cautious in presuming or making declarations about herbicide agent presence when DoD has superior access to relevant records and superior knowledge of its own operations. While some inconsistency in government positions, statements and decisions is inevitable given the size and complexity of Federal operations, it is confusing and illogical for one agency to create a rule that will have the force and effect of law that by its very premise depends upon a factual proposition that another agency with superior expertise or authority does not credit. Otherwise stated, for VA to presume an herbicide agent presence that DoD steadfastly denies after exhaustive research could implicate issues beyond VA benefits and result in widespread confusion about what the government believes to be fact. The better resolution is for VA and members of the public to submit all relevant evidence to DoD, so that the DoD list continues to evolve with the most up-to-date information, and for veterans to continue to submit evidence along with their individual claims.

VA recognizes that locations like Panama and Okinawa, Japan, are not on DoD's current list of locations where certain herbicide agents were used, tested or stored, and therefore would not warrant a presumption at this time. Ultimately, VA believes that linking its presumption with DoD's current herbicide agent list (which, as noted above, is a living document and therefore may evolve, upon the review of additional submitted evidence, to include locations like Panama and Okinawa) is the best course of action, but VA nevertheless welcomes all comments on this approach, or comments on Panama and Okinawa specifically, during the comment period for this rulemaking.

b. Amendments to § 3.307 Based on the PACT Act

As explained above, 38 CFR 3.307(a)(6) outlines the service requirements and other circumstances required for the presumption of exposure to certain herbicide agents. Currently, 38 CFR 3.307(a)(6) lists two locations as eligible for a presumption of exposure: the Republic of Vietnam and units that operated in or near the Korean DMZ in an area in which herbicides are known to have been applied. Based on section 403 of the PACT Act, VA is proposing to add the following locations to 38 CFR 3.307(a)(6) with corresponding eligible timeframes: (1) service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976; (2) service in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969; (3) service in Cambodia at Mimot or Krek, Kampong Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969; (4) service in Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980; and (5) service on Johnston Atoll or on a ship that called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977. These new locations will be added to 38 CFR 3.307(a)(6) by creating new paragraphs (a)(6)(vi–x).

To determine the territorial waters of Guam and American Samoa, VA relied on coordinates from the National Oceanic and Atmospheric Administration. The electronic charts can be found here: *https://charts.noaa.gov/InteractiveCatalog/nrnc.shtml#mapTabs-2.*

For claims based on service in Thailand, VA interprets the language of section 403 to include service on a ship that called to a coastal Thailand base. Section 403 provides a presumption of exposure to Veterans who served in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976. As the PACT Act definition of covered service in Thailand includes *any* United States or Royal Thai bases in Thailand, VA finds it reasonable to include service aboard a ship at any coastal Thailand base. Under this interpretation, any Veteran who served on a ship that called to a coastal base in Thailand is eligible for a presumption of exposure to certain herbicides.

VA's current policy regarding claims based on Thailand service is contained in sub-regulatory guidance and considers exposure on a case-by-case direct basis for security personnel, security patrol dog handlers, or other Service members whose daily activities placed them near the security perimeters of Thailand military bases during the Vietnam Era. Proposed 38 CFR 3.307(a)(6)(vi) would supplant that sub-regulatory guidance, as this new paragraph would presume exposure to certain herbicides for all veterans who served in Thailand at any U.S. or Royal Thai base between January 9, 1962, and June 30, 1976, without regard to where on the base the veteran was located or what military job specialty the Veteran performed.

For claims based on service in Johnston Atoll or on a ship that called to Johnston Atoll, 38 U.S.C. 1116(d)(5) defines covered service to include service ''on Johnston Atoll or on a ship that called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977.'' Section 1116(d)(5) specifies two categories of service related to Johnston Atoll that constitute covered service: (1) service on Johnston Atoll and (2) service on a ship that called at Johnston Atoll. VA understands 38 U.S.C. 1116(d)(5)'s date range to refer to the dates of the veteran's service in the location (the

Atoll itself or on a ship), and that the date range provided in the statute applies to both categories. VA thus proposes to amend 38 CFR 3.307(a)(6) to make clear that the presumption of exposure to certain herbicides applies when the veteran was present on Johnston Atoll, to include presence on the the ship when it called at Johnston Atoll, even if the veteran did not disembark, during the qualifying period.

III. Proposed Changes to § 3.309 Diseases Subject to Presumptive Service Connection

Based on the FY 2021 NDAA and section 404 of the PACT Act, VA proposes to amend its adjudication regulations by revising section 3.309 to add bladder cancer, Parkinsonism, hypothyroidism, hypertension and MGUS to the list of diseases subject to presumptive service connection based on exposure to certain herbicide agents. VA proposes to add the five new conditions to the end of section 3.309(e), directly after soft tissue sarcoma.

VA also proposes to include parenthetical language for Parkinsonism that identifies the most common forms of Parkinsonism known as Parkinson-plus syndromes (also referred to as atypical Parkinsonism). The most common Parkinson-plus syndromes are progressive supranuclear palsy (PSP), multiple system atrophy (MSA) (also referred to as Shy-Drager syndrome), corticobasal degeneration (CBD), vascular Parkinsonism, and dementia with Lewy bodies (DLB).[2] The purpose of this parenthetical language is to ensure that disorders that fall under the umbrella term Parkinsonism are not overlooked by claims processors, resulting in examinations not being requested when warranted.

Drug-induced Parkinsonism will not be included as a presumptive condition as its etiology stems from drug side effects, not exposure to certain herbicide agents. Furthermore, drug-induced Parkinsonism is a condition that usually subsides over time once the relevant drug is discontinued.[3] Claims for service connection of drug-induced Parkinsonism will continue to be considered, as warranted, on a direct basis or on a secondary basis per 38 CFR 3.310(a), which states that service connection will be granted when a disability is determined to be proximately due to or the result of a service-connected disease or injury. If a Veteran has a diagnosis of drug-induced Parkinsonism and a medical examiner opines that the disease is due to medication required for a service-connected condition, the claim for service connection for drug-induced Parkinsonism may be granted on a secondary basis. To provide clarity, VA further proposes to add a new note to 38 CFR 3.309(e) to explain that drug-induced Parkinsonism is not recognized as a disease associated with exposure to certain herbicide agents.

IV. Proposed Changes to § 3.313 Claims Based on Service in Vietnam

38 CFR 3.313 provides regulatory guidance for establishing service connection for non-Hodgkin's lymphoma (NHL) based on service in ''Vietnam.'' Currently, service connection for NHL requires a medical diagnosis and evidence showing service on land in Vietnam or service in Vietnam's offshore waters. (The current regulatory provision does not distinguish between ''Vietnam'' and the ''Republic of Vietnam.'') Before the *Procopio* decision, service solely in the offshore waters was not sufficient to grant service connection for any condition except NHL.

Based on the definition of Vietnam's offshore waters in the BWN Act, claims for NHL will no longer be held to a separate standard of service connection than other conditions listed under 38 CFR 3.309(e). Furthermore, because the current regulatory guidance does not distinguish between ''Vietnam'' and the ''Republic of Vietnam,'' VA is proposing to amend its adjudication regulations to specify that in order to establish presumptive service connection for NHL, service must have been in the ''Republic of Vietnam,'' to ensure that the regulation is consistent with the statutory definition of Vietnam's offshore waters. VA notes that, in light of *Procopio* and the BWN Act, the scope and effect of section 3.313 are essentially coextensive with section 3.309(e) as the latter applies to NHL. However, VA proposes to revise, rather than rescind, section 3.313 because this provision could have an independent effect in rare cases, as it does not depend on a rebuttable presumption of herbicide agent exposure.

V. Proposed Changes to § 3.114 Change of Law or Department of Veterans Affairs Issue

38 CFR 3.114(a), which provides effective date provisions in situations where there has been a change in law or VA issue, applies, in relevant part, to benefits awards to an individual suffering from spina bifida whose biological father or mother is or was a Vietnam Veteran or a Veteran with covered service in Korea. Since the BWN Act authorizes VA to extend these benefits to children of Veterans with covered service in Thailand, VA proposes to add individuals with spina bifida born to Veterans with covered service in Thailand as a category of claimants who are entitled to consideration for an effective date as specified in this regulation.

Furthermore, VA proposes a clerical amendment to section 3.114(a) by replacing the word ''child'' with the phrase ''natural child'' wherever it occurs in the regulation. This is not a substantive regulatory change; it is merely a clerical amendment that reflects the statutory definition of ''child'' for purposes of benefits for children of certain veterans born with spina bifida. See 38 U.S.C. 1831(1).

VI. Proposed Changes to § 3.814 Monetary Allowance Under 38 U.S.C. Chapter 18 for An Individual Suffering From Spina Bifida Whose Biological Father or Mother Is or Was a Vietnam Veteran or a Veteran With Covered Service in Korea

Individuals born with spina bifida whose biological father or mother was determined to be exposed to certain herbicide agents in Vietnam or Korea have long been eligible for a monthly monetary allowance under 38 U.S.C. chapter 18, based on the severity of their spina bifida symptoms. However, this eligibility did not extend to natural children of Thailand Veterans for whom certain herbicide agent exposure has been conceded, nor did it extend to natural children of Veterans who served in the offshore waters of the Republic of Vietnam. 38 CFR 3.814 is the regulation that provides for entitlement to this monetary allowance under 38 U.S.C. chapter 18 and sets forth the criteria that must be met in order to establish such entitlement. The BWN Act expanded eligibility for spina bifida benefits to natural children of certain Thailand Veterans, as well as natural children of Veterans who served in the offshore waters of the Republic of Vietnam. This proposed rulemaking updates the criteria accordingly.

For purposes of spina bifida benefits for natural children of Thailand Veterans, the BWN Act, in 38 U.S.C. 1822, defined a Veteran of covered service in Thailand as ''any individual, without regard to the characterization of that individual's service, who—(1)

[2] Nicolaus R. McFarland. ''Diagnostic Approach to Atypical Parkinsonian Syndromes,'' Continuum (Minneap Minn). 2016 Aug; 22(4 Movement Disorders)11171142. doi: *10.1212/CON.0000000000000348*

[3] Shin, Hae-Won, and Sun Ju Chung. ''Drug-induced parkinsonism.'' *Journal of clinical neurology (Seoul, Korea)* vol. 8,1 (2012): 15–21. doi:10.3988/jcn.2012.8.1.15

served in the active military, naval, or air service in Thailand, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on January 9, 1962, and ending on May 7, 1975; and (2) is determined by the Secretary, in consultation with the Secretary of Defense, to have been exposed to a herbicide agent during such service in Thailand''

As discussed above in Section II.b., the PACT Act expanded the list of locations eligible for a presumption of exposure to certain herbicides to include Thailand. The PACT Act defined covered service in Thailand, in 38 U.S.C. 1116(d)(2), as ''active military, naval, air, or space service-performed in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed.'' Prior to the PACT Act, 38 U.S.C. 1822 provided benefits to children born with spina bifida whose parent served in Thailand any time between January 9, 1962, and May 7, 1975. The PACT Act did not amend 38 U.S.C. 1822. For purposes of establishing entitlement to monetary benefits for spina bifida under 38 U.S.C. Chapter 18, VA proposes to define covered service in Thailand as ''service at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed.'' This definition includes the description of covered service from 38 U.S.C. 1116 but maintains the eligible time frame from 38 U.S.C. 1822. VA has determined that aligning the definitions of what characterizes Thailand service will improve the consistency of decisions for Thailand Veterans and their survivors.

For the purposes of establishing entitlement to monetary benefits for spina bifida under 38 U.S.C. chapter 18, VA is proposing to include the offshore waters of the Republic of Vietnam in the definition of service in the Republic of Vietnam. In accordance with the BWN Act, VA further proposes to amend 38 CFR 3.814(c)(1) to align with the definition of ''service in the Republic of Vietnam'' set forth in the proposed amendment to 38 CFR 3.307(a)(6)(iii).

Further, in accordance with the BWN Act, VA is extending the date range for establishing presumption of exposure along the Korean DMZ from April 1, 1968, through August 31, 1971, to September 1, 1967, through August 31, 1971. *See* 38 U.S.C. 1116B(a)(2). VA proposes to amend the start date in 38 CFR 3.814(c)(2) to reflect the date mandated by the new statute.

VA also proposes replacing the phrase ''biological son or daughter'' in 38 CFR 3.814(c)(4) with ''natural child'' consistent with the clerical amendment proposed for 38 CFR 3.114(a).

VII. Proposed Changes to § 3.815 Monetary Allowance Under 38 U.S.C. Chapter 18 for an Individual With Disability From Covered Birth Defects Whose Biological Mother Is or Was a Vietnam Veteran; Identification of Covered Birth Defects

Prior to the BWN Act, if a Veteran mother only had service in the offshore waters of the Republic of Vietnam and did not go ashore or serve in the inland waterways, that service did not qualify for entitlement to a monthly monetary award for any natural children born with qualifying birth defects. The Act expanded the definition of ''Vietnam Veteran'' to include Veterans who served in the offshore waters of the Republic of Vietnam. Therefore, VA proposes to amend 38 CFR 3.815 accordingly.

38 CFR 3.815 provides for a monetary allowance under 38 U.S.C. 1812 for individuals with disability due to covered birth defects whose biological mother is or was a Vietnam Veteran. Covered birth defects include any birth defect other than familial disorders, birth-related injuries, or fetal or neonatal infirmity with well-established causes. All birth defects not excluded under these categories are covered birth defects. However, if an individual's only birth defect is spina bifida, their monthly monetary allowance will be paid under the provisions of 38 U.S.C. 1803, 1821, and 1822, which provide a monthly monetary award for children of certain herbicide agent-exposed Veteran parents who served in Vietnam, Thailand or near the Korean DMZ.

In accordance with the BWN Act, VA proposes to amend 38 CFR 3.815(c)(1) to align the definition of ''service in the Republic of Vietnam'' with the definition set forth in the proposed amendment to 38 CFR 3.307(a)(6)(iii).

VIII. Proposed Changes to § 3.105 Revision of Decisions

38 CFR 3.105(g), which describes procedural requirements for reductions in evaluations under 38 U.S.C. chapter 18 for children of certain herbicide agent-exposed Veterans, currently only applies to children of Vietnam Veterans born with spina bifida or children of Veterans with covered service in Korea born with spina bifida who were entitled to benefits. Because the BWN Act authorized VA to extend those benefits under 38 U.S.C. chapter 18 to children of certain Veterans who served in Thailand born with spina bifida, VA proposes to add these children to the category of claimants who are covered by the procedural provisions specified in this regulation. Since natural children of Veterans with covered service in Thailand are a newly covered type of claimant, it is necessary to add them as a category of claimants who are covered by the procedural provisions of 38 CFR 3.105. This ensures that benefits awarded to these claimants cannot be severed or reduced until the claimant has been afforded time to present evidence in support of maintaining their benefits.

Finally, VA proposes a clerical amendment to section 3.105(g) by replacing the word ''children'' with the phrase ''natural children'' wherever it occurs in the regulation. As is true with the proposed amendment to 38 CFR 3.114(a), this is a clerical change made to reflect the statutory definition of ''child'' for purposes of benefits for children of certain Veterans born with spina bifida. See 38 U.S.C. 1831(1).

IX. Proposed Changes to § 3.816 Awards Under the Nehmer Court Orders for Disability or Death Caused by a Condition Presumptively Associated With Herbicide Exposure

VA proposes to codify the current procedural guidance regarding locating the appropriate survivor(s) of a deceased *Nehmer* class member and defining the parameters of ''reasonable efforts'' to identify them. VA is also codifying its existing policy to pay newly identified qualifying payees before attempting recoupment from improperly compensated payees, rather than waiting for recoupment before paying the newly identified qualifying payees. The intent of this change is to ensure compliance with the *Nehmer* consent decree.

Historically, VA has sought to locate payees for potential retroactive *Nehmer* benefits by sending letters to all dependents of record requesting the names, addresses and telephone numbers of all known survivors. VA will also seek to obtain proof of dependency documents such as birth certificates, marriages certificates and other proof of dependency, if necessary.

If payees cannot be identified, VA will make reasonable efforts to locate payees as the information on file permits. For example, if a claimant's record identifies an authorized representative or a relative, it would be reasonable to contact such person to request information concerning the

existence of a surviving spouse, child(ren), parent(s) or the executor/administrator of the class member's estate. It would be unreasonable to attempt to locate a payee where there is no evidence of record to suggest that the party would potentially qualify for retroactive benefits.

If the evidence of record does not contain sufficient information to identify an eligible *Nehmer* class beneficiary, a letter will be sent to the last known address of the Veteran, and VA will wait 30 days for a response. If an address is unknown, an attempt will be made to contact the survivor by telephone to obtain their address.

This proposed regulation codifies the procedure for locating *Nehmer* payees as follows: Claims processors must review the claims folder for relevant information and review other VA resources including, but not limited to, benefit applications, statements from the veteran, medical records, corporate database and claims processing system notes. If review of both the claims folder and electronic claims processing system do not provide beneficiary contact information, claims processors must contact any known authorized representatives of record (including those who provided first notice of death and/or funeral/burial services). Claims processors also must attempt to locate potential payees using online public record investigation software authorized by VA. If, after this review, no beneficiary, authorized representative or next of kin is located, the claims processor will send (i) a letter to the Veteran's last known address and wait 30 days for a response and (ii) attempt contact via last known telephonic contact information. If no response is received at the expiration of 30 days, the claims processor will annotate in the claims folder all actions taken to identify eligible payees. The claims processor will then add the claim data to communications with *Nehmer* class counsel, as VA is required to provide class counsel with a list of every claim where eligible survivors cannot be located.

Given the universe of information in the VA benefits system available to claims processors and the measures VA proposes to identify eligible beneficiaries and contact individuals who may provide information about eligible beneficiaries unknown to VA, this procedural guidance constitutes what VA has determined to be reasonable efforts to identify all appropriate *Nehmer* payees. VA does not believe it is reasonable to pay private search firms or undertake extraordinary efforts beyond those identified in this regulation to identify potential payees.

If, following such efforts, VA releases the full amount of unpaid benefits to a payee or payees, and additional qualifying payees subsequently identify themselves to VA, VA will pay the newly identified payee(s) the portion of the award to which they are entitled, and then attempt to recover the overpayment from the original payee(s). While this is consistent with VA's current policy, the revision is necessary in light of the December 2, 2021, amendment to 38 CFR 3.816(f)(3), which was required by the November 10, 2021, court order in *Nehmer* v. *U.S. Department of Veterans Affairs,* No. C86–06160 WHA (N.D. Cal.) vacating the final sentence of section 3.816(f)(3), directing VA to issue a rule rescinding that sentence and requiring VA to publish that rule in the **Federal Register**. *See* 86 FR 68409 (Dec. 2, 2021). VA is obligated to issue payment to the newly identified payee(s) regardless of whether it previously disbursed the entirety of an award to the original payee(s). As noted by the U.S. Court of Appeals for Veterans Claims in *Snyder* v. *Principi,* the prior disbursement ''in no way impairs [VA's] authority and obligation to pay from the compensation . . . account the amount that is owed to the correct beneficiary.'' 15 Vet. App. 285, 292 (2001). This is because ''the amount owed to the correct beneficiary, in fact, remains undisturbed in the compensation . . . account.'' *Id.* Nevertheless, payment to newly identified payees does not relieve VA of its corresponding obligation to recover the overpayment to the original payees. *See* 31 U.S.C. 3711(a)(1) (''The head of an executive, judicial, or legislative agency . . . shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency.''); 38 CFR 1.910(a) (requiring VA to take ''aggressive collection action . . . to collect all claims for money or property arising from [VA's] activities''); *see also Edwards* v. *Peake,* 22 Vet. App. 57, 59 (2008) (noting that ''the Secretary generally is required to recover erroneous VA payments or overpayment of benefits'').

X. Severability

The purpose of this section is to clarify the agency's intent with respect to the severability of provisions of this proposed rule. Each provision that the agency has proposed is capable of operating independently and the agency intends them to be severable. If any provision of this rule is determined by judicial review or operation of law to be invalid, the agency would not intend that partial invalidation to render the remainder of this rule invalid. Likewise, if the application of any portion of this proposed rule to a particular circumstance were determined to be invalid, the agencies would intend that the rule as proposed remain applicable to all other circumstances.

Executive Orders 12866, 13563 and 14094

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 (E.O. on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 of September 30, 1993 (Regulatory Planning and Review), and E.O. 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under E.O. 12866, Section 3(f)(1), as amended by E.O. 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that no small entities or businesses provide Federal compensation or pension benefits to Veterans, and such entities or businesses therefore would be unaffected by the proposed rule. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Healthcare, Pensions, Radioactive materials, Veterans, Vietnam.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on January 9, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.105 by revising paragraph (g) to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are natural children of Vietnam Veterans or natural children of Veterans with covered service in Korea or Thailand. Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefore, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

* * * * *

■ 3. Amend § 3.114 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing the authority citation immediately preceding paragraph (b); and

■ c. Revising the authority citation immediately following paragraph (b).

The revisions read as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a natural child of a Vietnam Veteran or natural child of a Veteran with covered service in Korea or Thailand is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a natural child of a Vietnam Veteran or natural child of a Veteran with covered service in Korea or Thailand is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and supplemental claims as well as claims for increase.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 1805, 1815, 1821, 1822, 1831, 1832, 5110(g))

■ 4. Amend § 3.307 by revising paragraphs (a)(6) introductory text, (a)(6)(iii) through (v), and adding paragraphs (a)(6)(vi) through (xi) to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical, or prisoner-of-war related disease, disease associated with exposure to certain herbicide agents, or disease associated with exposure to contaminants in the water supply at Camp Lejeune; wartime and service on or after January 1, 1947.

(a) * * *

(6) *Presumption of exposure to certain herbicide agents.* (i) For the purposes of this section, the term ''herbicide agent'' means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4–D; 2,4,5–T and its contaminant TCDD; cacodylic acid; and picloram.

* * * * *

(iii) *Service in the Republic of Vietnam.* A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. The last date on which such a Veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962 and ending on May 7, 1975. Service in the Republic of Vietnam includes service in the offshore waters of the Republic of Vietnam. Service in the offshore waters of the Republic of Vietnam is defined as service in waters at any location not more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia. This line would encompass Phu Quoc island, terminating at the mid-point of the Ben Hai River, and intersecting the following points:

Points geographic names	Latitude north	Longitude east
At Phu Quoc Extension Point A	10°14′51.16″	104°12′54.69″
At Phu Quoc Extension Point B	10°23′55.92″	104° 7′56.91″
At Phu Quoc Extension Point C	10°30′12.70″	103°59′19.11″
At Phu Quoc Extension Point D	9°43′18.90″	102°46′28.56″
At Phu Quoc Extension Point E	9°11′34.58″	103°14′38.50″
At Hon Nhan Island, Tho Chu Archipelago Kien Giang Province	9°15.0′	103°27.0′
At Hon Da Island southeast of Hon Khoai Island Minh Hai Province	8°22.8′	104°52.4′
At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Toa Special Sector	8°37.8′	106°37.5′
At Bong Lai Islet, Con Dao Islet	8°38.9′	106°40.3′
At Bay Canh Islet, Con Dao Islet	8°39.7′	106°42.1′
At Hon Hai Islet (Phu Qui group of islands) Thuan Hai Province	9°58.0′	109°5.0′
At Hon Doi Islet, Thuan Hai Province	12°39.0′	109°28.0′
At Dai Lanh point, Phu Khanh Province	12°53.8′	109°27.2′
At Ong Can Islet, Phu Khanh Province	13°54.0′	109°21.0′
At Ly Son Islet, Nghia Binh Province	15°23.1′	109° 9.0′
At Con Co Island, Binh Tri Thien Province	17°10.0′	107°20.6′

(iv) *Service in or near the Korean Demilitarized Zone (DMZ).* A Veteran who, during active military, naval, or air service, served between September 1, 1967, and August 31, 1971, in a unit that, as determined by DoD, operated in or near the Korean DMZ in an area in which certain herbicide agents are known to have been applied during that period, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. *See also* 38 CFR 3.814(c)(2).

(v) *Service operating, maintaining, or serving aboard C–123 aircraft.* An individual who performed service in the Air Force or Air Force Reserve under circumstances in which the individual concerned regularly and repeatedly operated, maintained, or served onboard C–123 aircraft known to have been used to spray an herbicide agent during the Vietnam era shall be presumed to have been exposed during such service to an herbicide agent. For purposes of this paragraph, ''regularly and repeatedly operated, maintained, or served onboard C–123 aircraft'' means that the individual was assigned to an Air Force or Air Force Reserve squadron when the squadron was permanently assigned one of the affected aircraft and the individual had an Air Force Specialty Code indicating duties as a flight, ground maintenance, or medical crew member on such aircraft. Such exposure constitutes an injury under 38 U.S.C. 101(24)(B) and (C). If an individual described in this paragraph develops a disease listed in 38 CFR 3.309(e) as specified in paragraph (a)(6)(ii) of this section, it will be presumed that the individual concerned became disabled during that service for purposes of establishing that the individual served in the active military, naval, or air service.

(vi) *Service in Thailand.* A veteran who, during active military, naval, or air service, served in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. Service at any United States or Royal Thai base includes service aboard a ship that called to a coastal base in Thailand.

(vii) *Service in Laos.* A veteran who, during active military, naval, or air service, served in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that serviche.

(viii) *Service in Cambodia.* A veteran who, during active military, naval, or air service, served in Cambodia at Mimot or Krek, Kampong Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service.

(ix) *Service in Guam or American Samoa.* A Veteran who, during active military, naval, or air service, served in Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service.

(x) *Service on Johnston Atoll.* A Veteran who, during active military, naval, or air service, served on Johnston Atoll or served on a ship when it called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service.

(xi) *Service in locations recognized by the Department of Defense.* A veteran who does not meet the requirements of paragraphs (a)(6)(iii)-(x) of this section, and whose circumstances of service reasonably would have placed the Veteran at a site of certain herbicide agent testing, use, or storage on a date of certain herbicide agent testing, use, or storage, shall be presumed to have been exposed to an herbicide agent during such service, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service. The DoD List of Locations Where Tactical Herbicides and Their Chemical Components Were Tested, Used, or Stored Outside of Vietnam, published on VA's website, is the authoritative source regarding where and when certain herbicide agents were tested, used or stored for purposes of this paragraph, and can be found at: *https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/index.asp.* VA will publish changes to this list in the Notices section of the **Federal Register**.

* * * * *

■ 5. Amend § 3.309 by revising paragraph (e) to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) *Disease associated with exposure to certain herbicide agents.* If a Veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service connected if the requirements of § 3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied.

AL amyloidosis
Chloracne or other acneform disease consistent with chloracne.
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes),
Hodgkin's disease
Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)
All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)
Multiple myeloma
Non-Hodgkin's lymphoma
Parkinson's disease
Early-onset peripheral neuropathy
Porphyria cutanea tarda
Prostate cancer
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)
Bladder cancer
Parkinsonism (including, but not limited to, the following Parkinson-plus syndromes (also referred to as ''atypical Parkinsonism''): progressive supranuclear palsy (PSP), multiple system atrophy (MSA) (also referred to as Shy-Drager syndrome), corticobasal degeneration (CBD), vascular Parkinsonism, and dementia with Lewy bodies (DLB))
Hypothyroidism
Hypertension
Monoclonal gammopathy of undetermined significance (MGUS)

Note 1: The term ''soft-tissue sarcoma'' includes the following:

Adult fibrosarcoma
Dermatofibrosarcoma protuberans
Malignant fibrous histiocytoma
Liposarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating (systemic) angioendotheliomatosis
Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

Note 2: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

Note 3: Drug-induced Parkinsonism is not recognized as a disease associated with exposure to certain herbicide agents.

* * * * *

■ 6. Revise § 3.313 to read as follows:

§ 3.313 Claims based on service in the Republic of Vietnam.

(a) Service in the Republic of Vietnam. Service in the Republic of Vietnam includes service in the offshore waters of the Republic of Vietnam as defined in 38 CFR 3.307(a)(6)(iii). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

(b) Service connection based on service in the Republic of Vietnam. Service in the Republic of Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

■ 7. Amend § 3.814 by revising the section heading, paragraph (c), and the authority citation at the end of the section to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam Veteran or a Veteran with covered service in Korea or Thailand.

* * * * *

(c) Definitions—(1) *Vietnam veteran.* For the purposes of this section, the term ''Vietnam Veteran'' means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the offshore waters of the Republic of Vietnam as defined in 38 CFR 3.307(a)(6)(iii). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Covered service in Korea.* For the purposes of this section, the term ''Veteran with covered service in Korea'' means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the DoD, to have been exposed to an herbicide agent during such service. Exposure to an herbicide agent will be conceded if the Veteran served between September 1, 1967, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which certain herbicide agents are known to have been applied during that period, unless there is affirmative evidence to establish that the Veteran was not exposed to any such agent during that service.

(3) *Covered service in Thailand.* For the purposes of this section, the term ''covered service in Thailand'' means service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed.

(4) *Individual.* For the purposes of this section, the term ''individual'' means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam Veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam Era, or whose biological father or mother is or was a Veteran with covered service in Korea or Thailand and who was conceived after the date on which the Veteran first had covered service in

Korea or Thailand as defined in this section. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a person is the natural child of a Vietnam Veteran or a Veteran with covered service in Korea or Thailand.

(5) *Spina bifida.* For the purposes of this section, the term ''spina bifida'' means any form and manifestation of spina bifida except spina bifida occulta.

* * * * *

(Authority: 38 U.S.C. 501, 1116A, 1116B, 1805, 1811, 1812, 1821, 1822, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

■ 8. Amend § 3.815 by revising paragraph (c)(1) and the authority citation at the end of the section to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam Veteran; identification of covered birth defects.

* * * * *

(c) * * *

(1) Vietnam Veteran. For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore of the Republic of Vietnam, as defined in 38 CFR 3.307(a)(6)(iii). Service in other locations will constitute service in the Republic of Vietnam if the conditions of service involved duty or visitation in the Republic of Vietnam.

* * * * *

(Authority: 38 U.S.C. 501, 1116A, 1811, 1812, 1813, 1814, 1815, 1816, 1831, 1832, 1833, 1834, 5101, 5110, 5111, 5112)

■ 9. Amend § 3.816 by revising paragraph (f)(3) and the authority citation at the end of the section to read as follows:

§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

* * * * *

(f) * * *

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section. For the purposes of this section, *reasonable efforts* to locate a *Nehmer* payee are limited to the following:

(i) Claims processors must review the claims folder for beneficiary contact information. Documents in the claims folder that might contain this contact information can include but are not limited to:

(A) benefit applications;

(B) statements from the Veteran; and

(C) medical records

(ii) Claims processors must review electronic claims processing systems for potential beneficiary contact information, including:

(A) corporate database review, and

(B) claims processing system notes review

(iii) Claims processors must utilize online public record investigation software authorized by VA to locate potential beneficiary contact information.

(iv) If review of both the claims folder and electronic claims processing systems do not provide contact information, VA will attempt to contact any known or applicable authorized representatives of record, next of kin, individuals who provided first notice of death, the executor/administrator of the class member's estate, or funeral homes that provided funeral/burial services, if that information is available.

(v) If no beneficiary, authorized representative, next of kin, individuals who provided first notice of death, executor/administrator of the class member's estate, or funeral home that provided funeral/burial services is located in the review above, then claims processors must:

(A) Send a letter to the last known address of the veteran and wait 30 days for a response, and

(B) Attempt contact via the Veteran's last known telephonic contact information found in the Veteran's file.

(vi) If, following such efforts, VA releases the full amount of unpaid benefits to a payee, and additional qualifying payees subsequently identify themselves to VA, VA will pay the newly identified payees the portion of the award to which they are entitled, and then attempt to recover the overpayment from the original payee(s).

* * * * *

(Authority: 38 U.S.C. 501)

[FR Doc. 2024–02590 Filed 2–9–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0649; FRL–11647–01–R9]

Air Plan Revisions; California; Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Feather River Air Quality Management District (FRAQMD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns a rule submitted to address section 185 of the Clean Air Act (CAA or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before March 13, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0649 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kira Wiesinger, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105; phone: (415) 972–3827; email: *wiesinger.kira@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
FRAQMD	7.15	Clean Air Act Nonattainment Fees	04/04/2022	07/05/2022

On October 28, 2022, the EPA determined that the submittal for Rule 7.15 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 7.15 in the California SIP. The FRAQMD originally adopted an earlier version of this rule on December 6, 2010, but that version of the rule was never submitted for inclusion in the SIP. The FRAQMD amended Rule 7.15 on April 4, 2022. If we take final action to approve the April 4, 2022 version of Rule 7.15, this version will be incorporated into the SIP.

C. What is the purpose of the submitted rule?

Under sections 182(d)(3), (e), (f) and 185 of the Act, states with ozone nonattainment areas classified as ''Severe'' or ''Extreme'' are required to submit a SIP revision that requires major stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NOx) emissions in the area to pay a fee if the area fails to attain the standard by the attainment date. The required SIP revision must provide for annual payment of the fees, computed in accordance with CAA section 185(b).

The Sacramento Metro, CA ozone nonattainment area has been classified as Severe for the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The Sacramento Metro area includes a portion of Sutter County that is under the jurisdiction of the FRAQMD. The EPA has previously issued a finding that the State of California had failed to submit the required revisions for the 1-hour ozone NAAQS for portions of the Sacramento Metro area, including the portion under the jurisdiction of the FRAQMD.[1] The FRAQMD submitted Rule 7.15 for the portion of the Sacramento Metro area under the jurisdiction of the District to satisfy the requirement to submit a CAA section 185 fee program for each federal ozone NAAQS for which the Sacramento Metro area is classified as Severe or Extreme.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). The EPA is also evaluating the rule for consistency with the statutory requirements of CAA section 185.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability and SIP revisions. The EPA's technical support document (TSD) has more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Rule

The TSD includes recommendations for the next time the local agency amends the rule.

D. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve submitted Rule 7.15 because it fulfills all relevant requirements. The rule is not limited to a particular ozone NAAQS, and we therefore propose to find that it satisfies the District's obligations under the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS. We will accept comments from the public on this proposal until March 13, 2024. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP and address the EPA's obligation to promulgate a FIP arising from our previous finding that the State of California has failed to submit the required CAA section 185 SIP revisions for the 1-hour ozone NAAQS for the portion of the Sacramento Metro area under the jurisdiction of the FRAQMD.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference FRAQMD Rule 7.15, ''Clean Air Act

[1] January 5, 2010 (75 FR 232). Although the imposition of sanctions due to this finding was deferred on May 18, 2011 (76 FR 28661), and was permanently stopped with our October 28, 2022 completeness letter, there remains an obligation for the EPA to promulgate a federal implementation plan (FIP) associated with the January 5, 2010 action.

Nonattainment Fees,'' amended on April 4, 2022, which addresses the CAA section 185 fee program requirements. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: February 5, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–02770 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2023–0419; FRL–11736–01–R3]

Redesignation of Portions of Westmoreland and Cambria Counties, Pennsylvania for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS): Notification of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is providing notice of our intent to redesignate portions of Westmoreland County and Cambria County, Pennsylvania, to ''nonattainment'' for the 2010 sulfur dioxide (SO_2) national ambient air quality standard (NAAQS or standard). Westmoreland County is currently designated ''attainment/unclassifiable,'' and Cambria County is currently designated ''unclassifiable.'' EPA's intended redesignation of portions of these counties is based on modeled violations of the 2010 SO_2 NAAQS. If the redesignation to nonattainment is finalized, the Commonwealth of Pennsylvania would be required to undertake certain planning requirements to reduce SO_2 concentrations within this area, including, but not limited to, the requirement to submit within 18 months of redesignation a revision to the Pennsylvania state implementation plan (SIP) that provides for attainment of the SO_2 standard as expeditiously as practicable, but no later than five years after the date of redesignation to nonattainment.

Notice is hereby given that EPA has posted on our public electronic docket and internet website the intended redesignation for relevant portions of Westmoreland and Cambria counties, Pennsylvania under the 2010 SO_2 NAAQS. The Agency invites the public to review and provide input on our intended redesignation during the comment period specified in the **DATES** section. EPA notified the Commonwealth of Pennsylvania of our intended redesignation action via a letter to the Governor on or about February 17, 2023, which is included in the docket for this notice of availability (NOA).

DATES: Comments must be received on or before March 28, 2024. Please refer to

the **SUPPLEMENTARY INFORMATION** section for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0419 at *www.regulations.gov* or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

EPA encourages the public to review our letter notifying Pennsylvania of our intended redesignation action, and the associated area-specific technical support information at *www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions* or in the public docket for this intended redesignation at *www.regulations.gov* under Docket ID No. EPA–R03–OAR–2023–0419.

SUPPLEMENTARY INFORMATION:

The information in this document is organized as follows:

I. Purpose of Action and Instructions for Submitting Public Comments
II. The 2010 SO_2 NAAQS
III. Designations for the 2010 SO_2 NAAQS
IV. SO_2 Monitoring and Modeling Considerations
V. Modeled SO_2 NAAQS Violations in Westmoreland and Cambria Counties, Pennsylvania
VI. EPA's Intended Decision To Address Modeled SO_2 NAAQS Violations in Portions of Westmoreland and Cambria Counties, Pennsylvania Through Redesignation

I. Purpose of Action and Instructions for Submitting Public Comments

The purpose of this NOA is to solicit input from interested parties on EPA's notification to the Governor of Pennsylvania about our intent and rationale for redesignating portions of Westmoreland and Cambria counties in Pennsylvania to nonattainment for the 2010 SO_2 NAAQS. EPA's notification letter and the supporting technical analysis can be found at *www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions,* as well as in the public docket for this redesignation at *www.regulations.gov* under Docket ID No. EPA–R03–OAR–2023–0419.

EPA invites public input regarding the redesignation of portions of Westmoreland and Cambria counties during the 45-day comment period provided in this document. To receive full consideration, input from the public must be submitted to the docket by March 28, 2024. This publication and opportunity for public comment does not affect any rights or obligations of any state, or tribe, or of EPA, which might otherwise exist pursuant to the Clean Air Act (CAA or Act) section 107(d).

CAA section 107(d)(3) provides a process for air quality redesignations that involves recommendations by affected states, territories, and tribes to EPA and responses from the Agency to those parties, prior to EPA promulgating final area redesignation decisions. The Agency is not required under CAA section 107(d)(3) to seek public comment during the redesignations process, but we are electing to do so for these counties with respect to the 2010 SO_2 NAAQS to gather additional information for EPA to consider before making a final redesignation decision for these specific areas.

A. Submitting CBI

Do not submit CBI information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. For additional directions on sending or delivering information identified as CBI, contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

II. The 2010 SO_2 NAAQS

Under section 109 of the CAA, EPA has established primary and secondary NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards, the attainment and maintenance of which EPA has determined, including a margin of safety, are requisite to protect the public health. The secondary NAAQS represent ambient air quality standards, the attainment and maintenance of which EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

EPA revised the primary SO_2 NAAQS in a final rule published in the **Federal Register** on June 22, 2010 (75 FR 35520), codified at 40 CFR 50.17, which became effective on August 23, 2010. Based on review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO_2, EPA revised the primary SO_2 NAAQS to provide the requisite protection of public health with an adequate margin of safety. Specifically, EPA established a new 1-hour SO_2 standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air

quality receptor location) when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. 40 CFR 50.17(a) and (b).

Anthropogenic SO_2 emissions originate chiefly from point sources, with fossil fuel combustion at electric utilities and other industrial facilities accounting for the majority of total emissions.[1] Current scientific evidence links short-term exposures to SO_2, ranging from five minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms.[2] These effects are particularly important for asthmatics at elevated ventilation rates (*e.g.,* while exercising or playing).[3] Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly and asthmatics.[4]

III. Designations for the 2010 SO_2 NAAQS

EPA is required by CAA section 107(d) to designate all areas throughout the nation as attaining or not attaining the NAAQS within two years of the promulgation of any new or revised NAAQS. Pursuant to CAA section 107(d), EPA must designate as ''nonattainment'' those areas that violate the NAAQS and those nearby areas that contribute to violations. Once an area has been designated, the EPA Administrator, under CAA section 107(d)(3), may at any time notify a state that a designation should be revised.

EPA was required to designate areas throughout the country for the 2010 SO_2 NAAQS by June 3, 2012. EPA invoked a 1-year extension of the deadline to designate areas for the 2010 SO_2 NAAQS, as provided for under CAA section 107, after which the Agency completed an initial round of SO_2 designations for certain areas of the country on August 5, 2013 (referred to as ''Round 1'').[5] In Round 1, EPA designated Indiana County and a portion of Armstrong County, Pennsylvania as nonattainment (hereafter referred to as the ''Indiana Area''). On January 9, 2018,[6] in a subsequent round of designations (Round 3), EPA designated Westmoreland County, Pennsylvania as attainment/unclassifiable, and Cambria County, Pennsylvania as unclassifiable.

In 2018, during the public comment period for the proposed approval of the SO_2 attainment SIP for the Indiana Area (83 FR 32606, July 13, 2018), the Sierra Club (in conjunction with the National Parks Conservation Association (NPCA), PennFuture, Earthjustice, and Clean Air Council (the Council)) submitted a modeling analysis which claimed to show violations of the SO_2 NAAQS within portions of Westmoreland and Cambria counties due to SO_2 emissions from sources located within the Indiana Area. In 2022, during the public comment period for the proposed partial disapproval and partial approval of the Indiana Area's attainment SIP (87 FR 15166, March 17, 2022), EPA received additional modeling from the Sierra Club, and Keystone-Conemaugh Projects, LLC (KEY–CON),[7] focused on the Westmoreland and Cambria areas. EPA also conducted its own modeling of those areas. Based on review of all modeling analyses, EPA has determined that there are modeled SO_2 NAAQS violations outside of the existing Indiana Area, in portions of Westmoreland and Cambria counties, and accordingly notified the Governor of Pennsylvania in a letter dated February 17, 2023, of its intent to redesignate the relevant portions of Westmoreland and Cambria counties as nonattainment for the 2010 SO_2 NAAQS, consistent with CAA section 107(d)(3)(A). On June 22, 2023, Acting Secretary for the Pennsylvania Department of Environmental Protection (PA DEP), Richard Negrin, responded to EPA's letter but did not specify whether the Commonwealth agreed or disagreed with EPA's determination to redesignate portions of Westmoreland and Cambria counties as nonattainment for the 2010 SO_2 NAAQS. Instead, Pennsylvania's response included several comments questioning certain aspects of the Technical Support Document (TSD) that EPA had developed and submitted to PA DEP with the February 17, 2023 redesignation letter. EPA has responded to the Commonwealth's comments in a response to comments (RTC) document which is in the docket for this document.[8]

IV. SO_2 Monitoring and Modeling Considerations

The 1-hour primary SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. EPA also believes that in certain cases, including when SO_2 monitors are lacking, air dispersion modeling is an appropriate tool to determine whether an area is in attainment, as discussed in EPA's document titled, ''SO_2 NAAQS Designations Modeling Technical Assistance Document'' (Modeling TAD). The Modeling TAD provides nonbinding recommendations on how to appropriately and sufficiently model ambient air in proximity to an SO_2 emission source to establish air quality data for comparison to the 2010 primary SO_2 NAAQS for the purposes of designations.

Ambient SO_2 monitoring data are collected by state, local, and tribal monitoring agencies (''monitoring agencies'') in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58. A monitoring network is generally designed to measure, report, and provide related information on air quality data as described in 40 CFR part 58. To ensure that the data from the network is accurate and reliable, the monitors in the network must meet a number of requirements, including the use of monitoring methods that EPA has approved as Federal Reference Methods (FRMs) or Federal Equivalent Methods (FEMs), focusing on particular monitoring objectives, and following specific siting criteria, data reporting, quality assurance and data handling rules or procedures.

At present, except for SO_2 monitoring required at National Core Monitoring Stations (Ncore stations), there are no minimum monitoring requirements for SO_2 in 40 CFR part 58 appendix D, other than a requirement for EPA Regional Administrator approval before removing any existing monitors and a requirement that any ongoing SO_2 monitoring must have at least one monitor sited to measure the maximum concentration of SO_2 in that area.

In addition to using any valid data generated by existing monitors, refined dispersion modeling may inform NAAQS designation and

[1] 75 FR 35520 (June 22, 2010).

[2] Id.

[3] Id.

[4] Id.

[5] 78 FR 47191. Effective date October 4, 2013.

[6] 83 FR 1098. Effective date April 9, 2018.

[7] KEY–CON, licensee for the Keystone Generating Station located in Armstrong County and the Conemaugh Generating station located in Indiana County, provided modeling to support its comments rebutting modeling and views presented by the Sierra Club and EPA.

[8] A copy of PA DEP's comments on EPA's initial redesignation TSD and also EPA's RTC replying to these comments, can be found in Docket No. EPA–R03–OAR–2023–0419 via *www.regulations.gov.*

implementation decisions regarding sources that may have the potential to cause or contribute to a NAAQS violation. For a short-term 1-hour standard, dispersion modeling of stationary sources can be more technically appropriate, efficient, and effective because it accounts for fairly infrequent combinations of meteorological and source operating conditions that can contribute to peak ground-level concentrations of SO_2.

EPA's Guideline on Air Quality Models, found at appendix W to 40 CFR part 51, provides recommendations on modeling techniques and guidance for estimating pollutant concentrations to assess control strategies and determine emission limits.

V. Modeled SO_2 NAAQS Violations in Westmoreland and Cambria Counties, Pennsylvania

Effective on October 4, 2013, the Indiana Area (which encompasses Indiana County, as well as Plumcreek Township, South Bend Township and Eldertown Borough of Armstrong County) was designated as nonattainment for the 2010 SO_2 NAAQS. The Indiana Area includes Keystone, Conemaugh, Homer City, and Seward electric generating units (EGUs), all primary SO_2 emitting sources.

On October 11, 2017, PA DEP submitted to EPA an attainment SIP for the Indiana Area which the Agency proposed approval of on July 13, 2018 (83 FR 32606). During the public comment period for the proposed approval of the attainment SIP, the Sierra Club (in conjunction with the NPCA, PennFuture, Earthjustice, and the Council) submitted a modeling analysis using actual emissions and the critical emission values (CEVs) [9] for Conemaugh and Seward which claimed to show violations of the SO_2 NAAQS outside of the Indiana Area, beyond the eastern border of Indiana County, within nearby portions of Westmoreland and Cambria counties. The modeling used the same meteorological data, stack parameters, background concentrations and building downwash as Pennsylvania's attainment SIP for the Indiana Area. The Sierra Club modeling used emission inputs of actual historical emissions (2013–2018 quarter 1) and a finer receptor grid that included receptors outside Indiana County. When modeling 2015–2017 emissions, the resulting design value was 293.4 micrograms per cubic meter (ug/m^3), and when modeling 2013–2017 emissions, the resulting design value was 267.2 ug/m^3.[10]

EPA issued a final approval of Pennsylvania's attainment plan for the Indiana Area on October 19, 2020 (85 FR 66240). On December 18, 2020, the Sierra Club, Clean Air Council, and PennFuture filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging EPA's final approval of the Indiana Area's attainment plan.[11] On April 5, 2021, EPA filed a motion for voluntary remand without vacatur of its approval of the Indiana Area attainment plan in order to reconsider its approval of the attainment plan.

On August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted EPA's request for remand without vacatur of the final approval of Pennsylvania's 2010 SO_2 NAAQS attainment plan for the Indiana Area, requiring that the Agency take final action in response to the remand no later than one year from the date of the court's order (*i.e.,* by August 18, 2022).

After reconsideration, on March 17, 2022, EPA proposed partial disapproval and partial approval of the Indiana Area attainment plan (87 FR 15166). During the public comment period, EPA received air quality modeling (including modeling files) from the Sierra Club (in conjunction with the NPCA, PennFuture, Earthjustice, and the Council) using updated emissions data claiming to show modeled NAAQS violations in Westmoreland and Cambria counties due to SO_2 emissions from the Conemaugh and Seward sources located in Indiana County. EPA also received an air quality modeling report from KEYCON which used updated emissions from Conemaugh and Seward but did not show modeled NAAQS violations in Westmoreland and Cambria counties.[12]

EPA then conducted its own modeling analysis, discussed in detail in the TSD located in the docket for this document. Based on review of all modeling analyses, EPA determined that there are modeled SO_2 NAAQS violations outside of the existing Indiana Area, in Westmoreland and Cambria counties.

VI. EPA's Intended Decision To Address Modeled SO_2 NAAQS Violations in Portions of Westmoreland and Cambria Counties, Pennsylvania Through Redesignation

The CAA provides EPA with the authority to revise designations of, or ''redesignate,'' areas under CAA section 107(d)(3). Such redesignations can originate as requests by states (per CAA section 107(d)(3)(D)), and EPA can also notify a state at any time that a designation of any area or portion of an area should be revised, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA Administrator deems appropriate. CAA section 107(d)(3)(A) further states that, ''[i]n issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.'' The Act then requires the Governor to submit to EPA such redesignation, if any, as the Governor deems appropriate (CAA section 107(d)(3)(B)). CAA section 107(d)(3)(C) states that ''the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with [CAA section 107(d)(3)(B)], making such modifications as the Administrator may deem necessary . . . . If the Governor does not submit, in accordance with [CAA section 107(d)(3)(B)], a redesignation for an area (or portion thereof) identified by the Administrator under [CAA section 107(d)(3)(A)], the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.''

As noted, CAA section 107(d)(3)(A) provides EPA latitude to consider a broad range of information in considering whether a designation should be revised. In consideration of ''air quality data, planning and control considerations, or any other air quality-related considerations the EPA Administrator deems appropriate,'' EPA has taken note of the analytical guidance that it has previously used in issuing initial area designations under CAA section 107(d)(1). EPA has issued multiple guidance documents for performing SO_2 designations, the most recent of which is a September 5, 2019 guidance from Peter Tsirigotis, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10.[13]

[9] A CEV is the maximum modeled emission rate that results in attainment.

[10] EPA considers 196.4 ug/m^3 equivalent to 75 ppb (based on the 2010 SO_2 NAAQS).

[11] *Sierra Club, et. al.* v. *EPA,* Case No. 20–3568 (3rd Cir.).

[12] KEYCON emailed the modeling files to EPA on April 20, 2022.

[13] *See,* ''Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard—Round 4,'' memorandum to Regional Air Division Directors, Regions 1–10, from Peter

This memorandum supplements, where necessary, prior designations guidance documents on area designations for the 2010 primary SO_2 NAAQS issued on March 24, 2011, March 20, 2015, and July 22, 2016. The September 2019 memorandum identifies evaluation factors in determining whether areas are in violation of the 2010 SO_2 NAAQS and factors that EPA intends to assess in determining the boundaries for such areas. These factors include:

(1) Air quality characterization via ambient monitoring or dispersion modeling results;

(2) emissions-related data;

(3) meteorology;

(4) geography and topography; and

(5) jurisdictional boundaries.

Available modeling indicates that portions of Westmoreland and Cambria counties are violating the 2010 1-hour SO_2 NAAQS. EPA's detailed evaluation of the modeled violations, contributing sources, and intended area boundaries based on the weight of evidence of the previously identified factors are included in the TSD, which is located in the docket for this action. EPA's intended boundaries of the relevant area encompass Lower Yoder Township in Cambria County, Pennsylvania and St. Clair Township, Seward Borough, and New Florence Borough in Westmoreland County, Pennsylvania. A map showing the boundaries of our intended nonattainment area for Westmoreland and Cambria counties is included in the TSD.

With respect to area boundaries, EPA's modeling shows that the sources of this nonattainment are SO_2 emissions from the Conemaugh and Seward plants, which are located in the existing Indiana, Pennsylvania nonattainment area. The attainment plan for the Indiana Area was partially disapproved and partially approved. This initiated a sanctions clock under CAA section 179, providing for emission offset sanctions for new sources unless Pennsylvania submits, and EPA fully approves, a revised attainment SIP for the Indiana Area within 18 months after the Agency's final partial disapproval, and providing for highway funding sanctions if EPA has not fully approved a revised plan within six months thereafter. Due to this unique situation and the already determined attainment planning schedule for the Indiana Area, EPA has decided not to add the proposed Westmoreland and Cambria nonattainment area into the existing Indiana Area. EPA maintains that under the circumstances presented here, a new nonattainment area that does not include the contributing sources is not an impediment to the Commonwealth's ability to impose new emission limits on the sources contributing to the air quality violations in the nonattainment area. In any future attainment plan submitted for this new area, Pennsylvania will need to demonstrate that any future emissions or new emission limits for Seward and Conemaugh are sufficient to provide for NAAQS attainment in both areas as a result of this redesignation. A discussion of the intended boundaries for the Westmoreland and Cambria nonattainment area is located in the TSD associated with this redesignation document. The TSD can be found at *www.regulations.gov* in Docket ID No. EPA–R03–OAR–2023–0419. Based on this information, EPA notified the Governor of Pennsylvania, in a letter dated February 17, 2023, of EPA's intention to redesignate portions of Westmoreland and Cambria counties to nonattainment. On June 22, 2023, Acting Secretary for the PA DEP, Richard Negrin, responded to EPA's letter but did not specify whether it agreed or disagreed with EPA's determination to redesignate portions of Westmoreland and Cambria counties as nonattainment for the 2010 SO_2 NAAQS. Instead, Pennsylvania's response included several comments questioning certain aspects of the TSD that EPA had developed and submitted to PA DEP with the February 17, 2023 redesignation letter. EPA has responded to the Commonwealth's comments in a RTC document which is in the docket for this action.[14]

Through this action, EPA is providing notice of our intent to redesignate portions of Westmoreland and Cambria counties to nonattainment for the 2010 SO_2 NAAQS. The Agency is voluntarily taking public comment on the intended redesignation, TSD, and our response to PA DEP's June 27, 2023 comments. Public comment information is located in section I of this document. Per CAA section 107(d)(3)(C), EPA intends to promulgate a redesignation, if any, after considering any further information obtained during the comment period.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–02834 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

Tsirigotis, dated September 5, 2019, available at *www.epa.gov/sites/default/files/2019-09/documents/round_4_so2_designations_memo_09-05-2019_final.pdf.*

[14] A copy of PA DEP's comments on EPA's initial redesignation TSD and also EPA's RTC replying to these comments, can be found in Docket No. EPA–R03–OAR–2023–0419 via *www.regulations.gov.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240129–0026]

RIN 0648–BM78

Fisheries of the Northeastern United States; Framework Adjustment 38 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement Framework Adjustment 38 to the Atlantic Sea Scallop Fishery Management Plan (FMP) that establishes scallop specifications and other management measures for fishing years 2024 and 2025. Framework 38 would implement measures to protect small scallops to support rotational access area trips to the fleet in future years. This action would also revise regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Comments must be received by February 27, 2024.

ADDRESSES: The New England Fishery Management Council (Council) has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework 38 and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of Framework 38 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 38, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Dr. Cate O'Keefe, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/scallop-framework-38.*

You may submit comments on this document, identified by NOAA–NMFS–

2024–0004, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2024–0004 in the Search box (*note:* copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233, email: *travis.ford@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop FMP, established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework Adjustment 38 to the Atlantic Sea Scallop FMP on December 6, 2023. The Council submitted a draft of the framework, including a draft EA, for NMFS review and approval on December 22, 2023. This action proposes to approve and implement Framework 38, which establishes scallop specifications and other measures for fishing years 2024 and 2025, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2024, and default specifications for fishing year 2025, as recommended by the Council.

NMFS proposes to implement these Framework 38 measures as close as possible to the April 1 start of fishing year 2024. If NMFS implements these measures after the start of the fishing year, the default allocation measures currently established for fishing year 2024 will go into place on April 1, 2024. The Council reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate, as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2024 Fishing Year, and Default Specifications for Fishing Year 2025

The Council set the proposed OFL based on a fishing mortality rate (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The proposed ABC and the equivalent total ACL for each fishing year are based on an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 47.4 million pounds (lb; 21,497 metric tons (mt)) for 2024 and 49.8 million lb (22,586 mt) for the 2025 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2025 when the Council develops the next framework adjustment.

Table 1 outlines the proposed scallop fishery catch limits. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the Atlantic Sea Scallop FMP (72 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.,* the larger ''trip boat'' fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.,* the smaller ''day boat'' fleet); and the remaining 0.5 percent is allocated to limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 (76 FR 43746; July 21, 2011) specified that buffers to account for management uncertainty are not necessary in setting the LAGC ACLs (*i.e.,* the LAGC ACL is equal to the LAGC ACT). For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.39. Amendment 21 (87 FR 1688, January 12, 2023) modified the ACL flowchart to account for the scallop biomass in the Northern Gulf of Maine (NGOM) as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. That action moved the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery. In addition, Amendment 21 created the NGOM Set-Aside to support a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) in the NGOM Management Area.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2024 AND 2025 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

Catch limits	2024 (mt)	2025 (mt) [1]
OFL	33,406	35,241
ABC/ACL (discards removed)	21,497	22,586
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	215	226
NGOM Set-Aside	191	143
ACL for fishery	20,490	21,616
Limited Access ACL	19,363	20,427
LAGC Total ACL	1,127	1,189

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2024 AND 2025 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS—Continued

Catch limits	2024 (mt)	2025 (mt) [1]
LAGC IFQ ACL (5 percent of ACL)	1,024	1,081
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	103	109
Limited Access ACT	16,781	17,703
APL (after set-asides removed)	11,609	([1])
Limited Access APL (94.5 percent of APL)	10,971	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	638	479
LAGC IFQ Annual Allocation (5 percent of APL) [2]	580	435
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	58	44

[1] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[2] As a precautionary measure, the 2025 IFQ and annual allocations are set at 75 percent of the 2024 IFQ Annual Allocations.

This action would deduct 1.275 million lb (578 mt) of scallops annually for 2024 and 2025 from the ABC for use as the Scallop RSA to fund scallop research. Vessels participating in the Scallop RSA are compensated through the sale of scallops harvested under RSA projects. Of the 1.275 million-lb (578-mt) allocation, NMFS has already allocated 125,941 lb (57,126 kg) to previously funded multi-year projects as part of the 2023 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2024 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct one percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 473,994 lb (215 mt) for 2024 and 498,245 lb (226 mt) for 2025. The Council may adjust the 2025 observer set-aside when it develops specific, non-default measures for 2025.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2024 and 2025 (Table 2). Proposed 2024 DAS allocations are less than those allocated to the limited access fleet in 2023. Framework 38 would set 2025 DAS allocations at 75 percent of fishing year 2024 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2025 specifications action is delayed past the start of the 2025 fishing year. The proposed allocations in table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2023 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2024 AND 2025

Permit category	2024	2025 (default)
Full-Time	20.00	15.00
Part-Time	8.00	6.00
Occasional	1.67	1.25

If NMFS implements these Framework 38 measures after the April 1 start of fishing year 2024, default DAS allocations, which were established in Framework Adjustment 36 to the Atlantic Sea Scallop FMP (88 FR 19559, April 3, 2023), would go into place on April 1, 2024. Under the default DAS allocations, full-time vessels would receive 18 DAS, part-time vessels would receive 7.20 DAS, and occasional vessels would receive 1.50 DAS. The allocations would later increase in accordance with Framework 38 when Framework 38 goes into effect. NMFS will notify all limited access permit holders of both default and Framework 38 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 38 be approved and implemented after April 1, 2024.

Changes to Fishing Year 2024 Sea Scallop Rotational Area Program

For fishing year 2024 and for the start of 2025, Framework 38 would combine and expand the boundaries of the Nantucket Lightship-West and Nantucket Lightship-North to form one area called the Nantucket Lightship Rotational Area (Table 3). This expanded area would be closed to better support rotational access in the future.

TABLE 3—NANTUCKET LIGHTSHIP SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NLS1	40°49.8′	69°0.0′
NLS2	40°49.8′	69°30.0′

TABLE 3—NANTUCKET LIGHTSHIP SCALLOP ROTATIONAL AREA—Continued

Point	N latitude	W longitude
NLS3	40°43.2′	69°30.0′
NLS4	40°43.2′	70°19.8′
NLS5	40°26.4′	70°19.8′
NLS6	40°19.8′	70°0.0′
NLS7	40°19.8′	68°48.0′
NLS8	40°33.0′	68°48.0′
NLS9	40°33.0′	69°0.0′
NLS1	40°49.8′	69°0.0′

For fishing year 2024 and the start of 2025, Framework 38 would divide Area I into three separate areas (*i.e.,* Area I, Area I-Sliver, and Area I-Quad). Area I (Table 4) would be closed to the limited access fleet but would be available for LAGC IFQ fishing until the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken. Area I-Sliver (Table 5) would remain closed to all scallop fishing to protect small scallops. Area I-Quad (Table 6) would also be closed to all scallop fishing to protect transplanted scallops related to an ongoing RSA project. The Area I-Quad closure would remain in place for one year, and then revert to being part of the Area I Rotational Area.

TABLE 4—AREA I-SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIA1	40°58.2′	68°30′
AIA2	40°55.8′	68°46.8′
AIA3	41°3.0′	68°52.2′
AIA4	41°0.6′	68°58.2′
AIA5	41°4.2′	69°1.2′
AIA6	41°25.8′	68°30′
AIA1	40°58.2′	68°30′

TABLE 5—AREA I-SLIVER SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIS1	41°30.0′	68°30.0′
AIS2	41°25.8′	68°30.0′
AIS3	41°4.2′	69°1.2′
AIS4	41°30.0′	69°22.8′
AIS1	41°30.0′	68°30.0′

TABLE 6—AREA I-QUAD SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
AIQ1	40°55.2′	68°53.4′
AIQ2	41°0.6′	68°58.2′
AIQ3	41°3.0′	68°52.2′
AIQ4	40°55.8′	69°46.8′
AIQ1	40°55.2′	68°53.4′

Framework 38 would keep the Area II Scallop Rotational Area open for fishing year 2024. In addition, it would open the New York Bight Scallop Rotational Area (table 7) to scallop fishing as part of the Rotational Area Program. The New York Bight Scallop Rotational Area was previously closed to optimize growth of the several scallop year classes within the closure area and to support scallop fishing and is now ready for fishing.

TABLE 7—NEW YORK BIGHT SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

Elephant Trunk Scallop Rotational Area Reverting to Open Area

Framework 38 would revert the Elephant Trunk Scallop Rotational Area to part of the open area. This area was previously managed as part of the area rotation program; however, there is not enough biomass to support rotational access, nor was there enough recruitment seen in the 2023 annual survey to support keeping this area as part of the program. Based on this information, it no longer meets the criteria for either closure or controlled access as defined in 50 CFR 648.55(a)(6). This area would become part of the open area and could be fished as part of the DAS program or on LAGC IFQ open area trips.

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 8 provides the proposed limited access full-time allocations for all of the access areas for the 2024 fishing year and the first 60 days of the 2025 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in table 8) on any one trip.

TABLE 8—PROPOSED SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2024 AND 2025

Rotational access area	Scallop per trip possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Area II	12,000 lb (5,443 kg) per trip	24,000 lb (10,886 kg)	0 lb (0 kg).
New York Bight	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg).
Total		36,000 lb (16,329 kg)	0 lb (0 kg).

Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges

Framework 38 would allow full-time limited access vessels to exchange access area allocation in 6,000-lb (2,722-kg) increments. The owner of a vessel issued a full-time limited access scallop permit would be able to exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 6,000 lb (2,722 kg) from one access area for 6,000 lb (2,722 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. These exchanges may be made only between vessels with the same permit category; a full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Part-time vessels may not exchange access area allocations.

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 9 provides the proposed limited access part-time allocations for all of the access areas for the 2024 fishing year and the first 60 days of the 2025 fishing year. Vessels could fish the allocation in either of the open access areas (*i.e.,* Area II and New York Bight). These allocations could be landed in as many trips as needed, so long as a vessel does not exceed the possession limit (also in table 9) or its available allocation on any one trip.

TABLE 9—PROPOSED SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2024 AND 2025

Rotational access area	Scallop per trip possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Area II or New York Bight [1]	7,200 lb (3,266 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg).
Total		14,400 lb (6,532 kg)	0 lb (0 kg).

[1] Allocation can be fished in either Area II and/or New York Bight Access Areas.

5-Minute Vessel Monitoring System (VMS) Reporting on Federal Scallop Trips

Framework 38 would require that all scallop vessels with active VMS units be subject to constant reporting at 5-minute intervals when seaward of the VMS demarcation line on a federal scallop declaration. When inshore of the VMS demarcation line, vessels would report at a 30-minute interval. The increased VMS reporting rate is not intended to apply to vessels participating in state-waters scallop fisheries and excludes any scallop trip associated with the scallop state water exemption program. VMS is used in the scallop fishery as an enforcement and management tool. Increasing the VMS reporting rate to 5 minutes on declared scallop trips would improve enforcement of access area and closure boundaries by substantially reducing the window in which a vessel could enter or fish a closed area or access area undetected. VMS is also an important source of fishery effort data for the scallop fishery. Increasing the VMS reporting rate in the scallop fishery would improve data quality by increasing the spatial resolution of the data, which could lead to more effective management and enforcement.

Prohibition on Transiting Scallop Rotational Areas and the Western Gulf of Maine Closure

To better enforce the Sea Scallop Rotational Area Management Program, Framework 38 would prohibit all vessels fishing under a scallop declaration from entering or transiting any scallop rotational areas (unless the vessel is on a declared trip into that area, or otherwise specified) and the Western Gulf of Maine Closure Area. For fishing year 2024, the Area I (table 4) and the Area I-Quad (table 6) Scallop Rotational Areas would be corridors for continuous transiting, and transit would be permitted. Continuous transit means that a vessel has fishing gear stowed and not available for immediate use and travels through an area with a direct heading, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay. Prohibiting vessels on declared scallop trips from entering or transiting scallop rotational areas (unless otherwise specified) and the Western Gulf of Maine Closure Area would reduce the likelihood of fishing occurring inside these areas.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ-Only Permits. This action would implement a 2.26 million-lb (1,024-mt ACL for 2024 and a 2.40 million-lb (1,089-mt) default ACL for 2025 for LAGC vessels with IFQ-only permits (see table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. Framework 28 (82 FR 15155; March 27, 2017) changed the way the LAGC IFQ allocations are set from a direct percentage of the ACL to a percentage of the APL. The purpose of this change was to help ensure that the allocation of potential catch between the fleets is more consistent with the concept of spatial management by allocating catch to the LAGC IFQ fleet based on harvestable scallops instead of total biomass. Since Framework 28 was implemented in 2017, the LAGC IFQ allocation has been equal to 5.5 percent of the projected landings (5 percent for LAGC IFQ vessels and 0.5 percent for LAGC IFQ vessels that also have a limited access scallop permit). The annual allocation to the LAGC IFQ-only fleet for fishing years 2024 and 2025 based on APL would be 1.28 million lb (580 mt) for 2024 and 959,011 lb (435 mt) for 2025 (see table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 38 measures after the April 1 start of the 2024 fishing year, the default 2024 IFQ allocations would go into place automatically on April 1, 2024. Because this action would implement IFQ allocations that are less than the default allocations, NMFS will notify IFQ permit holders of both default 2024 and Framework 38 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 38 be approved after the April 1, 2024, start of fishing year 2024.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. This action would implement a 227,076-lb (103-mt) ACL for 2024 and a default 240,304-lb (109-mt) ACL for 2025 for limited access scallop vessels with IFQ permits (see table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 127,868 lb (58 mt) for 2024 and 97,003 lb (44 mt) for 2025 (see table 1). Each vessel's IFQ would be calculated from these allocations based on APL. Because this action would implement IFQ allocations that are less than the default allocations, NMFS will notify IFQ permit holders of both default 2024 and Framework 38 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 38 be approved after the April 1, 2024, start of fishing year 2024.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 38 would allocate LAGC IFQ vessels a fleet-wide number of trips for fishing year 2024 and no default trips for fishing year 2025 (see table 10). The scallop catch associated with the total number of trips for all areas combined (856 trips) for fishing year 2024 is equivalent to 5.5 percent of total projected catch from access areas.

LAGC Access Area trips can be taken in any of the available areas (Area I, Area II, or New York Bight). Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken all of the access areas would then be closed to LAGC IFQ fishing.

TABLE 10—FISHING YEARS 2024 AND 2025 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2024	2025 [2]
Area I/Area II/New York Bight [1]	856	0
Total	856	0

[1] LAGC Access Area trips can be taken in any of the available areas until Regional Administrator determines that the total number of LAGC IFQ trips have been or are projected to be taken.

[2] The LAGC IFQ access area trip allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.

4. NGOM Scallop Fishery Landing Limits and Platts Bank Scallop Rotational Closed Area. This action proposes total allowable landings (TAL) in the NGOM of 454,152 lb (206,000 kg) for fishing year 2024. This action would deduct 25,000 lb (11,340 kg) of scallops annually for 2024 and 2025 from the NGOM TAL to increase the overall Scallop RSA to fund scallop research. In addition, this action would deduct one percent of the NGOM ABC from the NGOM TAL for fishing years 2024 and 2025 to support the industry-funded observer program to help defray the cost to scallop vessels that carry an observer (table 11).

Amendment 21 developed landing limits for all permit categories in the NGOM and established an 800,000-lb (362,874-kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger (*i.e.,* the NGOM APL) will be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets. Framework 38 would set a NGOM Set-Aside of 420,598 lb (190,780 kg) for fishing year 2024 and a default NGOM Set-Aside of 315,449 lb (143,085 kg) for fishing year 2025. Because the NGOM Set-Aside for fishing years 2024 and 2025 is below the 800,000-lb (362,874-kg) trigger, Framework 38 would not allocate any landings to the NGOM APL. Table 11 describes the breakdown of the NGOM TAL for the 2024 and 2025 (default) fishing years.

TABLE 11—NGOM SCALLOP FISHERY LANDING LIMITS FOR FISHING YEAR 2024 AND 2025

Landings limits	2024	2025 [1]
NGOM TAL	454,152 lb (206,000 kg)	346,996 lb (157,395 kg) [2].
1 percent NGOM ABC for Observers	8,554 lb (3,880 kg)	6,548 lb (2,970 kg) [2].
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside	420,598 lb (190,780 kg)	315,449 lb (143,085 kg).
NGOM APL	([3])	([3]).

[1] The landings limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.
[2] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[3] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (362,874 kg).

Framework 38 would close the Platts Bank Scallop Rotational Closed Area (table 12) through fishing year 2025. This closure would protect a substantial number of small scallops that have not been recruited into the fishery.

TABLE 12—PLATTS BANK SCALLOP ROTATIONAL CLOSED AREA

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

5. Scallop Incidental Landings Target TAL. This action proposes a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2024 and 2025 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the open area and the Area II Scallop Rotational Area. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing on an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Lastly, Framework 38 prohibits the harvest of RSA from any rotational area under default 2025 measures. At the start of 2025, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2025 specifications.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes one revision to address regulatory text that is unnecessary, outdated, and unclear. This revision to § 648.64(f)(2) would fix an error and clarify that the Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the northern windowpane flounder sub-ACL.

In addition, this proposed rule includes changes to regulatory text in § 648.11 that are required to update the industry-funded observer program to the Pre-Trip Notification System (PTNS). The integration of the scallop notification requirement into the PTNS helps standardize observer operations between fisheries and modernize reporting systems. The PTNS is a mobile-friendly website that is more sophisticated and flexible than the aging interactive voice response technology. The change to the PTNS does not affect determination of scallop coverage rates or the compensation analysis. There are no changes to the requirements vessels must abide by if selected to carry an observer, such as equal accommodations, a harassment-free environment, and other safety requirements. These revisions would be made at § 648.11(k)(1), (2), (3), and (4).

These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to the Atlantic Sea Scallop FMP are carried out in accordance with the Atlantic Sea Scallop FMP and the Magnuson-Stevens Act.

Classification

NMFS is proposing these annual specifications and management measure changes pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, which provides specific authority for implementing this action. Pursuant to section 305(d) of the Magnuson-Steven Act, this action is necessary to carry out the Atlantic Sea Scallop FMP by allowing NMFS to implement measures developed in Framework Adjustment 38 to the Atlantic Sea Scallop FMP for fishing year 2024. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea Scallop FMP and other applicable law, subject to further consideration after public comment.

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public

participation in this action pursuant to Administrative Procedure Act section 553(c) (5 U.S.C. 553(c)), while also ensuring that the final specifications are in place for the start of the Atlantic sea scallop fishing year on April 1, 2024. The Council adopted Framework 38 to the Atlantic Sea Scallop FMP on December 6, 2023, and submitted a preliminary draft of the framework on December 22, 2023. NMFS has taken all diligent steps to promulgate this rule as quickly as possible but could not have published the rule sooner because the data necessary for the Council to develop the framework was not yet available. Stakeholder and industry groups have been involved with the development of this action and have participated in public meetings throughout the past year.

If this action is not implemented by April 1, 2024, it would delay positive economic benefits to the scallop fleet, could negatively impact the access area rotation program by delaying fishing in areas that should be available, could adversely affect scallop stocks by delaying harvest when scallop meats are smaller resulting in increased mortality, and could create confusion in the Atlantic sea scallop industry. A 15-day comment period is reasonable because the rule is not complex, it implements an FMP that underwent a full comment period, there is a pending deadline of April 1, 2024, before default specification goes into effect, and failing to implement Framework 38 by that deadline would have adverse consequences for the public.

While NMFS is not waiving the comment period in its entirety, a 30-comment period would likely delay implementation of Framework 38 and trigger the 2024 default specifications from Framework 36. If Framework 38 is delayed beyond April 1, 2024, certain default measures, including access area designations, DAS, IFQ, RSA, and observer set-aside allocations, would automatically be put into place. Most of these default allocations are set at lower harvest levels than what would be implemented under Framework 38. These default allocations were intentionally set at levels low enough to avoid exceeding the final Framework 38 allocations. Framework 38 would increase allocations throughout the fleet. Under default measures, each full-time vessel has 18 DAS and no access area trips. The specification measures in Framework 38 would provide full-time vessels with an additional 2 DAS (20 DAS total) and 36,000 lb (16,329 kg) in access area allocations. Framework 38 also would open the New York Bight Access Area allowing the fleet to sustainably fish in the area. Accordingly, this action also prevents more restrictive aspects of the default measures from going into effect.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared for Framework 38, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows:

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2024, with 2025 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 38 document and the preamble of this proposed rule and are not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Federal Rules Which May Duplicate, Overlap or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with limited access, LAGC IFQ, and LAGC NGOM scallop permits. Framework 38 (section 5.6) and the LAGC IFQ Performance Evaluation (2017) provide extensive information on the number of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**). There were 307 vessels that held full-time limited access permits in fishing year 2022, including 244 dredge, 53 small-dredge, and 10 scallop trawl permits. In the same year, there were also 27 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2022. In 2019, NMFS reported that there were a total of 300 IFQ-only permits, with 212 issued and 88 in Confirmation of Permit History. Approximately 96 of the IFQ vessels and 78 NGOM vessels actively fished for scallops in fishing year 2022. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Thirty-eight limited access vessels also held LAGC IFQ permits, 52 had NGOM permits, and 102 had incidental permits.

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated through stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2022 permits and contains average gross sales associated with those permits for calendar years 2018 through 2022. Matching the potentially impacted 2022 fishing year permits described above (*i.e.,* limited access and LAGC IFQ) to calendar year 2022 ownership data results in 150 distinct ownership entities for the limited access fleet and 77 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration (SBA)

guidelines, 142 of the limited access distinct ownership entities and 87 LAGC IFQ entities are categorized as small business entities. Eight limited access and none of the LAGC IFQ entities are categorized as large business entities with annual fishing revenues over $11 million in 2022. There were 73 distinct small business entities with NGOM permits in 2022.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council's preferred alternative (section 4.3.3) in Framework 38 (see **ADDRESSES**) would allocate each full-time limited access vessel 20 open area DAS and 3 access area trips (*i.e.,* 2 Area II trips at 12,000 lb (5,443 kg) and 1 New York Bight trip at 12,000 lb (5,443 kg)) amounting to 36,000 lb (16,329 kg) in fishing year 2024. This is estimated to result in about 25.596 million lb (11,610 mt) of APLs after research and observer set asides are accounted for. The limited access share of 94.5 percent is around 24.18 million lb (10,792 mt) (table 14). The LAGC IFQ share (*i.e.,* 5.5 percent allocation for both IFQ only and limited access vessels with IFQ permits) will be about 1.407 million lb (638 mt) (section 4.4.2, table 15). Total landings, including set-asides to support research and observer coverage is projected to be about 27.39 million lb (12,423 mt) (table 13).

The preferred alternative (section 4.3.3) is expected to have negative impacts on the net revenues and profits of small entities regulated by this action in fishing year 2024 (*i.e.,* Framework 38) compared to the fishing year 2023 (*i.e.,* Framework 36) scenario. The decline in revenue per entity between fishing year 2023 levels and fishing year 2024 is a result of a decline in scallop prices for these fishing years despite higher projected landings in Framework 38 relative to Framework 36. Projected landings for limited access fleet are expected to increase by about 1.325 million lb (601 mt) under the Framework 38 preferred alternative compared to the Framework 36 preferred alternative.

Under the Framework 38 preferred alternative (section 4.3.3), allocations for the LAGC IFQ fishery, including the limited access vessels with IFQ permits, will be about 12 percent higher than the allocation that was implemented for fishing year 2023 under Framework 36. In terms of net revenue, this difference is expected to be of similar magnitude and negative for the preferred alternative relative to fishing year 2023 levels. Therefore, the Framework 38 preferred alternative will have slightly negative or negligible economic impacts on the LAGC IFQ fishery compared to fishing year 2023 levels due to a recent decline in scallop prices (table 15).

The economic benefits of all the alternatives considered in Framework 38, including the proposed alternative, will exceed economic benefits of No Action. The specification alternatives considered in Framework 38 slightly differ across alternatives with each alternative allocating to the same access area allocations. Differences between the alternatives are driven by the number of DAS allocated, which ranges from 18 to 24 DAS and the trip limit in access areas is fixed at 12,000 lb (5,443 kg). The Council's preferred alternative, alternative 3 (section 4.3.3) (see **ADDRESSES**) would result in a higher allocation to the limited access and LAGC IFQ components in 2024. This is expected to result in lower revenues compared to Framework 36 preferred alternative in fishing year 2023 primarily due to lower expected price during Framework 38 relative to Framework 36 (table 14 and table 15). The percent change in net revenue per business entity for all Framework 38 alternatives is expected to decline by 2.3 percent to 12.28 percent compared to the Framework 36 preferred alternative. Under the preferred alternative in Framework 38, net revenues per entity with limited access permits are estimated to be below fishing year 2023 levels by about 8.6 percent in fishing year 2024 (table 14).

The Council considered 4 NGOM TAL options for fishing year 2024 that ranged from 396,391 lb (179,800 kg) (option 1) to 527,346 lb (239,200 kg) (option 3). All TAL options would result in higher revenues compared to No Action, which are default measures set in Framework 36 for fishing year 2024. The preferred alternative (alternative 2, option 2) would have a slightly higher TAL (454,152 lb, 206,000 kg) and revenue compared to the alternative 2 (option 1), but lower revenues than alternative 2 (option 3). When compared to No Action, the higher TAL of alternative 2 (option 2) would also result in higher revenues and economic benefits for entities in this fishery with an estimated increase in net revenues by about 47 percent compared to No Action (table 16).

Under the sharing arrangement approved for the NGOM Management Area in Amendment 21, Framework 38 would not allocate pounds to the LAGC IFQ or limited access components for fishing year 2024 because the NGOM set-aside did not exceed 800,000 lb (362,874 kg). Therefore, Action 2 would not have direct impacts on the limited access component. More research is planned for this area in 2024, which will help to increase the understanding of biomass in the NGOM management area. This will lead to better management of the NGOM resource with positive biological and economic impacts over the long-term on both LAGC and limited access vessels.

Economic impacts of Framework 38 preferred alternatives, including fishery specifications, access area trip allocations for the limited access and LAGC IFQ fisheries, NGOM measures, and other measures to reduce fishery impacts are expected to be slightly negative for the scallop vessels and small business entities compared to the fishing year 2023 baseline implemented through Framework 36. This is primarily due to a decline in the projected price. There are eight large entities in the limited access component of the scallop fishery and impacts on scallop revenues to small entities would not be disproportionate. All entities would be impacted in a similar way from a higher projected landing allocation. A slight negative or negligible economic impact in Framework 38 compared to Framework 36 is primarily due to a decline in scallop prices rather than changes in projected landings between these frameworks. We have determined that the preferred alternative is nevertheless optimal because it would minimize risks associated with stock biomass uncertainties while protecting small scallops and minimizing bycatch of species such as yellowtail and windowpane flounder. Furthermore, the preferred alternative intentionally leaves biomass in the water to increase the likelihood that a similar DAS allocation and associated F rate, along with access area fishing will be available for the following fishing year.

TABLE 13—SHORT-TERM ECONOMIC IMPACTS FOR FISHING YEAR 2024 COMPARED WITH FY 2023: ESTIMATED LANDINGS (million lb.), REVENUES, PRODUCER SURPLUS, AND TOTAL ECONOMIC BENEFITS

[In 2023 current dollars, Mil. dollars]

Alternatives/runs	* Framework 38 alternatives (in 2023 dollars)					* Framework 36's preferred alternative	* Framework 36's preferred alternative
	Alternative 1 no action	Alternative 2	Alternative 3 (preferred)	Alternative 4	Status quo		
Economic variables	4.3.1 NA	4.3.2 18d12k	4.3.3 20d12k	4.3.4 24d12k	4.3.5 SQ	In 2023 $	In 2022 $
Landings (millions of lb)	14.40	26.17	27.39	29.73	27.11	25.01	25.01
Landings (millions of kg)	6.53	11.87	12.42	13.48	12.29	11.34	11.34
Revenue	$218.34	$368.96	$383.93	$409.92	$379.04	$415.09	$398.63
Producer Surplus (PS)	$136.21	$269.15	$281.14	$301.33	$274.66	$314.19	$301.73
Total Economic Benefits (CS+PS)	$146.25	$300.90	$315.84	$341.77	$307.39	$335.46	$322.15
Net Values or Difference from Fishing Year 2024 Status Quo:							
Landings	−12.71	−0.95	0.28	2.62	0	.....	.....
Revenue	−160.70	−10.08	4.89	30.88	0	.....	.....
Producer Surplus (PS)	−138.45	−5.51	6.48	26.67	0	.....	.....
Total Economic Benefits (CS+PS)	−161.14	−6.49	8.45	34.38	0	.....	.....
Net Values or Difference from Fishing Year 2023 (Framework 36's Preferred Alternative projection) values:							
Landings	−10.61	1.16	2.38	4.73	2.11	0.00	.....
Revenue	−$196.75	−$46.13	−$31.16	−$5.17	−$36.05	$0.00	.....
Producer Surplus (PS)	−$177.98	−$45.04	−$33.05	−$12.86	−$39.53	$0.00	.....
Total Economic Benefits (CS+PS)	−$189.21	−$34.56	−$19.62	$6.31	−$28.07	$0.00	.....

Notes: A negative sign indicates a lower value for a Framework 38 alternative compared to the Framework 36 preferred alternative and vice versa.

*Note that Framework 36 and Framework 38 are evaluated at different prices, and price variability may swing wildly for various reasons affecting the economic comparisons between the two frameworks. In such a case, preferred alternative comparison with status quo in the current framework would be more relevant.

TABLE 14—NET SCALLOP REVENUE FOR LIMITED ACCESS VESSELS IN FY 2024 AND PERCENT CHANGE FROM THE FY 2023

[Revenues in 2023 dollars]

Alternatives/runs	Unit	Framework 38 alternatives					Framework 36's preferred alternative (in 2023 $)
		Alt. 1	Alt 2	Alt 3	Alt 4	Status quo	
Description		4.3.1 No Action	4.3.2	4.3.3 Pref. Alt.	4.3.4	4.3.5 Status quo	
Estimated scallop APL landings	mil lb	14.40	26.17	27.39	29.73	27.11	25.01
	mil kg	6.53	11.87	12.42	13.48	12.30	11.34
Estimated limited access scallop landings (94.5% net of set asides).	mil lb	11.91	23.03	24.19	26.40	23.92	21.601
	mil kg	5.40	10.44	10.97	11.97	10.85	9.80
No. of Entities (Average in 2018–2022) both small and large	Counts	151	151	151	151	151	146
Estimated revenues for scallop APL	mil dollars	$218.34	$368.96	$383.93	$409.92	$379.04	$476.51
Estimated limited access revenues from scallop	mil dollars	$180.55	$324.69	$338.99	$363.94	$334.43	$415.63
Estimated Net Revenue for scallop APL	mil dollars	$199.580	$338.703	$351.730	$373.948	$345.805	$377.04
Estimated limited access net revenue from scallop	mil dollars	$165.04	$298.07	$310.56	$332.00	$305.10	$328.87
Net scallop revenue per Entity	mil dollars	$1.092	$1.971	$2.054	$2.196	$2.018	$2.247
% change in net revenue compared to SQ (Framework 36 preferred alternative).	Percent	−51.43%	−12.28%	−8.61%	−2.30%	−10.21%	0.00%

Note: landings and net revenues net of set asides, such as RSA scallop, *etc.*

TABLE 15—IMPACTS OF THE LAGC IFQ ALLOCATION FOR THE FISHING YEAR 2023

Sections	Framework 38 alternatives					Framework 36's preferred alternative
	4.3.1	4.3.2	4.3.3 (preferred)	4.3.4	4.3.5	
Descriptions	NA	12k, 18 DAS	12k, 20DAS	12k, 24 DAS	Status quo	
Allocation for IFQ only vessels (5%) (lb	630,015	1,218,319	1,279,673	1,396,717	1,265,718	1,142,890
Allocation for IFQ only vessels (5%) (kg)	285,721	552,526	580,351	633,432	574,022	518,317
Allocation for limited access vessels with IFQ permits (0.5%) (lb)	63,002	121,832	127,967	139,672	126,572	114,289
Allocation for limited access vessels with IFQ permits (0.5%) (kg)	28,572	55,253	58,035	63,343	57,402	51,832
Total Allocation* for IFQ fishery (5.5%) (lb)	693,017	1,340,150	1,407,641	1,536,388	1,392,290	1,257,179
Total Allocation* for IFQ fishery (5.5%) (kg)	314,293	607,778	638,386	696,775	631,424	570,149
% Change in estimated landings (and revenue) per business entity from SQ (Framework 36 Pref Alt)	−44.9%	6.6%	12.0%	22.2%	10.7%	0.0%

*APL w/set aside removed.

TABLE 16—IMPACTS OF THE PREFERRED ALTERNATIVE 2 OPTION 2 AND OTHER ALTERNATIVES FOR NGOM SCALLOP FISHERY

[2024 fishing year and monetary values in 2023 dollars]

	Alternative 2			Alternative 1
	4.2.2.2.1	4.2.2.2.2	4.2.2.2.3	(no action)
	Option 1	Option 2 (preferred)	Option 3	
	F=0.18	F=0.21	F=0.25	
Area(s) fished	Stellwagen, Ipswich, Jeffreys	Stellwagen, Ipswich, Jeffreys	Stellwagen, Ipswich, Jeffreys	
2024 Total Allowable Landings (TAL) (lb)	396,391	454,152	527,346	.....
2024 Total Allowable Landings (TAL) (kg)	179,769	205,965	239,159	.....
1% NGOM ABC for Observers (lb)	8,554	8,554	8,554	.....
1% NGOM ABC for Observers (kg)	3,879	3,879	3,879	.....
2024 RSA Contribution (lb)	25000	25000	25000	.....
2024 RSA Contribution (kg)	11,338	11,338	11,338	.....
Lag year Overage Payback	.....	.....	.....	.....
2024 NGOM Set-Aside (lb)	362,837	420,598	493,792	285,641
2024 NGOM Set-Aside (kg)	164,552	190,747	223,942	129,542
Impacts of the NGOM Set-Aside:				
Estimated LAGC revenue (in 2023 dollars)	$5,002,773	$5,799,178	$6,808,372	$3,938,399
Days at sea (DAS)	1,814	2,103	2,469	1,428
Trip costs (in 2023 dollars)	1,239,370	1,436,669	1,686,683	$975,686
Net revenue	$3,763,403	$4,362,509	$5,121,688	$2,962,713
Net revenue net of No Action	$800,689	$1,399,795	$2,158,975	.....
Net revenue net of No Action %	27.03%	47.25%	72.87%	0.00%

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 29, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 648.2, add the definition, in alphabetical order, of ''Continuous transit or transit'' to read as follows:

§ 648.2 Definitions.

* * * * *

Continuous transit or transit, with respect to the Atlantic Sea Scallop Fishery, means that a vessel has fishing gear stowed and not available for immediate use, as described in this section, and travels through an area with a direct heading, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

■ 3. In § 648.10, revise paragraph (c)(1)(ii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(c) * * *

(1) * * *

(ii) For vessels issued a Federal scallop permit and equipped with a VMS unit, at least once every 30 minutes, 24 hr a day, throughout the year, when not on a declared Federal scallop trip or when shoreward of the VMS Demarcation Line. With the exception of vessels on a declared state waters exemption trip, all vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 5 minutes when on a declared Federal scallop trip and seaward of the VMS Demarcation Line.

* * * * *

■ 4. In § 648.11, revise paragraphs (k)(1) through (3), and (4)(i) to read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(k) * * *

(1) *General.* Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (a) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access, LAGC IFQ, and LAGC NGOM permits are required to comply with the additional notification requirements specified in paragraph (k)(2) of this section. When NMFS informs the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area, Open Area, or NGOM as specified in paragraph (k)(3) of this section, the vessel may not fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip without an observer if the vessel owner, operator, and/or manager has been informed that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (k)(3) of this section.

(2) *Vessel notification procedures*—Scallop limited access, LAGC IFQ, and LAGC NGOM vessel owners, operators, or managers shall notify NMFS via a Pre-Trip Notification System (PTNS) at least 48 hours, but not more than 10 days, prior to the beginning of any Federal scallop trip of all requested stratification information (*e.g.,* permit category, access area/area to be fished, gear, and EFP participation) and deployment details (*e.g.,* sail date, sail time, port of departure, estimated trip duration).

(3) *Selection of scallop trips for observer coverage.* Based on predetermined coverage levels for various permit categories and areas of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to

paragraph (h) of this section, NMFS shall inform the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified scallop trip, at least 24 hr prior to the PTNS sail time of that trip notification. All assignments and waivers of observer coverage shall be issued to the vessel. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was submitted to NMFS. PTNS notifications that are canceled are not considered active notifications, and a vessel may not sail on a Federal scallop trip on a canceled notification.

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must carry an observer that has passed a NMFS-certified Observer Training class certified by NMFS from an observer service provider approved by NMFS under paragraph (h) of this section. The PTNS will offer selected trips to approved observer service providers in a manner that will take into account the vessels' provider preferences, but final outcomes will be dependent on the observer availability of each provider. The PTNS will inform the owner, operator, or vessel manager of a trip's selection outcome between 48 and 24 hours prior to the PTNS sail time. The PTNS will specify the trip's outcome (*i.e.,* selection to carry an observer or a waiver), as well as which provider has been assigned to provide any required coverage along with their contact information. Vessels shall communicate trip details with the assigned observer provider company within a reasonable timeframe after the provider has been assigned. A list of approved observer service providers shall be posted on the NMFS/FSB website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.* Observers are not required to be available earlier than the PTNS sail time for that trip notification. Unless otherwise determined by the Regional Administrator or their delegate, if an observer is not available for a trip, providers will indicate as such in the PTNS, and the trip will be waived of the coverage requirement, as appropriate. Upon initial selection, providers will indicate their availability to cover a trip between 48 and 24 hours prior to the PTNS sail time for that trip notification, however extenuating circumstances impacting the observer's availability (*e.g.,* illness or transportation issues) may result in a waiver within 24 hours of the vessel's sail time. A vessel of any eligible permit type may not begin a selected trip without the assigned observer unless having been issued a waiver.

* * * * *

■ 5. Amend § 648.14 by:

■ a. Revising paragraphs (i)(1)(vi)(B)(*1*) and (*2*);

■ b. Adding paragraphs (i)(1)(vi)(C) and (C)(*1*);

■ c. Revising paragraphs (i)(2)(vi)(B); and (i)(3)(v)(E).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(vi) * * *

(B) * * *

(*1*) Fish for, possess, or land scallops in or from a Scallop Rotational Area unless it is participating in and complies with the requirements of the Scallop Access Area program defined in § 648.59(b)–(g).

(*2*) Enter or transit Scallop Rotational Areas on a declared Federal scallop trip, as described in § 648.59(a)(1), unless the Scallop Rotational Area has been defined as ''available for continuous transit'' as provided by § 648.59(a)(2) and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(C) *Western Gulf of Maine Closure Area*

(*1*) Enter or transit the Western Gulf of Maine Closure Area, as defined in § 648.81(a)(4) on a declared Federal scallop trip.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(B) Enter or transit Scallop Rotational Areas on a declared Federal scallop trip, as described in § 648.59(a)(1), unless the Scallop Rotational Area has been defined as ''available for continuous transit'' as provided by § 648.59(a)(2) and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(i) * * *

(3) * * *

(v) * * *

(E) Enter or transit Scallop Rotational Areas on a declared Federal scallop trip, as described in § 648.59(a)(1), unless the Scallop Rotational Area has been defined as ''available for continuous transit'' as provided by § 648.59(a)(2) and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 6. In § 648.53, revise paragraphs (a)(9) and (b)(3) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2024 and 2025 fishing years:

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2024 (mt)	2025 (mt) [1]
OFL	33,406	35,241
ABC/ACL (discards removed)	21,497	22,586
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	215	226
NGOM Set-Aside	191	143
ACL for fishery	20,490	21,616
Limited Access ACL	19,363	20,427
LAGC Total ACL	1,127	1,189
LAGC IFQ ACL (5 percent of ACL)	1,024	1,081
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	103	109
Limited Access ACT	16,781	17,703
APL (after set-asides removed)	11,609	([1])

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS—Continued

Catch limits	2024 (mt)	2025 (mt) [1]
Limited Access APL (94.5 percent of APL)	10,971	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	638	479
LAGC IFQ Annual Allocation (5 percent of APL) [2]	580	435
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	58	44

[1] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys. The 2025 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in paragraph (a)(6)(iii)(B) of this section, the 2025 IFQ annual allocations are set at 75 percent of the 2024 IFQ Annual Allocations.

* * * * *

(b) * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2024 and 2025 are as follows:

TABLE 3 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2024	2025 [1]
Full-Time	20.00	15.00
Part-Time	8.00	6.00
Occasional	1.67	1.25

[1] The DAS allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. The 2025 DAS allocations are set at 75 percent of the 2024 allocation as a precautionary measure.

* * * * *

■ 7. Amend § 648.59 by:

■ a. Revising paragraphs (a)(1) and (2);

■ b. Removing paragraph (a)(3);

■ c. Revising paragraphs (b)(3)(i)(B) and (b)(3)(ii)(A)(*1*);

■ d. Removing and reserving paragraph (b)(3)(ii)(B); and

■ e. Revising paragraphs (c), (e)(1) and (2), (f), (g)(1), (g)(3)(v) and (g)(4)(ii).

The revisions read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) * * *

(1) *Prohibition on Entering or Transiting a Scallop Rotational Area.* On a declared scallop trip, a vessel issued any Federal scallop permit may not enter, transit, fish for, possess, or land scallops in or from a Scallop Rotational Area unless it is participating in, and complies with, the Scallop Access Area Program Requirements defined in paragraphs (b) through (g) of this section, or if the vessel is transiting a Scallop Rotational Area defined as ''available for continuous transit'' pursuant to paragraph (a)(2) of this section. On a trip declared out of the Federal scallop fishery, a vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, possess, or retain scallops or intend to fish for, catch, possess, or retain scallops.

(2) *Transiting a Scallop Rotational Area available for Continuous Transit.* A vessel on a declared scallop trip or possessing scallops may continuously transit, as defined in § 648.2, a Scallop Rotational Area, if that area has been determined available for continuous transit, as specified in (a)(2)(i) of this section, and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(i) Scallop Rotational Areas Available for Continuous Transit:

(A) Area 1 Scallop Rotational Area, as defined in § 648.60(c);

(B) Area 1 Quad Scallop Rotational Areas, as defined in § 648.60(a).

(ii) [Reserved]

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2024 and 2025 fishing years:

(*1*) *Full-time vessels.*

(*i*) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)

Rotational access area	Scallop possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Area II	12,000 lb (5,443 kg) per trip	24,000 lb (10,886 kg)	0 lb (0 kg).
New York Bight	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg).
Total		36,000 lb (16,329 kg)	0 lb (0 kg).

(*ii*) [Reserved]

(*2*) * * *

(*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

Rotational access area	Scallop possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Area II or New York Bight [1]	7,200lb (3,266 kg) per trip	14,400 lb (6,532 kg)	0 lb (0 kg).

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)—Continued

Rotational access area	Scallop possession limit	2024 Scallop allocation	2025 Scallop allocation (default)
Total		14,400 lb (6,532 kg)	0 lb (0 kg).

[1] Allocation can be fished in either Area II and/or New York Bight Access Areas.

(*ii*) [Reserved]

(*3*) * * *

(*i*) For the 2024 fishing year only, an occasional limited access vessel is allocated 3,000 lb (1,361 kg) of scallops with a trip possession limit at 3,000 lb of scallops per trip (1,361 kg per trip). Occasional limited access vessels may harvest the 3,000 lb (1,361 kg) allocation from Area II or New York Bight Access Areas.

(*ii*) For the 2025 fishing year, occasional limited access vessels are not allocated scallops in any rotational access area.

(ii) * * *

(A) * * *

(*1*) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 6,000 lb (2,722 kg) increments. For example, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 12,000 lb (5,443 kg) from one access area for 12,000 lb (5,443 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category (*i.e.,* a full-time vessel may not exchange allocations with a part-time vessel, and vice versa). Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 6,000 lb (2,722 kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(B) [Reserved]

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Area II Access Area at the end of fishing year 2023, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Area II Access Area is open in fishing year 2024 (April 1, 2024 through May 30, 2024).

* * * * *

(e) * * *

(1) 2024: Area II Scallop Rotational Area.

(2) 2025: No access areas.

(f) *VMS polling.* All vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 30 minutes when not on a declared Federal scallop trip or when shoreward of the VMS Demarcation Line. With the exception of vessels on a declared state waters exemption trip, all vessels issued a Federal scallop permit and equipped with a VMS unit shall be polled at a minimum of once every 5 minutes when on a declared Federal scallop trip and seaward of the VMS Demarcation Line. Vessel owners shall be responsible for paying the costs of VMS polling.

(g) *Limited Access General Category vessels.*

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (2), and (6) through (9) and (d) through (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Area II, Area I, and New York Bight Scallop Rotational Areas specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2024 and 2025 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2024	2025 [2]
Area I/Area II/New York Bight [1]	856	0
Total	856	0

[1] LAGC Access Area trips can be taken in any of the available areas until Regional Administrator determines that the total number of LAGC IFQ trips have been or are projected to be taken.

[2] The LAGC IFQ access area trip allocations for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.

(4) * * *

(ii) *Other species.* Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Area II or Area I Scallop Rotational Areas specified in § 648.60 is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

* * * * *

■ 8. Amend § 648.60 by:

■ a. Adding paragraph (a);
■ b. Revising paragraphs (b)(1) and (c);
■ c. Adding paragraph (d);
■ d. Revising paragraph (g);
■ e. Removing and reserving paragraph (i);
■ f. Revising paragraph (j); and
■ g. Removing paragraph (k).

The additions and revisions read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *Area I-Quad Scallop Rotational Area.* The Area 1-Quad Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (a)

Point	N latitude	W longitude
AIQ1	40°55.2′	68°53.4′
AIQ2	41°0.6′	68°58.2′
AIQ3	41°3.0′	68°52.2′
AIQ4	40°55.8′	69°46.8′
AIQ1	40°55.2′	68°53.4′

(b) * * *

(1) *Area II Scallop Rotational Area boundary.* The Area II Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (b)(1)

Point	N latitude	W longitude	Note
AII1	41°30′	67°20′	
AII2	41°30′	(1)	(2)
AII3	40°40′	(3)	(2)
AII4	40°40′	67°20′	
AII1	41°30′	67°20′	

[1] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.
[2] From Point AII2 connected to Point AII3 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 65°52.61′ W long.

* * * * *

(c) *Area I Scallop Rotational Area.* The Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (c)

Point	N latitude	W longitude
AIA1	40°58.2′	68°30′
AIA2	40°55.8′	68°46.8′
AIA3	41°3.0′	68°52.2′
AIA4	41°0.6′	68°58.2′
AIA5	41°4.2′	69°1.2′
AIA6	41°25.8′	68°30′
AIA1	40°58.2′	68°30′

(d) *Area 1-Sliver Scallop Rotational Area.* The Area 1-Sliver Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (d)

Point	N latitude	W longitude
AIS1	41°30.0′	68°30.0′
AIS2	41°25.8′	68°30.0′
AIS3	41°4.2′	69°1.2′
AIS4	41°30.0′	69°22.8′
AIS1	41°30.0′	68°30.0′

* * * * *

(g) *Nantucket Lightship Scallop Rotational Area.* The Nantucket Lightship Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (g)

Point	N latitude	W longitude
NLS1 ...	40°49.8′	69°0.0′
NLS2 ...	40°49.8′	69°30.0′
NLS3 ...	40°43.2′	69°30.0′
NLS4 ...	40°43.2′	70°19.8′
NLS5 ...	40°26.4′	70°19.8′
NLS6 ...	40°19.8′	70°0.0′
NLS7 ...	40°19.8′	68°48.0′
NLS8 ...	40°33.0′	68°48.0′
NLS9 ...	40°33.0′	69°0.0′

TABLE 5 TO PARAGRAPH (g)—Continued

Point	N latitude	W longitude
NLS1 ...	40°49.8′	69°0.0′

* * * * *

(i) [Reserved]

(j) *New York Bight Scallop Rotational Area.* The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (j)

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

* * * * *

■ 9. In § 648.62, revise paragraph (b)(1) and add paragraph (e) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(b) * * *

(1) The following landings limits will be effective for the NGOM for the 2024 and 2025 fishing years.

TABLE 1 TO PARAGRAPH (b)(1)

Landings limits	2024	2025 [1]
NGOM TAL	454,152 lb (206,000 kg)	346,996 lb (157,395 kg) [2].
1 percent NGOM ABC for Observers	8,554 lb (3,880 kg)	6,548 lb (2,970 kg) [2].
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside	420,598 lb (190,780 kg)	315,449 lb (143,085 kg).
NGOM APL	([3])	([3])

[1] The landings limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment.
[2] The catch limits for the 2025 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2025 that will be based on the 2024 annual scallop surveys.
[3] NGOM APL is set when the NGOM Set-Aside is above 800,000 lb (362,874 kg).

* * * * *

(e) *Platts Bank Scallop Rotational Closed Area.* (1) For fishing years 2024 and 2025, a vessel issued a Federal scallop permit on a declared scallop trip may not enter, transit, fish for, possess, or land scallops in or from the Platts Bank Scallop Rotational Closed Area.

(2) *Boundaries.* The Platts Bank Scallop Rotational Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (e)(2)

Point	N latitude	W longitude
NYB1 ..	40°00′	73°20′
NYB2 ..	40°00′	72°30′
NYB3 ..	39°20′	72°30′
NYB4 ..	39°20′	73°20′
NYB1 ..	40°00′	73°20′

* * * * *

■ 10. In § 648.64, revise paragraph (f)(2) to read as follows:

§ 648.64 Flounder Stock sub-ACLs and Ams for the scallop fishery.

* * * * *

(f) * * *

(2) The Northern Windowpane Flounder Gear Restricted Area shall remain in effect for the period of time based on the corresponding percent overage of the northern windowpane flounder sub-ACL, as follows:

TABLE 4 TO PARAGRAPH (f)(2)—NORTHERN WINDOWPANE FLOUNDER GEAR RESTRICTED AREA ACCOUNTABILITY MEASURE DURATION

Percent overage of sub-ACL	Duration of gear restriction
20 or less	November 15 through December 31.
Greater than 20	April through March (year-round).

* * * * *

[FR Doc. 2024–02236 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 89, No. 29

Monday, February 12, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–24–0001]

Notice of Availability of the Draft Programmatic Environmental Assessment for AMS Resilient Food Systems Infrastructure Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability; request for public comments.

SUMMARY: The Agricultural Marketing Service (AMS) announces that the Draft Programmatic Environmental Assessment (PEA) for the Resilient Food Systems Infrastructure (RFSI) Program is available for public review and comments.

DATES: Comments must be received on or before March 13, 2024 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments may be submitted electronically by email: *RFSI@usda.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. AMS will address comments received on the draft PEA in the final PEA.

FOR FURTHER INFORMATION CONTACT: Lara Shockey, Natural Resource Specialist, Transportation and Marketing Program; Telephone: (304) 373–5875; email: *lara.s.shockey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Draft PEA analyzes and discloses the potential environmental impacts associated with the establishment of the Resilient Food Systems Infrastructure (RFSI) Program. The United States Department of Agriculture (USDA) Agriculture Marketing Service (AMS) has proposed to fund cooperative agreements to coordinate initiatives for non-meat and poultry food products in the middle of the supply chain. Funds will support expanded capacity for the aggregation, processing, manufacturing, storing, transporting, wholesaling, and distribution of locally and regionally produced food products, including specialty crops, dairy, grains for human consumption, aquaculture, and other food products, excluding meat and poultry.

States will make subawards to support local and regional food and farm businesses and other entities. States will also provide supply chain and market development services. Through these efforts, the RFSI program aims to enhance market access for small and mid-size producers and food businesses, contributing to a more resilient and sustainable food system.

The RFSI Program is authorized by section 1001 (b)(4) of the American Rescue Plan Act (ARPA) (Pub. L. 117–2), which funds ''loans and grants and other assistance to maintain and improve food and agricultural supply chain resiliency.'' Recipients of funding from this proposed program would be allowed 48 months to complete work funded by the awards.

The environmental impacts of funding projects to expand capacity for the aggregation, processing, manufacturing, storing, transporting, wholesaling, and distribution of locally and regionally produced, non-meat and poultry food products and provide supply chain and market development services have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, 42 U.S.C. 4321–4347, as amended.

A Draft PEA has been prepared, and based on this analysis, AMS has preliminarily determined there will not be a significant impact to the human environment. As a result, an Environmental Impact Statement (EIS) has not been initiated (40 CFR 1501.6). AMS intends for this PEA to create efficiencies by establishing a framework that can be used for ''tiering,'' where appropriate, to project-specific actions that require additional analysis. As decisions on specific applications are made, to the extent additional NEPA analysis is required, environmental review will be conducted to supplement the analysis set forth in this PEA.

The Draft PEA is available for review online at the program website: *https://www.ams.usda.gov/services/grants/rfsi.*

Comments Invited

Interested stakeholders are invited to submit comments on the Draft PEA, as specified in the **ADDRESSES** section of this Notice. The most helpful comments reference a specific recommendation for changing AMS' proposed approach to assessing environmental impacts, explain the reason for any recommended change, and include supporting information. AMS will consider all comments received on or before the closing date.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–02801 Filed 2–9–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–148, C–570–149]

Gas Powered Pressure Washers From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on gas powered pressure washers (pressure washers) from People's Republic of China (China).

DATES: Applicable February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla (AD) or Ted Pearson (CVD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as

amended (the Act), on December 21, 2023, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of pressure washers from China [1] and, on December 22, 2023, its affirmative final determination in the CVD investigation of pressure washers from China.[2]

On February 5, 2024, pursuant to sections 705(d) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of LTFV imports of pressure washers from China and subsidized imports of pressure washers from China, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[3]

Scope of the Orders

The products covered by these orders are gas powered pressure washers from China. For a complete description of the scope of these orders, *see* the appendix to this notice.

AD Order

As stated above, on February 5, 2024, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation in which it found that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of pressure washers from China that are sold at LTFV.[4] Therefore, in accordance with section 735(c)(2) and 736 of the Act, Commerce is issuing this AD order. Because the ITC determined that imports of pressure washers from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of pressure washers from China. Antidumping duties will be assessed on unliquidated entries of pressure washers from China entered, or withdrawn from warehouse, for consumption, on or after August 3, 2023, the date of publication of the *AD Preliminary Determination* in the **Federal Register**, but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described in the ''Provisional Measures—AD'' section below.[5]

Continuation of Suspension of Liquidation—AD

Except as noted in the ''Provisional Measures—AD'' section of this notice, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of pressure washers from China. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margin indicated in the table below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rate listed below.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate adjusted for export offset(s) (percent)
Jiangsu Jianghuai Engine Co., Ltd	Jiangsu Jianghuai Engine Co., Ltd	274.37	263.83
Sumec Hardware and Tools Co., Ltd	Sumec Hardware and Tools Co., Ltd	179.88	169.34
Zhejiang Danau Machine Co., Ltd	Zhejiang Danau Machine Co., Ltd	179.88	169.34
China-Wide Entity		274.37	263.83

Critical Circumstances—AD

With respect to the ITC's negative critical circumstances determination on imports of pressure washers from China, Commerce intends to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after May 5, 2023 (*i.e.,* 90 days prior to the date of the publication of the *AD Preliminary Determination*), but before August 3, 2023 (*i.e.,* the date of publication of the *AD Preliminary Determination*).

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of pressure washers from China, Commerce extended the four-month period to six-months.[6] In the underlying investigation, Commerce published the preliminary determination on August 3, 2023. Therefore, the extended period, beginning on the date of publication of the *AD Preliminary Determination,* ended on January 29, 2024. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

[1] *See Gas Powered Pressure Washers from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 88 FR 88365 (December 21, 2023).

[2] *See Gas Powered Pressure Washers from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* in Part, 88 FR 88578 (December 22, 2023).

[3] *See* ITC's Letter, ''Notification Letter: Investigation Nos. 701–TA–684 and 731–TA–1597 (Final),'' dated February 5, 2024 (ITC Notification Letter).

[4] *Id.*

[5] See Gas Powered Pressure Washers from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances Determination, in Part, Postponement of Final Determination, and Extension of Provisional Measures, 88 FR 51279 (August 3, 2023) (AD Preliminary Determination), and accompanying Preliminary Decision Memorandum.

[6] *See AD Preliminary Determination.*

The provisional measures period, beginning on the date of publication of the *AD Preliminary Determination,* ended on January 29, 2024. Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of pressure washers from China entered, or withdrawn from warehouse, for consumption after January 29, 2024, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

CVD Order

As stated above, based on the above-referenced affirmative final determination by the ITC that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of pressure washers from China, in accordance with section 705(c)(2) of the Act, Commerce is issuing this CVD order.[7]

Therefore, in accordance with section 706(a) of the Act, Commerce intends to direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of pressure washers from China entered, or withdrawn from warehouse, for consumption on or after June 5, 2023, the date of publication of the *CVD Preliminary Determination,*[8] but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described in the ''Provisional Measures—CVD'' section of this notice.

Suspension of Liquidation and Cash Deposits—CVD

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of pressure washers from China, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

Commerce also intends, pursuant to section 706(a)(1) of the Act, to instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, CBP will require, at the same time as importers would deposit estimated normal customs duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[9] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Company	Subsidy rate (percent *ad valorem*)
Jiangsu Jianghuai Engine Co., Ltd.[10]	11.19
Chongqing Dajiang Power Equipment Co., Ltd	206.57
China GTL Tools Group, Ltd	206.57
Loncin Motor Co., Ltd	206.57
Maxworld Home Co., Ltd	206.57
Ningbo Jugang Machinery Manufacturing Co., Ltd	206.57
Powerful Machinery & Electronics Technology Developing Co., Ltd	206.57
Pinghu Biyi Cleaning Equipment Co., Ltd	206.57
Senci Electric Machinery Co., Ltd	206.57
Taizhou Bison Machinery Co., Ltd	206.57
Taizhou Longfa Machinery Co., Ltd	206.57
Taizhou Newland Machinery Co., Ltd	206.57
Zhejiang Anlu Cleaning Machinery Co., Ltd	206.57
Zhejiang Constant Power Machinery Co., Ltd	206.57
Zhejiang Lingben Machinery & Electronics Co., Ltd	206.57
Zhejiang Xinchang Bigyao Power Tool Co., Ltd	206.57
Zhejiang Zhinanche Cleaning Equipment Co., Ltd	206.57
All Others	11.19

Provisional Measures—CVD

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *CVD Preliminary Determination* on June 5, 2023. As such, the four-month period beginning on the date of publication of the *CVD Preliminary Determination* ended on October 2, 2023. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final affirmative injury determination.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of pressure washers from China entered, or withdrawn from warehouse, for consumption, on or after October 2, 2023, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances—CVD

With regard to the ITC's negative critical circumstances determination on imports of pressure washers from China,

[7] *See* ITC Notification Letter.

[8] *See Gas Powered Pressure Washers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination,* 88 FR 36531 (June 5, 2023) (*CVD Preliminary Determination*).

[9] *See* section 706(a)(3) of the Act.

[10] Commerce finds the following company to be cross-owned with JD Power: Jiangsu Nonghua Intelligent Agriculture Technology Co., Ltd.

we intend to instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn, for consumption on or after March 7, 2023 (*i.e.,* 90 days prior to the date of the publication of the *CVD Preliminary Determination*), but before June 5, 2023 (*i.e.,* the date of publication of the *CVD Preliminary Determination*).

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the *Final Rule* in the **Federal Register**.[11] On September 27, 2021, Commerce also published the *Procedural Guidance* in the **Federal Register**.[12] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[13]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [14]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,*[15] the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [16] Accordingly, as stated above, the petitioner and Government of China should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for this order. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of China will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of China are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the AD and CVD orders with respect to pressure washers from China, pursuant to sections 736(a) and 706(a) of the Act. Interested parties can find a list of AD/CVD orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

These AD and CVD orders are published in accordance with sections 706(a) and 736(a) of the Act, and 19 CFR 351.211(b).

Dated: February 6, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders are cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of these orders cover cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of the orders cover cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

The power washers subject to these orders have an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of these orders regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of these orders is merchandise covered by the

[11] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[12] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[13] *Id.*

[14] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[15] *See Procedural Guidance.*

[16] *See Final Rule,* 86 FR at 52335.

scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The merchandise covered by these orders are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2024–02902 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD701]

Pacific 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 Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) is holding an online meeting.

DATES: The online meeting will be held Wednesday, February 28, 2024 through Friday, March 1, 2024. The meeting will start each day at 8 a.m., Pacific standard time and continue until business is completed on each day.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the HMSAS to discuss and prepare reports for agenda items on the Pacific Council's March 5–11, 2024 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 7, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02823 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD702]

Pacific 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 Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) is holding an online meeting.

DATES: The online meeting will be held Wednesday, February 28, 2024 through Friday, March 1, 2024. The meeting will start each day at 8 a.m., Pacific standard time and continue until business is completed on each day.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the HMSMT to discuss and prepare reports for agenda items on the Pacific Council's March 5–11, 2024, meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 7, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02819 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD720]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Hapeman (Permit No. 27128), Shasta McClenahan, Ph.D. (Permit No. 21482–02), Erin Markin, Ph.D. (Permit No. 27670), and Carrie Hubard (Permit No. 26663); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
21482–02	0648–XG359	Dan Engelhaupt, Ph.D., HDR, Inc., 4173 Ewell Road, Virginia Beach, VA 23455.	84 FR 41705, August 15, 2019.	January 9, 2024.
27128	0648–XD201	Tamara McGuire, Ph.D., 5010 SW West Hills Road, Unit 1, Corvallis, OR 97333.	88 FR 50112, August 1, 2023.	January 16, 2024.
27670	0648–XD524	Iris Segura-García, Ph.D., Harbor Branch Oceanographic Institute, 5600 US 1, Fort Pierce, FL 34946.	88 FR 78729, November 16, 2023.	January 12, 2024.
26663	0648–XC868	Alaska Whale Foundation, P.O. Box 1927, Petersburg, AK 99833 (Responsible Party: Fred Sharpe, Ph.D.).	88 FR 18299, March 28, 2023.	January 30, 2024.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA 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 ESA 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), as applicable.

Dated: February 6, 2024.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–02812 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD712]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public webinar of its Risk Policy Working Group to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, February 27, 2024, at 1 p.m.

ADDRESSES: Webinar registration URL information: *https://zoom.us/webinar/register/WN_W_gl369EQKmGn7iFlqOLXQ.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Risk Policy Working Group (RPWG) plan to address the terms of reference (TORs) approved by the New England Fishery Management Council (Council), including progress made in reviewing the Council's current Risk Policy, and Risk Policy Road Map (TOR 1). They will also develop possible changes to the risk policy (TOR 2), outlining a revised risk policy that may include elements of a decision tree approach and/or a tiered approach. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Ph.D., Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 7, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02821 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD709]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

DATES: The CPSMT meeting will be held Wednesday, February 28, 2024, from 1 p.m. to 4 p.m., Pacific standard time or until business for the day has been completed.

The CPSAS meeting will be held Monday, March 4, 2024, from 9 a.m. to 12 p.m., Pacific standard time or until business for the day has been completed.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415.

SUPPLEMENTARY INFORMATION: The primary purpose of the CPSMT and CPSAS online meetings are to discuss and develop work products and recommendations for the Pacific Council's March 2024 meeting. Topics will include reviewing the California Current Ecosystem report and fishery ecosystem plan initiatives. Other items on the Pacific Council's March agenda may be discussed as well. The meeting agendas will be available on the Pacific Council's website in advance of the meetings. No management actions will be decided by the CPSMT or CPSAS. CPSMT and CPSAS recommendations will be considered by the Pacific Council at their March Council meetings.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: February 7, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–02820 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NMFS Observer Programs' Information That Can Be Gathered Only Through Questions; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection; correction.

SUMMARY: On December 19, 2023, the Department of Commerce, published a 30-day public comment period notice in the **Federal Register** for an information collection entitled ''NMFS Observer Programs' Information That can be Gathered Only Through Questions.'' This document referenced incomplete information in the Needs and Uses section, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

ADDRESSES: This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0593.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this correction, contact Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 19, 2023 in FR Doc. 2023–27834, on page 87753, in the third column, correct the third paragraph of the ''Needs and Uses'' section to read:

The information collected will be used: (1) to monitor catch and bycatch in federally managed commercial fisheries; (2) to understand the population status and trends of fish stocks and protected species, as well as the interactions between them; (3) to determine the quantity and distribution of net benefits derived from living marine resources; (4) to predict the biological, ecological, and economic impacts of existing management action and proposed management options; (5) to ensure that the observer programs can safely and efficiently collect the information required for the previous four uses; and (6) for criminal and/or civil investigations by law enforcement agencies. In particular, these biological and economic data collection programs contribute to legally mandated analyses required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), Executive Order 12866 (E.O. 12866), as well as a variety of state statutes. The confidentiality of the data will be protected as required by the MSA, section 402(b).

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–02756 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD641]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approved Monitoring Service Providers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of approved Northeast multispecies at-sea and electronic monitoring service providers for fishing year 2024.

SUMMARY: NMFS has approved nine companies to provide Northeast multispecies sector at-sea catch monitoring (ASM) and/or electronic catch monitoring (EM) services in fishing year 2024. Regulations implementing the Northeast Multispecies Fishery Management Plan require ASM and EM companies to meet service provider performance standards to be approved by NMFS to provide catch monitoring services to sectors. This action approves service providers that sectors may contract with for catch monitoring services for fishing year 2024.

DATES: Northeast multispecies at-sea and electronic monitoring service provider approvals are effective May 1, 2024, through April 30, 2025.

ADDRESSES: The list of NMFS-approved sector monitoring service providers is available at: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.*

FOR FURTHER INFORMATION CONTACT: Heather Nelson, Fishery Management Specialist, (808) 725–5179, email *Heather.Nelson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan includes a requirement for industry-funded monitoring of catch by sector vessels. NMFS approves independent third-party service providers with which sectors may contract to provide ASM and/or EM services to their vessels. NMFS requires full applications for approval from ASM and EM companies that are not currently approved to be a service provider. Previously approved ASM and EM companies are not required to submit a full application to maintain their approval status if they continue to meet all service provider performance standards and submit required updated information annually. The required updated information to maintain approval includes an updated Emergency Action Plan, evidence of adequate insurance coverage, and, if applicable, any updates to staffing or operations. Regulations at 50 CFR 648.11(h) describe the criteria for approval of ASM and EM service provider applications. NMFS approves service providers based on: (1) Completeness and sufficiency of applications; and (2) determination of the applicant's ability to meet the performance requirements of a sector monitoring service provider. Once approved, service providers must meet specified performance requirements outlined in § 648.11(h)(5) and (6), including required coverage levels, in order to maintain eligibility. NMFS must notify service providers, in writing, if NMFS withdraws approval for any reason.

Approved Monitoring Service Providers

On September 28, 2023, NMFS announced an opportunity for new monitoring companies to apply for approval to provide ASM and/or EM services in fishing year 2024, and an opportunity for currently approved providers to submit updated documentation to maintain their approval status in fishing year 2024. NMFS previously approved nine companies to provide catch monitoring services to the Northeast multispecies sectors in fishing year 2023. Five of the nine approved companies provide both ASM and EM services: A.I.S., Inc.; East West Technical Services, LLC; Fathom Research, LLC; New England Marine Monitoring; and Saltwater, Inc. The other four approved companies provide EM services only: Archipelago Marine Research, Ltd.; Flywire Cameras; Satlink US, LLC; and Teem Fish Monitoring, Inc.

All currently approved ASM and EM companies continue to meet all service provider performance standards, submitted all required documentation, and are therefore approved service providers for fishing year 2024. We did not receive any new ASM or EM provider applications. Table 1 includes the revised list of approved monitoring service providers.

NMFS has the authority to remove a service provider from its approved status in accordance with the regulations at § 648.11(h)(7). A monitoring service provider that fails to meet the requirements, conditions, and responsibilities will be notified in writing that it is subject to removal from the list of approved monitoring service providers. Withdrawing approval of a service provider will be based on an evaluation of the service providers ability to meet the third-party catch monitoring provider standards in § 648.11(h)(5) and (6). NMFS will closely monitor the performance of approved service providers, and will withdraw approval during the current approval term if it determines performance standards are not being met.

NMFS did not solicit applications to provide dockside monitoring (DSM) services related to the maximized retention EM program. NMFS is currently evaluating whether to operate the maximized retention EM program in fishing year 2024. NMFS will continue to administer the DSM program if it is operational in fishing year 2024. In future fishing years, NMFS intends to solicit applications to be an approved DSM provider when the DSM program transitions to industry-funding.

TABLE 1—APPROVED PROVIDERS FOR FISHING YEAR 2024

Provider	Services	Address	Phone	Fax	Website
A.I.S., Inc.	ASM/EM	540 Hawthorn St., Dartmouth, MA 02747	508–990–9054	508–990–9055	*https://aisobservers.com/.*
Archipelago Marine Research, Ltd..	EM	525 Head St., Victoria, BC V9A 5S1, Canada	250–383–4535	250–383–0103	*https://www.archipelago.ca/.*
East West Technical Services, LLC.	ASM/EM	91 Point Judith Rd., Suite 26 Unit 347, Narragansett, RI 02882.	860–910–4957	860–223–6005	*https://www.ewts.com/.*
Fathom Resources, LLC	ASM/EM	855 Aquidneck Ave., Unit 9, Middletown, RI 02842	508–990–0997	508–858–5383	*https://fathomresources.com/.*
Flywire Cameras	EM	PO Box 55048, Lexington, KY 40511	888–315–7796	502–861–6568	*https://www.flywirecameras.com/.*
New England Marine Monitoring.	ASM/EM	350 Commercial St., Portland, ME 04101	508–269–8138	none	*https://www.nemarinemonitoring.com/.*
Saltwater, Inc.	ASM/EM	733 N St., Anchorage, AK 99501	907–276–3241	907–258–5999	*https://www.saltwaterinc.com/.*
Satlink US, LLC	EM	16423 Sawgrass Drive, Rehoboth Beach, DE 19971	703–447–5287	none	*https://www.satlink.es/en/.*
Teem Fish Monitoring, Inc.	EM	309 2nd Ave., Suite 363, Prince Rupert, BC V8J 3T1, Canada.	778–884–2598	none	*https://teem.fish/.*

Note: ASM/EM = At-sea and electronic monitoring; EM = Electronic monitoring only.

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

Dated: February 7, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–02843 Filed 2–9–24; 8:45 am]

BILLING CODE 3510–23–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Tuesday, March 5, 2024 from 9 a.m. to 5 p.m. (EST).

ADDRESSES: The address of the open meeting is 8111 Gatehouse Rd, Room 345, Falls Church, VA 22042. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Shawn Clausen, 703–275–6060 (voice), *shawn.s.clausen.mil@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *https://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available on the DHB website, *https://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the March 5, 2024, meeting will be available on the DHB website. Any other materials presented in the meeting may also be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific tasks before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving a decision briefing on Prolonged Theater Care. The DHB also expects an update from the DHB Public Health Subcommittee's tasking on Effective Public Health Communication Strategies with DoD personnel, as well as a panel discussion on Artificial Intelligence opportunities and risks in healthcare.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting will be held in-person and virtually and is open to the public from 9:00 a.m. to 5:00 p.m. Seating and virtual participation is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.dhb@health.mil* or by contacting Mr. Rubens Lacerda at (703) 275–6012 no later than Tuesday, February 27, 2024. Additional details will be required from all members of the public attending in-person that do not have Gatehouse building access. Once registered, participant access information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Rubens Lacerda at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the FACA, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB's Designated Federal Officer (DFO), CAPT Clausen, at *shawn.s.clausen.mil@health.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: February 6, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–02777 Filed 2–9–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors, Marine Corps University; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost-effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University.

DATES: The meeting will be held on Tuesday, March 26, 2024, from 8:00 a.m. to 4:30 p.m. and Wednesday, March 27, 2024, from 08:30 a.m. to 11:00 a.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at Marine Corps University, Quantico Base, VA 22134. All sessions of the meeting will be open to the public via Microsoft Teams:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZGM4N2ZlMjktZTA4My00ZGRhLWExMzMtZWExM2Q5ZWNiMDRh%40thread.v2/0?context=%7b%22Tid%22%3a%2294e5a9ba-bbdc-4274-843d-164a71fd8ad3%22%2c%22Oid%22%3a%2298226ead-f252-4ec9-be22-f1e63a4979eb%22%7d

Meeting ID: 271 429 125 705

Passcode: Pi9auH

Or call in (audio only): +1 323–792–6328, United States, Los Angeles

Phone Conference ID: 505 125 129#

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Alternate Designated Federal Officer, Marine Corps University Board of Visitors, 2076 South

Street, Quantico, Virginia 22134, Telephone number 703–432–4837.

SUPPLEMENTARY INFORMATION:

Written Comments and Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 1 business day prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via email to: *Kimberly.florich@usmcu.edu.* Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: February 7, 2024.

J.E. Koningisor

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–02826 Filed 2–9–24; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), DOE.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, all agencies are required to publish in the **Federal Register** a notice of their systems of records. Notice is hereby given that the Federal Energy Regulatory Commission (FERC) is publishing a notice of modifications to an existing FERC system of records titled ''FERC–22 ''*Commission's Employees Indebtedness Cases Files.*''

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, or electronically to *privacy@ferc.gov.* Comments should indicate that they are submitted in response to ''Commission's Employees Indebtedness Cases Files'' (FERC–22).

FOR FURTHER INFORMATION CONTACT: Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6432.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, and to comply with the Office of Management and Budget (OMB) Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information,* January 3, 2017, this notice has twelve (12) new routine uses, including two routine uses that will permit FERC to disclose information as necessary in response to an actual or suspected breach that pertains to a breach of its own records or to assist another agency in its efforts to respond to a breach that was previously published separately at 87 FR 35543, June 10, 2022.

The following sections have been updated to reflect changes made since the publication of the last notice in the **Federal Register**: dates; addresses; for further contact information; system location; system name and number; system manager; authority for maintenance of the system; purpose of the system; categories of individuals covered by the system; categories of records in the system; record source categories; routine uses of records maintained in the system, including categories of users and the purpose of such; policies and practices for storage of records; policies and practices for retrieval of records; policies and practices for retention and disposal of records; administrative, technical, physical safeguards; records access procedures; contesting records procedures; notification procedures; and history.

SYSTEM NAME AND NUMBER:

Commission's Employees Indebtedness Cases Files (FERC 22).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of the Executive Director, Financial Management Division, Financial Operations Branch, 888 First Street NE, Washington, DC 20426.

SYSTEM MANAGER(S):

Director, Financial Management Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6219.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 735.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to track employee indebtedness and to maintain correspondence and documentation relating to employees' indebtedness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: FERC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include: individual's full name; current address; written complaints; payment plan; installment plan; signature; dollar amount owed; schedule of payment, including day and month, and amount of payment due; screenshots of checks; credit card transaction ID number, and related correspondence.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the records pertain and from creditors of employees, personnel specialists, and supervisors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to

such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC 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.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

POLICIES AND PRACTICES FOR THE STORAGE OF RECORDS:

Records are maintained in electronic format. Paper records are scanned and maintained in PDF format on shared drive or SharePoint. The paper form is disposed of once it is scanned.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by employee name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the schedule approved under the National Archives and Records Administration's General Records Schedule 1.1: Financial Management and Reporting Records. Disposition Authority: DAA–GRS–2013–0003–0002. Temporary. Destroy when business use ceases.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are stored on a shared drive or SharePoint within FERC's network. Access to electronic records is controlled by the organizations Single Sign-On and Multi-Factor Authentication solution. Access to electronic records is restricted to those individuals whose official duties require access.

RECORD ACCESS PROCEDURES:

Individuals requesting access to the contents of records must submit a request through the Freedom of Information Act (FOIA) office. The FOIA website is located at: *https://www.ferc.gov/foia.* Requests may be submitted through the following portal: *https://www.ferc.gov/enforcement-legal/foia/electronic-foia-privacy-act-request-form.* Written requests for access to records should be directed to: Director, Office of External Affair, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

See Records Access procedures.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, *see* Records Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

65 FR 21747, April 24, 2000.

Dated: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02813 Filed 2–9–24; 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: RP24–390–000.

Applicants: Dogwood Energy LLC, Missouri Joint Municipal Electric Utility Commission.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations, et al. of Dogwood Energy LLC, et al.

Filed Date: 2/1/24.

Accession Number: 20240201–5251.

Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–392–000.

Applicants: Vector Pipeline L.P.

Description: Annual Report of Operational Purchases and Sales of Vector Pipeline L.P.
Filed Date: 2/6/24.
Accession Number: 20240206–5044.
Comment Date: 5 p.m. ET 2/20/24.

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: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02816 Filed 2–9–24; 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: PR24–50–000.
Applicants: BBT Mississippi, LLC.
Description: 284.123 Rate Filing: BBT Mississippi SOC Filing to be effective 2/1/2024.
Filed Date: 2/1/24.
Accession Number: 20240201–5117.
Comment Date: 5 p.m. ET 2/22/24.

Docket Numbers: RP24–380–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmts (PennEnergy 37579, 37580) to be effective 2/1/2024.
Filed Date: 2/1/24.
Accession Number: 20240201–5102.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–381–000.
Applicants: Sabine Pipe Line LLC.
Description: 4(d) Rate Filing: Normal filing Feb 2024—7.26–4.6 to be effective 2/1/2024.
Filed Date: 2/1/24.
Accession Number: 20240201–5107.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–382–000.
Applicants: Dogwood Energy LLC, Missouri Joint Municipal Electric Utility Commission.
Description: Joint Petition for Temporary Waivers of Capacity Release Regulations, et al. of Dogwood Energy LLC, et al.
Filed Date: 2/1/24.
Accession Number: 20240201–5114.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–383–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 4(d) Rate Filing: TPC 2024–02–01 Negotiated Rate Agreement to be effective 2/1/2024.
Filed Date: 2/1/24.
Accession Number: 20240201–5216.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–384–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Penalty Revenue Crediting Report of Millennium Pipeline Company LLC.
Filed Date: 2/1/24.
Accession Number: 20240201–5233.
Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: RP24–385–000.
Applicants: Rover Pipeline LLC.
Description: 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 2–2–2024 to be effective 2/1/2024.
Filed Date: 2/2/24.
Accession Number: 20240202–5036.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: RP24–386–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 2–3–24 to be effective 2/3/2024.
Filed Date: 2/2/24.
Accession Number: 20240202–5085.
Comment Date: 5 p.m. ET 2/14/24.

Docket Numbers: RP24–387–000.
Applicants: Texas Gas Transmission, LLC.
Description: 4(d) Rate Filing: Amendment to Neg Rate Agmt (DTE 34937) to be effective 2/1/2024.
Filed Date: 2/2/24.
Accession Number: 20240202–5086.
Comment Date: 5 p.m. ET 2/14/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR24–23–001.
Applicants: CR Permian Natural Gas Transmission, LLC.
Description: Amendment Filing: CR Permian Amended SOC Filing to be effective 12/15/2023.
Filed Date: 2/2/24.
Accession Number: 20240202–5038.
Comment Date: 5 p.m. ET 2/23/24.
284.123(g) Protest: 5 p.m. ET 2/23/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02760 Filed 2–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15331–000]

Marlow Hydro, LLC; Notice of Intent To File License Application and Setting Deadline To File Final License Application

a. *Type of Filing:* Notice of Intent to File a License Application and Setting a Deadline to File a Final License Application.

b. *Project No.:* 15331–000.

c. *Date Filed:* June 20, 2023.

d. *Submitted By:* Marlow Hydro, LLC. (Marlow Hydro).

e. *Name of Project:* Nash Mill Dam Hydroelectric Project (Nash Mill Project).

f. *Location:* On the Ashuelot River, near the town of Marlow, Cheshire County, New Hampshire.

g. *Filed Pursuant to:* 18 CFR 5.5 and 385.216 of the Commission's regulations. Marlow Hydro filed a request to withdraw its surrender application on June 20, 2023.[1] The request is being treated as a Notice of Intent to File an Original License Application, which would have been filed pursuant to 18 CFR 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Anthony B. Rosario, 139 Henniker Street, Hillsborough, NH 03244; (603) 494–1854; or email at *t-iem@tds.net.*

i. *FERC Contact:* Prabha Madduri at (202) 502–8017; or by email at *prabharanjani.madduri@ferc.gov.*

j. On December 6, 2023, Commission staff issued a letter providing Marlow Hydro with details regarding the process for filing a license application for the Nash Mill Project. As stated above, on June 20, 2023, Marlow Hydro filed a notice of withdrawal of a surrender application for the Nash Mill Project and a request to return to a licensing process. The request to reinstate the subsequent licensing proceeding was denied. Staff determined, however, (1) that the pre-filing work (Pre-Application Document request, and approval, to use the TLP, and Joint Agency Meeting) performed by Marlow Hydro satisfies the requirements of 18 CFR 4.38(b) for first stage consultation; (2) that Marlow Hydro should proceed with second stage consultation; and (3) that the June 20, 2023 notice of withdrawal of the surrender application should serve as a notice of intent to file an original license application for the Nash Mill Project (see paragraph g).

k. There typically is no filing deadline for an original license application. However, Marlow Hydro is currently operating the project under section 18 CFR 16.21(a) of the Commission's regulations authorizing it to operate the project until the Commission acts on its application (see the *Notice of Authorization for Continued Project Operation* issued on December 22, 2022). Thus, to ensure that Marlow Hydro files a timely application for the Commission to act on, establishing a deadline for Marlow Hydro's original license application is warranted. Staff has determined that it is reasonable to expect second stage consultation and a final license application to be completed by the end of July of 2024. Therefore, the final license application for this project is due by July 31, 2024.

l. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire Division of Historical Resources, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are designating Marlow Hydro, LLC as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 106 of the National Historic Preservation Act.

n. A copy of the draft application may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *ferconlinesupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. 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.*

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02814 Filed 2–9–24; 8:45 am]

BILLING CODE 6717–01–P

[1] Marlow Hydro filed a notice of intent to file a subsequent license application on October 17, 2017, and a license application on December 1, 2020. On May 5, 2021, Marlow Hydro filed to withdraw the application and on June 17, 2022, to surrender the license. On June 20, 2023, Marlow Hydro requested to withdraw its surrender application and return to a licensing process. The withdrawal of the surrender became effective on July 5, 2023, pursuant to 18 CFR 385.216.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–24–000]

Double E Pipeline, LLC; Notice of Request for Extension of Time

Take notice that on January 31, 2024, Double E Pipeline, LLC. (Double E) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until February 18, 2025, to complete construction and place into service the Red Hills Lateral Project (Project) located in Eddy and Lea Counties, New Mexico. On December 19, 2022, the Commission issued a Notice of Request Under Blanket Authorization, which established a 60-day comment period, ending on February 17, 2023, to file protests. No protests were filed during the comment period, and accordingly the project was authorized on February 18, 2023, and by Rule should have been completed within one year.

In its 2024 Extension of Time Request, Double E states that pre-construction activities are ongoing, but that it will not complete all work associated with the Project by the February 18, 2024, deadline. Accordingly, Double E requests an extension of time until February 18, 2025, to complete construction of project facilities.

This notice establishes a 15-calendar day intervention and comment period

deadline. Any person wishing to comment on Double E's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[1] the Commission will aim to issue an order acting on the request within 45 days.[2] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[3] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).[4] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[5] The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (866) 208–3676 or TTY (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on February 21, 2024.

Dated: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02815 Filed 2–9–24; 8:45 am]

BILLING CODE 6717–01–P

[1] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

[2] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[3] *Id.* at P 40.

[4] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–47–000.

Applicants: Erie Boulevard Hydropower, L.P.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Erie Boulevard Hydropower, L.P.

Filed Date: 2/5/24.

Accession Number: 20240205–5193.

Comment Date: 5 p.m. ET 2/26/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–102–000.

Applicants: Wythe County Solar Project, LLC.

Description: Wythe County Solar Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 2/6/24.

Accession Number: 20240206–5054.

Comment Date: 5 p.m. ET 2/27/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1951–066; ER11–4462–090; ER13–2474–026; ER14–2708–028; ER14–2709–027; ER14–2710–027; ER15–30–025; ER15–58–025; ER16–1440–021; ER16–2240–021; ER16–2241–020; ER16–2297–021; ER17–838–064; ER18–1981–016; ER18–2032–016; ER18–2314–014; ER19–1128–010; ER19–2495–012; ER19–2513–012; ER20–637–010; ER20–780–010; ER20–792–010; ER20–1991–010; ER20–2237–010; ER20–2597–010; ER20–2603–010; ER20–2648–009.

Applicants: Northern Divide Wind, LLC, Skeleton Creek Wind, LLC, Soldier Creek Wind, LLC, Weatherford Wind, LLC, Ponderosa Wind, LLC, Oklahoma Wind, LLC, Sooner Wind, LLC, Wilton Wind Energy I, LLC, Wilton Wind Energy II, LLC, Wessington Springs Wind, LLC, Rush Springs Energy Storage, LLC, Sholes Wind, LLC, Wildcat Ranch Wind Project, LLC, Pratt Wind, LLC, NextEra Energy Marketing, LLC, Osborn Wind Energy, LLC, Ninnescah Wind Energy, LLC, Rush Springs Wind Energy, LLC, Roswell Solar, LLC, Palo Duro Wind Interconnection Services, LLC, Seiling Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC, Seiling Wind II, LLC, Seiling Wind, LLC, Steele Flats Wind Project, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC.

Description: Notice of Change in Status of Armadillo Flats Wind Project, LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5650.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER18–2118–017; ER20–2019–009; ER11–2642–025; ER10–1849–031; ER10–1852–091; ER12–895–030; ER12–1228–032; ER13–712–033; ER14–2707–027; ER15–1925–025; ER15–2676–024; ER16–1672–023; ER16–2190–021; ER16–2191–021; ER16–2275–020; ER16–2276–020; ER16–2453–022; ER17–2152–018; ER18–882–019; ER18–2003–016; ER18–

2066–011; ER18–2182–017; ER20–1907–009; ER20–1986–008; ER20–2064–010; ER20–2179–009; ER21–1990–007; ER21–2117–008; ER21–2149–008; ER21–2225–008; ER21–2296–008; ER21–2699–009; ER22–1982–007; ER22–2516–003; ER23–2629–002.

Applicants: High Banks Wind, LLC, Chaves County Solar II, LLC, Great Prairie Wind, LLC, Minco Wind Energy III, LLC, Ensign Wind Energy, LLC, Irish Creek Wind, LLC, Minco Wind Energy II, LLC, Little Blue Wind Project, LLC, Blackwell Wind Energy, LLC, Baldwin Wind Energy, LLC, High Majestic Wind I, LLC, Day County Wind I, LLC, Minco Wind I, LLC, Minco IV & V Interconnection, LLC, Minco Wind IV, LLC, Lorenzo Wind, LLC, Elk City Renewables II, LLC, Cottonwood Wind Project, LLC, Brady Interconnection, LLC, Kingman Wind Energy II, LLC, Kingman Wind Energy I, LLC, Brady Wind II, LLC, Brady Wind, LLC, Chaves County Solar, LLC, Cedar Bluff Wind, LLC, Breckinridge Wind Project, LLC, Mammoth Plains Wind Project, LLC, Cimarron Wind Energy, LLC, High Majestic Wind II, LLC, Minco Wind Interconnection Services, LLC, Florida Power & Light Company, Elk City Wind, LLC, FPL Energy South Dakota Wind, LLC, Gray County Wind Energy, LLC, Armadillo Flats Wind Project, LLC.

Description: Notice of Change in Status of Armadillo Flats Wind Project, LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5649.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER19–2373–014; ER10–1972–030; ER10–1841–031; ER10–1907–030; ER10–1918–031; ER10–1950–031; ER10–1951–065; ER10–1970–030; ER10–2005–031; ER10–2078–029; ER11–4462–089; ER12–1660–030; ER13–2458–025; ER10–1852–090; ER16–1872–021; ER16–2506–023; ER17–838–063; ER17–2270–022; ER18–1771–021; ER18–2224–021; ER18–2246–020; ER19–987–018; ER19–1003–018; ER19–1393–018; ER19–1394–018; ER19–2382–014; ER19–2398–016; ER19–2437–014; ER19–2461–014; ER20–122–012; ER20–1220–012; ER20–1796–002; ER20–1879–013; ER20–1987–013; ER20–2690–012; ER21–1320–008; ER21–1953–010; ER21–2048–010; ER21–2100–009; ER22–2536–005; ER22–2601–005; ER22–2634–005; ER23–568–004; ER23–2321–002; ER23–2324–002; ER23–2694–002.

Applicants: Cereal City Solar, LLC, Cavalry Energy Center, LLC, Dunns Bridge Energy Storage, LLC, Big Cypress Solar, LLC, Buffalo Ridge Wind, LLC, Walleye Wind, LLC, Kossuth County Wind, LLC, Point Beach Solar, LLC, Sac County Wind, LLC, Heartland Divide Wind II, LLC, Crystal Lake Wind Energy III, LLC, Jordan Creek Wind Farm LLC, Cerro Gordo Wind, LLC, Oliver Wind I, LLC, Entergy Arkansas, LLC, Oliver Wind Energy Center II, LLC, Crowned Ridge Interconnection, LLC, Crowned Ridge Wind, LLC, Emmons-Logan Wind, LLC, Hancock County Wind, LLC, Story County Wind, LLC, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Heartland Divide Wind Project, LLC, Pegasus Wind, LLC, Langdon Renewables, LLC, Stuttgart Solar, LLC, NextEra Energy Marketing, LLC, Oliver Wind III, LLC, Marshall Solar, LLC, Florida Power & Light Company, Tuscola Wind II, LLC, Tuscola Bay Wind, LLC, NEPM II, LLC, White Oak Energy LLC, Ashtabula Wind II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Services Massachusetts, LLC, Garden Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy North Dakota Wind, LLC, Butler Ridge Wind Energy Center, LLC, NextEra Energy Point Beach, LLC, Ashtabula Wind I, LLC.

Description: Notice of Change in Status of Ashtabula Wind I, LLC, et al.

Filed Date: 1/31/24.

Accession Number: 20240131–5648.

Comment Date: 5 p.m. ET 2/21/24.

Docket Numbers: ER23–2359–005.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ISA/CSA SA Nos. 6967 & 6968; Queue No. AD2–100/131 Docket ER23–235 to be effective 9/6/2023.

Filed Date: 2/5/24.

Accession Number: 20240205–5181.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: ER23–2764–003.

Applicants: Northeastern Power & Gas, LLC.

Description: Tariff Amendment: Amendment to 11 Asset Appendix number to be effective 9/25/2023.

Filed Date: 2/6/24.

Accession Number: 20240206–5037.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–377–001.

Applicants: Devon Energy Production Company, LP.

Description: Tariff Amendment: Amendment to Market Base Rate Filing to be effective 12/26/2023.

Filed Date: 2/6/24.

Accession Number: 20240206–5053.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1193–000.

Applicants: River Fork Solar, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/8/2024.

Filed Date: 2/6/24.

Accession Number: 20240206–5035.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1194–000.

Applicants: CPV Stagecoach Solar, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/8/2024.

Filed Date: 2/6/24.

Accession Number: 20240206–5045.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1195–000.

Applicants: NorthWestern Corporation.

Description: Annual Filing of Post-Employment Benefits Other than Pensions for 2023 of NorthWestern Corporation (Montana).

Filed Date: 2/1/24.

Accession Number: 20240201–5256.

Comment Date: 5 p.m. ET 2/22/24.

Docket Numbers: ER24–1196–000.

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): Brush Creek Renewables LGIA Filing to be effective 1/24/2024.

Filed Date: 2/6/24.

Accession Number: 20240206–5080.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1197–000.

Applicants: Just Energy (U.S.) Corp.

Description: Tariff Amendment: Just Energy (U.S.) Corp. Request to Cancel MBR Tariff to be effective 2/7/2024.

Filed Date: 2/6/24.

Accession Number: 20240206–5084.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1198–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–02–06_SA 4194 NSP-County of Dakota GIA (J1826) to be effective 11/10/2023.

Filed Date: 2/6/24.

Accession Number: 20240206–5087.

Comment Date: 5 p.m. ET 2/27/24.

Docket Numbers: ER24–1199–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Cancellation of UCSA, SA No. 6596; J878 to be effective 4/8/2024.

Filed Date: 2/6/24.

Accession Number: 20240206–5104.

Comment Date: 5 p.m. ET 2/27/24.

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: February 6, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–02817 Filed 2–9–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0314–0001; FRL–11733–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Indoor airPLUS Program (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Indoor AirPlus Program (EPA ICR Number 2763.01, OMB Control Number 2060–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on July 31, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before March 13, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0314 to EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Peggy Bagnoli, Indoor Environments Division, Office of Radiation and Indoor Air 6609T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9398; fax number: (202) 343–2393; email address: *Indoor_airPLUS@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct, or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on July 31, 2023, during a 60-day comment period (88 FR 16195). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Indoor AirPlus is aimed at forming public-private partnerships that help prevent various forms of indoor air pollution and their associated health risks. This ICR covers information collection activities under the EPA's newly revised Indoor AirPlus program. Indoor AirPlus is a voluntary certification labeling program that represents value-added marketability that home builders, verification companies, and oversight organizations can use to distinguish themselves from competition, while homeowners see a healthier and safer home with improved indoor air quality (IAQ) by requiring construction practices and product specifications that minimize exposure to airborne pollutants and contaminants.

Form numbers:

- A Partnership Agreement for Home Builder/Verification Organization/Home Certification Organizations (Voluntary).
  - 5900–662 Join Indoor AirPlus Partnership Agreement—Stand Alone Program_Form.docx.
  - 5900–663 Join Indoor AirPlus Partnership Agreement- Integrated with ES Form.docx.
  - 5900–669 Join Indoor AirPlus V2_Draft Certification System_LIVE.docx.
- Indoor AirPlus Verification Checklist/Home Certification Organizations Certification Process (Voluntary).
  - 5900–668 Verification of IAP Req Indoor AirPlus Fillable Verification Checklist.pdf.
- Indoor AirPlus Quarterly Reporting for Homebuilders/Raters (Voluntary).
  - 5900–667 Periodic Reporting_Indoor AirPlus Quarterly Form.xlsx.
- Leader Award Applications Builder/Affordable Builder/Rater (Voluntary).
  - 5900–664 Leader Award—Affordable Builder Application.pdf.
  - 5900–665 Leader Award—Builder Application.pdf.
  - 5900–666 Leader Award—Rater Application.pdf.

Respondents/affected entities: Respondents for this information collection request include Indoor AirPlus partners, including homebuilders and developers, verification organizations (raters and rating providers), and home certification organizations. The following is a list of Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes for industry segments which may be affected by information collections covered under this ICR for the Indoor AirPlus Program: Utilities (22), Construction (23), Retail Trade (44–45), Transportation and Warehousing (48–49), Finance and

Insurance (52), Real Estate and Rental and Leasing (53), Professional, Scientific, and Technical Services (54), and Public Administration (92).

Respondent's obligation to respond: voluntary (Clean Air Act, § 103).

Estimated number of respondents: 566 new and 2,142 active participants (total).

Frequency of response: Once per year (on average).

Total estimated burden: 11,862 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,204,447, which includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: This is a new ICR, no changes in burden currently applicable.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–02771 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–SFUND–2023–0560; FRL–11544–01–Region 5]

Proposed CERCLA Administrative Cost Recovery Settlement; Milwaukee Die Casting Site, Milwaukee, Wisconsin [EPA Agreement V–W–24–C–002]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 5, of a proposed administrative settlement for recovery of past response costs concerning the Milwaukee Die Casting Site (Site) in Milwaukee, Wisconsin with the following parties: Fisher Controls International, LLC and Pharmacia LLC, as the Settling Parties and Respondents.

DATES: Comments must be submitted on or before March 13, 2024.

ADDRESSES: The proposed settlement is available for public inspection at *https://response.epa.gov/MDC* and in the docket in Docket ID No. EPA–R05–SFUND–2023–0560. Submit your comments, identified by Docket ID No. EPA–R05–SFUND–2023–0560, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Brooks, Enforcement Investigator, EPA, Superfund & Emergency Management Division, Region 5, 77 West Jackson Blvd. (SR–6J), Chicago, IL 60604; email: *brooks.eric@epa.gov;* phone: (312) 353–8655.

SUPPLEMENTARY INFORMATION: The settlement requires the Respondents to pay $435,180.27 in past response costs. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to this settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at *https://response.epa.gov/MDC.*

Douglas Ballotti,

Director, Superfund & Emergency Management Division, Region 5.

[FR Doc. 2024–02767 Filed 2–9–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2024–0002]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089416XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before March 8, 2024 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2024–0002 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2024–0002 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089416XX.

Purpose and Use:

Brief description of the purpose of the transaction: Support of the export of U.S. manufactured goods and services.

Brief non-proprietary description of the anticipated use of the items being exported: Use in an oil and gas field optimization project.

Parties:

Principal Supplier: SLB.

Obligor: Bapco Energies B.S.C. (Bahrain).

Guarantor(s): None.

Description of Items Being Exported: Oilfield equipment and engineering and technical services.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United

States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Lin Zhou,

IT Specialist.

[FR Doc. 2024–02758 Filed 2–9–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Thursday, February 28th, 2023, from 3:00 p.m.–4:30 p.m. EDT.

PLACE: Virtual meeting—The meeting will be virtually for committee members, EXIM's Board of Directors and support staff, and virtually for all other participants.

STATUS: *Public Participation:* The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register below for the meeting: *https://events.teams.microsoft.com/event/59ec824f-c810-4797-894d-06344967c3dc@b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Kalesha Malloy,

IT Specialist.

[FR Doc. 2024–02923 Filed 2–8–24; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 23–14]

Notice of Filing of Amended Complaint and Assignment; D.F. Young, Inc., Complainant v. Wallenius Wilhelmsen Logistics AS, n/k/a Wallenius Wilhelmsen Ocean AS, and Wallenius Wilhelmsen Logistics Americas, LLC, Respondents

Served: February 6, 2024.

Notice is given that an amended complaint has been filed with the Federal Maritime Commission (the ''Commission'') by D.F. Young, Inc. (the ''Complainant'') against Wallenius Wilhelmsen Logistics AS, n/k/a Wallenius Wilhelmsen Ocean AS, and Wallenius Wilhelmsen Logistics Americas, LLC (the ''Respondents''). Complainant states that the Commission has jurisdiction over the amended complaint pursuant to 46 U.S.C. 41301, *et seq.* and pursuant to 46 U.S.C. 40904, 41102, and 41104 and 46 CFR 515.42.

Complainant is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business in Berwyn, Pennsylvania.

Complainant identifies Respondent Wallenius Wilhelmsen Logistics AS, n/k/a Wallenius Wilhelmsen Ocean AS (WWL Ocean) as a Norwegian corporation or other business entity with a principal place of business in Lysaker, Norway.

Complainant identifies Respondent Wallenius Wilhelmsen Logistics Americas, LLC (WWL Americas) as a corporation organized and existing under the laws of the State of Delaware with a place of business in Parsippany, New Jersey.

Complainant alleges that Respondents violated 46 U.S.C. 41102, 40501, 40904 and 46 CFR 515.42 by refusing to compensate for freight forwarding services on shipments of automobiles in accordance with the terms of the applicable tariff following demand for such compensation.

An answer to the amended complaint must be filed with the Commission within 25 days after the date of service.

The full text of the amended complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-14/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by December 13, 2024, and the final decision of the Commission shall be issued by June 27, 2025.

David Eng,

Secretary.

[FR Doc. 2024–02768 Filed 2–9–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than February 27, 2024.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Heath J. Buttery, McLean, Virginia; the Brenda Ann Buttery Durst GST Exempt Trust, Brenda Ann Buttery Durst, individually, and as trustee, the Jean Buttery Wallace GST Exempt Trust No. 2, Jean Buttery Wallace, as trustee, the John David Buttery GST Exempt Trust, John D. Buttery, individually, and as trustee, and the William Henry Buttery GST Exempt Trust, William H. Buttery, individually, as a trustee, all of Llano, Texas;* as members of the Buttery Family Group, a group acting in concert, to retain voting shares and control Hill

Country Bancshares, Inc. and indirectly retain voting shares of Llano National Bank, both of Llano, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–02807 Filed 2–9–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; State Personal Responsibility Education Program (PREP) (OMB #0970–0380)

AGENCY: Family and Youth Services Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) is requesting a 3-year extension of the State Personal Responsibility Program (PREP) state plans and performance progress report (OMB #0970–0380, expiration 12/31/2023). There are no changes requested to the state plan, but there are changes requested to the performance progress report. Changes include the addition of information related to equity activities and strategies to mitigate challenges.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The State PREP has mandatory, formula allotments for state and territories to apply. The process is for states and territories to submit and for ACYF/FYSB to collect their state plans and semi-annual performance progress reports.

Purpose and Use of the Information Collection: The state plan offers information about the proposed state project and has been and will continue to be used as the primary basis to determine whether or not the project meets the minimum requirements of the legislation for the grant award. There are no changes proposed to the state plan; FYSB is requesting to use these plans for another 3 years.

The Performance Progress Reports are collected semi-annually and inform the monitoring of the grantees' program design, program evaluation, management improvement, service quality, and compliance with agreed upon goals. ACYF/FYSB has used and will continue to use the information to ensure effective service delivery for program participants. Finally, the data from this collection will be used to report outcomes and efficiencies and will provide valuable information to policy makers and key stakeholders in the development of program and research efforts. Changes are proposed to the Performance Progress Reports and include the addition of information related to equity activities and strategies to mitigate challenges. Information on equity activities will be used to support the FYSB Equity Action Plan objectives and to inform the development of T&TA resources, as needed. The purpose of including strategies to mitigate challenges is to allow grant recipients to demonstrate how they overcome challenges. This information can be used to inform peer to peer sharing.

Respondents: All 52 states and territories that are still eligible to accept their State PREP mandatory, formula allotments for funding.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
State Plans	52	1	40	2,080
Performance Progress Reports	52	2	16	1,664

Estimated Total Annual Burden Hours: 3,744.

Authority: Section 513 of the Social Security Act (42 U.S.C. 713), as amended by section 50503 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) extended by Division CC, Title III, Section 302 of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–02749 Filed 2–9–24; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–5303]

Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination and Removal of a Foreign Manufacturer's Goods From Detention Without Physical Examination; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination (DWPE) and Removal of a Foreign Manufacturer's Goods from DWPE.'' The draft guidance, when finalized, will provide recommendations for collecting a representative sample for products subject to DWPE under an import alert

due to the appearance of adulteration caused by pathogens, unlawful animal drugs, scombrotoxin (histamine), and/or decomposition. When finalized, the draft guidance will also help foreign manufacturers and other processors of fish and fishery products subject to DWPE introduce evidence to FDA to support a request to have products removed from DWPE.

DATES: Submit either electronic or written comments on the draft guidance by April 12, 2024 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–5303 for ''Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination (DWPE) and Removal of a Foreign Manufacturer's Goods from DWPE; Draft Guidance for Industry.'' 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.'' 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.

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 Seafood Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Steven Bloodgood, Office of Food Safety (HFS–325), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5316; or Holli Kubicki, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination (DWPE) and Removal of a Foreign Manufacturer's Goods from DWPE.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

Under section 801(a)(3) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(a)(3)), an article of food imported or offered for import into the United States is subject to refusal of admission if it appears ''from the examination of such samples or otherwise'' to be adulterated. FDA issues import alerts to inform its field staff about products that appear to be in violation of FDA's laws and regulations and thus may be detained without physical examination. We may subject future shipments of fish or fishery products to DWPE when there is information that causes future shipments of a product or products to appear violative within the meaning of section 801(a) of the FD&C Act. Such information may exist based on the violative history of a product, manufacturer, shipper, grower, importer, geographic area, or country.

To carry out the provisions of section 801(a) of the FD&C Act when we detain

an article that appears violative, we provide notice to the owner or consignee of the nature of the violation and the right to present testimony regarding the admissibility of the article (21 CFR 1.94). Frequently, owners or consignees submit analytical test results based on samples taken from the article subject to DWPE as evidence demonstrating admissibility. We then determine if the testimony (analytical package, information, or other evidence) is sufficient. If the evidence is adequate to overcome the appearance of the violation(s), FDA will allow the article to proceed for entry into the United States. If the evidence is not adequate to remove the appearance of the violation(s), the entry will be refused admission into the United States.

In addition, interested parties may request that their products be removed from DWPE. FDA decisions to remove a product, manufacturer, or other entity from DWPE are based on evidence establishing that the conditions that gave rise to the appearance of a violation have been resolved and we have confidence that future shipments of the product to the United States will be in compliance with the FD&C Act. FDA may consider analytical results from successful consecutive tests as part of the evidence to support removal from DWPE.

The draft guidance, when finalized, will provide recommendations for collecting a representative sample for products subject to DWPE under an import alert due to the appearance of adulteration caused by pathogens, unlawful animal drugs, scombrotoxin (histamine), and/or decomposition. When finalized, the draft guidance will also help foreign manufacturers and other processors of fish and fishery products subject to DWPE introduce evidence to FDA to support a request to have products removed from DWPE.

The recommendations in the draft guidance include sample sizes based on a critical nonconformities sampling strategy. Using this statistical sampling equation, the amount of sampling recommended can be structured commensurate with the level of concern, and risk to consumers, associated with the type of adulteration to be addressed. For more information, see ''Derivation of Sampling Recommendations Related to Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination (DWPE) and Removal of a Foreign Manufacturer's Goods from DWPE; Guidance for Industry'' (Ref. 1). As the draft guidance makes clear, persons may propose alternative sampling plans and explain the basis for such alternatives.

We note that the draft guidance refers to the final rule entitled ''Laboratory Accreditation for Analyses of Foods'' (LAAF Rule, which is codified at 21 CFR part 1, subpart R). FDA is taking a stepwise approach to implementing the LAAF Rule based, in part, on reaching sufficient LAAF-accredited laboratory capacity for food testing (see 86 FR 68728 at 68739 and 68740, December 3, 2021). FDA may publish one or more documents in the **Federal Register** giving owners and consignees 6 months' notice before requiring them to use a LAAF-accredited laboratory for food testing covered by the rule (id.). We will monitor LAAF Rule implementation and update any final guidance based on this draft guidance accordingly.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 1, subpart R have been approved under OMB control number 0910–0898.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/FoodGuidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

IV. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.*

1. FDA, ''Derivation of Sampling Recommendations Related to Recommendations for Collecting Representative Samples for Food Testing Used as Evidence for Release of Certain Fish and Fishery Products Subject to Detention Without Physical Examination (DWPE) and Removal of a Foreign Manufacturer's Goods from DWPE; Guidance for Industry.''

Dated: February 7, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02838 Filed 2–9–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4974]

Advanced Manufacturing Technologies Designation Program; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability entitled ''Advanced Manufacturing Technologies Designation Program; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request'' that appeared in the **Federal Register** of December 13, 2023. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the document published on December 13, 2023 (88 FR 86333). Either electronic or written comments must be submitted by March 13, 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 13, 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–D–4974 for ''Advanced Manufacturing Technologies Designation Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

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; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. 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: Ranjani Prabhakara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6648, Silver Spring, MD 20993, 240–402–4652; 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.

With regard to the proposed collection of information: 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:

I. Background

In the **Federal Register** of December 13, 2023, FDA published a notice of availability with a 60-day comment period to provide comments on the draft guidance entitled ''Advanced Manufacturing Technologies Designation Program'' and its proposed collection of information. FDA has received requests to extend the comment period to allow sufficient time to develop and submit meaningful comments. FDA has considered the requests and is extending the comment period for 30 days, until March 13, 2024. The Agency believes that this extension allows adequate time for interested persons to submit comments.

II. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: February 7, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02836 Filed 2–9–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0119]

Fiscal Year 2024 Generic Drug Science and Research Initiatives Workshop; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''FY 2024 Generic Drug Science and Research Initiatives Workshop.'' The purpose of the public workshop is to provide an overview of the status of science and research initiatives for generic drugs and an opportunity for public input on these initiatives. FDA is seeking this input from a variety of stakeholders—

industry, academia, patient advocates, professional societies, and other interested parties—as it fulfills its commitment under the Generic Drug User Fee Amendments of 2022 (GDUFA III) to develop an annual list of science and research initiatives specific to generic drugs. FDA will take the information it obtains from the public workshop into account in developing its fiscal year (FY) 2025 Generic Drug User Fee Amendments (GDUFA) science and research initiatives.

DATES: The public workshop will be held on May 20 and 21, 2024. Either electronic or written comments on this public workshop must be submitted by June 21, 2024. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held in person and will be accessible virtually. Registrants will have an opportunity to indicate their interest in attending the public workshop in person. If there are restrictions imposed by applicable health guidelines for in-person gatherings, or seating capacity limitations, registrants interested in attending the public workshop in person will be contacted. The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503, sections B and C), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/visitor-information.*

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 June 21, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–0119 for ''FY 2024 Generic Drug Science and Research Initiatives Workshop; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Sam Raney, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4732, Silver Spring, MD 20993, 240–402–7967, *Sameersingh.Raney@fda.hhs.gov;* or Robert Lionberger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4722, Silver Spring, MD 20993, 240–402–7957, *Robert.Lionberger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2012, Congress passed the Generic Drug User Fee Amendments of 2012 (GDUFA I) (Pub. L. 112–144). GDUFA I was designed to enhance public access to safe, high-quality generic drugs and to modernize the generic drug program. To support this goal, FDA agreed in the Generic Drug User Fee Act Program Performance Goals and Procedures (GDUFA I commitment letter) to work with industry and interested stakeholders on identifying science and research initiatives specific to generic drugs for each fiscal year covered by GDUFA I.

In August 2017, GDUFA was reauthorized until September 2022 through the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Pub. L. 115–52), and in September 2022, GDUFA was reauthorized until September 2027 through the Generic Drug User Fee Amendments of 2022 (GDUFA III) (Pub. L. 117–180, 136 Stat. 2155). In the GDUFA Reauthorization

Performance Goals and Program Enhancements Fiscal Years 2023–2027 (GDUFA III commitment letter),[1] FDA agreed to conduct annual public workshops ''to solicit input from industry and stakeholders for inclusion in an annual list of GDUFA III regulatory science initiatives.'' This public workshop scheduled for May 20 and 21, 2024, seeks to fulfill this agreement.

II. Topics for Discussion at the Public Workshop

The purpose of this public workshop is to obtain input from industry and other interested stakeholders on identifying generic drug science and research initiatives for FY 2025. FDA is interested in receiving input about regulatory science initiatives for the ongoing years of the GDUFA III science and research program, and particularly for FY 2025.

Topics discussed during the workshop will focus on research that is needed to address scientific knowledge gaps and associated challenges impacting the development and regulatory assessment of generic products, including complex generics. As examples, topics discussed will likely relate to nitrosamine drug substance-related impurities, drug-device combination products, predictive tools to improve the efficiency of generic product development, and other topics that can enhance public access to high quality, safe and effective generic products. Specific presentations and discussions at this workshop will be announced at a later date and may differ from the topics above. Input about the topics above will help the Agency identify and expand its scientific focus for the next fiscal year.

FDA will consider all comments made at this workshop or received through the docket (see **ADDRESSES**) as it develops its FY 2025 science and research initiatives. Information concerning the science and research initiatives for generic drugs can be found on the Science & Research website at *https://www.fda.gov/drugs/generic-drugs/science-research.*

III. Participating in the Public Workshop

Registration: Registration is free. Persons interested in attending this public workshop must register online at *https://fda.zoomgov.com/webinar/register/WN_qwJcEJcWQeeglLeZMD2MCg.* Registration may be performed at any time before or during the workshop.

If you need special accommodations due to a disability, please contact FDA via email at *GDUFARegulatoryScience@fda.hhs.gov* no later than 11:59 p.m. eastern time on May 10, 2024.

Requests for Oral Presentations: During online registration you may indicate if you wish to present your public comments. Requests to provide public comments via a pre-recorded presentation or a live presentation, including in-person or virtual presentations, should be submitted via email to *GDUFARegulatoryScience@fda.hhs.gov* by 11:59 p.m. Eastern Time on March 8, 2024. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the workshop. Based upon the public comment presentation requests received by March 8, 2024, at 11:59 p.m. eastern time, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin; we will select and notify participants by April 1, 2024. If selected for presentation, any presentation materials must be emailed to *GDUFA RegulatoryScience@fda.hhs.gov* no later than May 10, 2024, 11:59 p.m. eastern time. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will be webcast. Please register online (as described above) to attend the workshop remotely (virtually). Registrants will receive a hyperlink that provides access to the webcast on both days. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

Transcripts: Please be advised that as soon as a video recording and audio transcript of the public workshop are available, they will be accessible at *https://www.regulations.gov* or via the Science & Research FDA website accessible at *https://www.fda.gov/drugs/generic-drugs/science-research.* They may also be available for viewing at the Dockets Management Staff (see **ADDRESSES**).

Dated: February 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–02841 Filed 2–9–24; 8:45 am]

BILLING CODE 4164–01–P

[1] The GDUFA III commitment letter is available at *https://www.fda.gov/media/153631/download.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0945–0005]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before April 12, 2024.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov, PRA@hhs.gov,* or by calling (202) 264–0041.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0945–0005 and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@hhs.gov,* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HIPAA Audit Review Survey.

Type of Collection: Reinstatement, with Change, of a Previously Approved Collection OMB No. 0945–0005: Office for Civil Rights (OCR)—Health Information Privacy Division.

Abstract: This information collection consists of 39 online survey questions that will be sent to 207 covered entities and business associates that participated in the 2016–2017 OCR HIPAA Audits. The survey will gather information relating to the effect of the audits on the audited entities and the entities' opinions about the audit process.

OCR is conducting a review of the 2016–2017 HIPAA Audits to determine its efficacy in assessing the HIPAA compliance efforts of covered entities.

As part of that review, the online survey will be used to:

Measure the effect of the 2016–2017 HIPAA Audits on covered entities' and business associates' subsequent actions to comply with the HIPAA Rules.

Provide entities with an opportunity to give feedback on the Audit and its features, such as the helpfulness of HHS' guidance materials and communications, the utility of the online submission portal, whether the Audit helped improve entity compliance, and the entities' responses to the Audit-report findings and recommendations.

Provide OCR with information on the burden imposed on entities to collect audit-related documents and to respond to audit-related requests; and

Seek feedback on the effect of the HIPAA Audit program on the entities' day-to-day business operations.

The information, opinions, and comments collected using the online survey will be used to improve future OCR HIPAA Audits.

ANNUALIZED BURDEN HOUR TABLE

Form name	Respondents	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
OCR HIPAA Audit Participant Survey.	Covered Entity Privacy and Security Officer(s) or Administrators.	166	1	45/60	124.5
OCR HIPAA Audit Participant Survey.	Business Associate Privacy and Security Officer(s) or Administrators.	41	1	45/60	30.75
Total		207			155.25

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2024–02737 Filed 2–9–24; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Maximizing Investigators' Research Award—E Study Section, March 05, 2024, 8 a.m. to March 6, 2024, 6 p.m., Center for Scientific Review, RKL2, 6701 Rockledge Dr, Bethesda, MD, 20817 which was published in the **Federal Register** on February 06, 2024, 89 FR 8218, Doc 2024–02265.

This meeting is being amended to change the meeting start time from 8 a.m. to 9 a.m. The meeting is closed to the public.

Dated: February 6, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02775 Filed 2–9–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Investigator Initiated Extended Clinical Trial (R01 Clinical Trial Required).

Date: March 8, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Lindsey M. Pujanandez, Ph.D., Scientific Review Officer, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852, (240) 627–3206, *lindsey.pujanandez@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 6, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02773 Filed 2–9–24; 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; URGenT: Translational Efforts to Advance Gene-based Therapies for Ultra-Rare Neurological and Neuromuscular Disorders.

Date: February 27, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, HHS NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–5720, *mirela.milescu@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 6, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–02774 Filed 2–9–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Extension and Modification of the National Customs Automation Program Test Concerning the Submission Through the Automated Commercial Environment of Certain Unique Entity Identifiers for the Global Business Identifier Evaluative Proof of Concept

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

ACTION: General notice.

SUMMARY: On July 21, 2023, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** extending and modifying a National Customs Automation Program Test concerning the submission of unique entity identifiers for the Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC). This document republishes and supersedes the notice published on July 21, 2023, announces an extension of the test period through February 23, 2027, notes a clarification in the purpose and scope of the GBI EPoC, and removes commodity and country of origin limitations on the entries eligible for the test. In addition, this document makes changes to the contact information for questions regarding the test, provides new web addresses dedicated to obtaining GBIs, and makes minor technical changes.

DATES: The GBI EPoC commenced on December 19, 2022, and will continue through February 23, 2027, subject to any extension, modification, or early termination as announced in the **Federal Register**. CBP began to accept requests from importers of record and licensed customs brokers to participate in the test on December 2, 2022, and CBP will continue to accept such requests until the GBI EPoC concludes. Public comments on the test are invited and may be submitted to the address set forth below, at any time during the test period.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Garrett Wright, Director, Trade Modernization Division, Trade Policy and Programs Directorate, Office of Trade, U.S. Customs and Border Protection, at (202) 897–9877 or via email at *GBI@cbp.dhs.gov,* with a subject line reading ''Global Business Identifier Test-GBI.'' For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, software vendors, importers of record, and licensed customs brokers should contact their assigned ACE or ABI client representatives, respectively. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro, Client Services Division, Office of Trade, U.S. Customs and Border Protection, at (571) 358–7809 or via email at *clientrepoutreach@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 2, 2022, U.S. Customs and Border Protection (CBP) published a General Notice (the December 2 Notice) in the **Federal Register** (87 FR 74157) announcing a National Customs Automation Program (NCAP) Test concerning the submission through the Automated Commercial Environment (ACE) of certain unique entity identifiers for the Global Business Identifier (GBI) Evaluative Proof of Concept (EPoC). On July 21, 2023, CBP published a General Notice (the July 21 Notice) in the **Federal Register** (88 FR 47154) extending and modifying the December 2 Notice. Specifically, the July 21 Notice extended the test period from July 21, 2023, through February 14, 2024; provided the correct web address for interested parties to use to obtain the Legal Entity Identifier (LEI) from the Global Legal Entity Identifier Foundation (GLEIF); and clarified that CBP would allow participants to provide one or more of the three identifiers for the manufacturers, shippers, and sellers (and optionally, exporters, distributors, and packagers) of merchandise, and that CBP would not require transmission of all three identifiers to participate in the test. This document republishes and supersedes the July 21 Notice, with the following modifications.

First, the test period has been extended from February 14, 2024, through February 23, 2027. Second, CBP made changes to Sections I.B. (Global Business Identifier Evaluative Proof of Concept (GBI EPoC)) and VI. (Evaluation Criteria) to clarify the purpose and scope of the test. CBP will continue to assess the functionality and effectiveness of universal global business identifiers to address data gaps caused by the unreliability of the manufacturer or shipper identification code (MID), in addition to exploring opportunities to enhance supply chain traceability and visibility more broadly—including examining how CBP, Partner Government Agencies (PGAs), and the trade industry might leverage GBIs to comply with growing supply chain traceability requirements.

Third, CBP has expanded the GBI EPoC to include entries of merchandise classifiable in any subheading of the Harmonized Tariff Schedule of the United States (HTSUS) and entries of imported merchandise from any country of origin. When CBP initially launched the GBI EPoC, the test was limited to entries of merchandise in five (5) categories (alcohol, toys, seafood, personal items, and medical devices), and to merchandise with 10 countries of origin (Australia, Canada, China, France, Italy, Mexico, New Zealand, Singapore, United Kingdom, and Vietnam). These requirements significantly limited the range of entries that could be evaluated under the test. As a result, CBP is removing these test limitations. It is important to note that the test continues to be limited to type 01 (formal) and type 11 (informal) entries.

Fourth, as noted in the **FOR FURTHER INFORMATION CONTACT** section above, the office responsible for the GBI EPoC has changed (it is no longer the Interagency Collaboration Division, Trade Policy and Programs Directorate, Office of Trade, but is now the Trade Modernization Division, Trade Policy and Programs Directorate, Office of Trade), and the point of contact for interested parties without an assigned client representative who have technical questions has changed. Fifth, GS1 and Dun & Bradstreet have created specific web pages dedicated to the GBI EPoC for obtaining a GBI; Section III.A. (Obtaining Global Business Identifier (GBI) Numbers) has been updated to include the new web addresses for the

dedicated GBI web pages. Lastly, CBP has made minor technical changes to Sections V. (Paperwork Reduction Act) and VI. (Evaluation Criteria).

For ease of reference, the July 21 Notice is republished below, with the changes described above.

I. Background

A. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through the NCAP, the thrust of customs modernization was focused on informed trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing, intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while facilitating compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality, which update the system and add new functionality.

Sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414), as amended, define and list the existing and planned components of the NCAP (Section 411), promulgate program goals (Section 412), provide for the implementation and evaluation of the program (Section 413), and provide for Remote Location Filing (Section 414). Section 411(a)(1)(A) lists the electronic entry of merchandise, Section 411(a)(1)(B) lists the electronic entry summary of required information, and Section 411(a)(1)(D) lists the electronic transmission of manifest information, as existing NCAP components. Section 411(d)(2)(A) provides for the periodic review of data elements collected in order to update the standard set of data elements, as necessary.

B. Global Business Identifier Evaluative Proof of Concept (GBI EPoC)

ACE is the system through which the U.S. Government has implemented the ''Single Window,'' the primary system for processing trade-related import and export data required by the PGAs that work alongside CBP in regulating specific commodities. The transition away from paper-based procedures has resulted in faster, more streamlined processes for both the U.S. Government and industry. To continue this progress, CBP began working with the Border Interagency Executive Council (BIEC) and the Commercial Customs Operations Advisory Committee (COAC), starting in 2017, to discuss the continuing viability of the data element known as MID.

Currently, importers of record provide the MID at the time of filing of the entry summary. *See generally* 19 CFR part 142. The 13-digit MID is derived from the name and address of the manufacturer or shipper, as specified on the commercial invoice, by applying a code constructed pursuant to instructions specified by CBP. *See* Customs Directive No. 3550–055, dated November 24, 1986 (available online at *https://www.cbp.gov/sites/default/files/documents/3550-055_3.pdf*). Although use of the MID has served CBP and the international trade community well in the past, it has become apparent that the MID is not always a consistent or unique number. For example, the MID is based upon the manufacturer or shipper name, address, and country of origin, and this data can change over time and/or result in the same MID for multiple entities. Also, while the MID provides limited identifying information, other global unique identifiers capture a broader swath of pertinent information regarding the entities with which they are associated (*e.g.,* legal ownership of businesses, specific business and global locations, and supply chain roles and functions). Changes in international trade and technology for tracking the flow of commodities have presented an opportunity for CBP and PGAs to explore new processes and procedures for identifying the parties involved in the supply chains of imported goods.

CBP has thus engaged in regular outreach with stakeholders, including, but not limited to, importers of record, licensed customs brokers, trade associations, and PGAs, with a goal of obtaining meaningful feedback on their existing systems and operations in order to establish a mutually beneficial global entity identifier system. As a result of these discussions, CBP developed the Global Business Identifier Evaluative Proof of Concept (GBI EPoC), which is an interagency trade transformation project that aims to test global business identifiers as a supply chain traceability solution, for industry and the U.S. Government alike. The GBI EPoC seeks to amplify the U.S. Government's visibility into the supply chain of goods entering the U.S. and explore opportunities for CBP and PGAs to leverage verifiable information regarding parties in the supply chain to improve risk assessment and admissibility decisions.

For purposes of the GBI EPoC, ACE has been modified to permit test participants to provide the following entity identifiers (GBIs) associated with manufacturers, shippers, and sellers of merchandise covered by entries that meet the GBI EPoC criteria: nine (9)-digit Data Universal Numbering System (D–U–N–S®), thirteen (13)-digit Global Location Number (GLN), and/or twenty (20)-digit Legal Entity Identifier (LEI). The GBIs will be provided in addition to other required entry data (which may include the MID); any GBIs associated with the importer of record itself need not be provided as part of this test. The GBIs associated with the manufacturers, shippers and sellers will be provided with the CBP Form 3461 (Entry/Immediate Delivery) data transmission via the Automated Broker Interface (ABI) in ACE for formal entries for consumption (''entry type 01'' in ACE) and informal entries (''entry type 11'' in ACE). CBP will then access the underlying data (GBI data) associated with the D–U–N–S®, GLN, and LEI, as set forth in the agreements that CBP has entered into with Dun & Bradstreet (D&B), GS1, and the Global Legal Entity Identifier Foundation (GLEIF), respectively, in order to connect a specific entry and merchandise to a more complete picture of those entities' ownership, structure, and affiliations, among other information. D&B, GS1, and GLEIF are collectively referred to as the identity management companies (IMCs).

Through the GBI EPoC, CBP aims to leverage existing entity identifiers—the D–U–N–S®, GLN, and LEI—to develop a systematic, accurate, and efficient method for the trade to report, and the U.S. Government to uniquely identify, legal business entities, their different business locations and addresses, and their various functions and supply chain roles. CBP will consider whether these three GBIs, singly, or in concert, ensure that CBP and PGAs receive standardized trade data in a universally compatible trade language. Moreover, CBP will examine whether the GBIs

submitted to CBP can be easily verified, thus reducing uncertainties that may be associated with the information related to shipments of imported merchandise. CBP will also consider whether the GBI EPoC may ultimately prove to be a more far-reaching, interagency initiative, one that keeps with the vision and actualized promise of the ''Single Window,'' by providing better visibility into the supply chain for CBP and PGAs, thereby further reducing paper processing, expediting cargo release, and enhancing the traceability of supply chains.

II. Authorization for the Test

The Customs Modernization Act authorizes the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The GBI EPoC is authorized pursuant to 19 CFR 101.9(b), which provides for the testing of NCAP programs or procedures. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995).

III. Conditions for the Test

The test is voluntary, and importers of record and licensed customs brokers who wish to participate in the test must comply with all of the conditions set forth below. The full effect of access to additional entity-related data based on submission of the GBIs will be a key evaluation metric of the test.

Participation in the test will provide test participants with the opportunity to test and give feedback to CBP on the GBI EPoC design and scope. Participation may also enable test participants to establish and test their digital fingerprints, such as more accurately identifying certain parties involved in their supply chains. In addition, participation may allow the trade community to better manage and validate their data and streamline their import data collection processes. Lastly, test participation may allow for the wider application of entity identifiers that are currently providing broad sector coverage and enhanced data analysis.

A. Obtaining Global Business Identifier (GBI) Numbers

Importers of record and licensed customs brokers who are interested in participating in the test must arrange to obtain any combination of the required D–U–N–S®, GLN, and/or LEI entity identifiers (the GBIs) from the manufacturers, shippers, and sellers of merchandise that are intended to be covered by future entries that will meet the conditions of the test (commodity + country of origin). For purposes of providing the information required for the test, the parties are defined as follows for each covered entry:

- Manufacturer (or supplier)—The party that last manufactures, assembles, produces, or grows the goods or the party supplying the finished goods in the country from which the goods are leaving for the United States.
- Shipper—The party that enters into a contract for carriage with, and arranges for delivery of the goods to, a carrier or transport intermediary for transportation to the United States.
- Seller—The last known party by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the owner of the goods must be provided.

Optionally, test participants may also arrange to obtain the GBIs for exporters, distributors, and packagers that will be associated with these future entries and provide them to CBP on qualifying entries covered by this test.

A party may obtain its own GBI by contacting Dun and Bradstreet (D&B) at *https://support.dnb.com/?cust=CustomsBorderProtection,* regarding the D–U–N–S®; GS1 at *https://www.gs1us.org/industries-and-insights/by-industry/government-and-public-sector/gs1-us-and-customs-and-border-protection,* regarding the GLN; and the Global Legal Entity Identifier Foundation (GLEIF) at *https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations,* regarding the LEI.

Once the manufacturers, shippers, and sellers (and, optionally, the exporters, distributors, and packagers) have obtained their own GBIs (the D–U–N–S®, GLN, and LEI), these parties should provide the resulting GBIs to the relevant importer of record or licensed customs broker participating in the test. If these parties experience any difficulty with obtaining any of the GBIs, the importer of record or licensed customs broker seeking to participate in the test should reach out to CBP by email at *GBI@cbp.dhs.gov.* The test participant is not required to obtain or submit GBIs pertaining to its own entity.

Importers of record and licensed customs brokers are reminded that they are responsible for obtaining any necessary permissions with respect to providing to CBP the GBIs for manufacturers, shippers, and sellers (and, optionally, for exporters, distributors, and packagers) in the supply chains of the imported merchandise for which they file the specified types of entries subject to the conditions of the test. Therefore, prior to submitting their request to participate in the test to CBP, as discussed below, importers of record and licensed customs brokers should consult with the applicable parties to ensure that these parties are willing to grant any necessary permissions to share their GBIs (which will also result in CBP's access to the underlying GBI data associated with those GBIs, as described above) with CBP under the auspices of the test.

B. Submission of Request To Participate in the GBI EPoC

The test is open to all importers of record and licensed customs brokers provided that these parties have requested permission and are approved by CBP to participate in the test. Importers of record and licensed customs brokers seeking to participate in the test should email the GBI Inbox (*GBI@cbp.dhs.gov*) with the subject heading ''Request to Participate in the GBI EPoC.'' As part of their request to participate, importers of record and licensed customs brokers must agree to provide available GBIs with entry filings for merchandise that is subject to the conditions of the test and state that they intend to participate in the test. The request must include the potential participant's filer code and evidence that it has obtained at least one of the three identifiers (D–U–N–S®, GLN, and LEI), or is in the process of obtaining an identifier, from the manufacturers, shippers, and sellers (and, optionally, exporters, distributors, and packagers) of merchandise to be entered pursuant to the test.

Test participants who are importers of record and do not self-file must advise CBP in their request that they have authorized their licensed customs broker(s) to file qualifying entries under the test on their behalf. Test participants who are licensed customs brokers must advise CBP that they have been authorized to file qualifying entries on behalf of importers of record whose shipments meet the test criteria as set forth below.

CBP began accepting requests to participate in the test on December 2, 2022, and will continue to accept them until the test concludes. Anyone providing incomplete information, or otherwise not meeting the test requirements, will be notified by email, and given the opportunity to resubmit the request to participate in the test.

C. Approval of GBI EPoC Participants

A party who wishes to participate in this test is eligible to do so as long as it is an importer of record or licensed customs broker who files type 01 (formal) or type 11 (informal) entries of merchandise, and that party obtains the

required GBIs from its supply chain partners. After receipt of a request to participate in the test, CBP will notify, by email, the importers of record and licensed customs brokers who are approved for participation and inform them of the starting date of their participation (noting that test participants may have different starting dates). Test participants must provide the GBIs they have received to CBP prior to the starting date of their participation (participants will also provide the GBIs to CBP again with each qualified entry filing meeting the requirements of the test). Test participants are considered to be bound by the terms and conditions of this notice and any subsequent modifications published in the **Federal Register**.

D. Criteria for Qualifying Entries

1. Commodities Subject to the GBI EPoC

The test will be limited to type 01 and type 11 entries, but is open to merchandise classifiable in any subheading of the HTSUS. Test participants are encouraged to submit GBIs with all qualified entry filings that meet the conditions of the test so that CBP has a fulsome data set to evaluate; however, entries will not be rejected if GBIs are not submitted.

2. Countries of Origin Subject to the GBI EPoC

The test is open to merchandise from any country of origin.

E. Filing Entries With GBIs (Via ABI in ACE)

Test participants must coordinate with their software vendors or technical teams to ensure that their electronic systems are capable of transmitting the D–U–N–S®, GLN, and LEI entity identifiers to CBP. During this test, CBP will only accept electronic submissions of GBIs via ABI in ACE with CBP Form 3461 (Entry/Immediate Delivery) filings for type 01 and type 11 entries. Upon selection to participate in the test, the test participants will be provided with technical information and guidance regarding the transmission of the GBIs to CBP with the CBP Form 3461 filings. The assigned ABI client representatives of the test participants will provide additional technical support, as needed.

F. CBP Access to Underlying GBI Data Associated With GBIs

As part of the test, CBP has entered into agreements with D&B, GS1, and GLEIF (the IMCs) for limited access to the underlying data (GBI data) that is associated with the GBIs for the duration of the test and for testing of CBP's automated systems.[1] The data elements for which CBP has entered into agreements with D&B, GS1, and GLEIF may include, but are not limited to: (1) entity identifier numbers, (2) official business titles; (3) names; (4) addresses; (5) financial data; (6) trade names; (7) payment history; (8) economic status; and (9) executive names. The data elements will be examined as part of the test.

Consistent with the agreements, CBP may access GBI data, combine it with CBP data, and evaluate the GBIs that the test participants provide with an entry filing. The GBI data will assist CBP and PGAs in determining the optimal combination of the three entity identifiers (the GBIs) that will provide the U.S. Government with sufficient entity data needed to support identification, monitoring, and enforcement procedures to better equip the U.S. Government to focus on high-risk shipments and bad actors.

CBP will process entries submitted pursuant to the test by analyzing the GBIs submitted via ABI in ACE and ensuring that the GBIs are submitted correctly. CBP will then evaluate the submitted entries to assess the ease and cost of obtaining each of the GBIs, evaluating each GBI to ensure that it is being submitted properly per the technical requirements that will be set forth in CBP and Trade Automated Interface Requirements (CATAIR), and ensuring that CBP is able to validate that each GBI is accurate using the underlying GBI data from the IMCs or otherwise known to CBP.

G. Partner Government Agencies (PGAs)

PGAs are important to the success of the test. Certain PGAs, which may receive GBIs and GBI data and are intended as core test beneficiaries, may use the GBIs and GBI data to improve risk management and import compliance. This may result in smarter, more efficient, and more effective compliance efforts. CBP will announce the PGAs who will receive GBIs and GBI data pursuant to the test in a notice to be published in the **Federal Register** at a later date.

H. Duration of Test

The test began on December 19, 2022, and will run through February 23, 2027, subject to any extensions, modifications or early termination as announced by way of a notice to be published in the **Federal Register**.

I. Misconduct Under the Test

Misconduct under the test may include, but is not limited to, submitting false GBIs with an entry filing. Currently, CBP does not plan to assess penalties against GBI EPoC participants that fail to timely and accurately submit GBIs during the test. CBP also does not anticipate shipment delays due to the failure to file or the erroneous filing of GBIs. However, test participants are expected to follow all other applicable regulations and requirements associated with the entry process.

After an initial six-month period (or at such earlier time as CBP deems appropriate), a test participant may be subject to discontinuance from participation in this test for any of the following repeated actions:

- Failure to follow the terms and conditions of this test;
- Failure to exercise due diligence in the execution of participant obligations;
- Failure to abide by applicable laws and regulations that have not been waived; or
- Failure to deposit duties or fees in a timely manner.

If the Director, Trade Modernization Division (TMOD), Trade Policy and Programs (TPP), Office of Trade (OT), finds that there is a basis to discontinue a participant's participation in the test, then CBP will provide written notice, via email, proposing the discontinuance with a description of the facts or conduct supporting the proposal. The test participant will be offered the opportunity to respond to the Director's proposal in writing within 10 business days of the date of the written notice. The response must be forwarded to the TMOD Director, TPP, OT, by emailing *GBI@cbp.dhs.gov,* with a subject line reading ''Appeal—GBI Discontinuance.''

The Director, TMOD, will issue a final decision in writing on the proposed action within 30 business days after receiving a timely-filed response from the test participant, unless such time is extended for good cause. If no timely response is received, the proposed notice becomes the final decision of CBP as of the date that the response period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the response process under this paragraph has been concluded with a written decision that is adverse to the test participant, which will be provided via email.

[1] As noted above, D&B, GS1, and GLEIF are IMCs. The GBI data consists of data provided by the relevant entity to the IMCs in order to generate a GBI—the D–U–N–S®, GLN, or LEI. GBIs allow CBP to link the underlying GBI data to specific entities and entries.

J. Confidentiality

Data submitted and entered into ACE may include confidential commercial or financial information which may be protected under the Trade Secrets Act (18 U.S.C. 1905), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a). However, as stated in previous notices, participation in this or any of the previous ACE tests is not confidential and, therefore, upon receipt of a written Freedom of Information Act request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

IV. Comments on the Test

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program. Comments should be submitted via email to *GBI@cbp.dhs.gov,* with the subject line reading ''Comments/Questions on GBI EPoC.''

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

The collection of GBI information gathered under this test has been approved by OMB in accordance with the requirements of the PRA under OMB control number 1651–0141. In addition, the Entry/Immediate Delivery Application and ACE Cargo Release (CBP Form 3461 and 3461 ALT) collection of information, which collects the GBI when entry is made, has been approved by OMB under OMB control number 1651–0024.

VI. Evaluation Criteria

The test is intended to evaluate the feasibility of utilizing GBIs to address data gaps caused by the unreliability of the MID, in addition to exploring opportunities to enhance supply chain traceability and visibility more broadly—including examining how CBP, PGAs, and the trade industry might leverage GBIs to comply with growing supply chain traceability requirements. This will involve exploring the use of GBIs to accurately identify legal business entities, their different business locations and addresses, as well as their various functions and supply chain roles, based upon information derived from the unique D–U–N–S®, GLN, and LEI entity identifiers. The test will assist CBP in enforcing applicable laws and protecting the revenue, while fulfilling trade modernization efforts by assisting the agency in verifying the roles, functions and responsibilities that various entities play in a given participant's importation of merchandise. CBP's evaluation of the test, including the review of any comments submitted to CBP during the duration of the test, will be ongoing with a view to possible extension or expansion of the test.

CBP will evaluate whether the test: (1) improves foreign entity data for trade facilitation, enforcement, risk management, and statistical integrity; (2) ensures U.S. Government access to foreign entity data; (3) institutionalizes a global, managed identification system; (4) implements a cost-effective solution; (5) obtains stakeholder buy-in; and (6) facilitates legal compliance across the U.S. Government. At the conclusion of the test, an evaluation will be conducted to assess the efficacy of the information received throughout the course of the test. The final results of the evaluation will be published in the **Federal Register** as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

Should the GBI EPoC be successful and ultimately be codified under the CBP regulations, CBP anticipates that this data would greatly enhance ongoing trade entity identification and resolution, reduce risk, and improve compliance operations. CBP would also anticipate greater supply chain visibility and additional information with which to verify and validate information on legal entities, which will support better decision-making during customs clearance processes.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2024–02788 Filed 2–9–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0003]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice; correction.

SUMMARY: On January 19, 2024, FEMA published in the **Federal Register** a notice describing the fiscal year (FY) 2023 Assistance to Firefighters Grant (AFG) program application process, deadlines, and award selection criteria pursuant to the Federal Fire Prevention and Control Act of 1974, as amended. This notice explained the differences, if any, between these guidelines and those recommended by representatives of the national fire service leadership during the annual meeting of the Criteria Development Panel (CDP), which was held July 18–19, 2023. This notice also announced the application period for the FY 2023 AFG Program, which is Jan. 29, 2024–March 8, 2024, and was also announced on the FEMA AFG Program website at *https://www.fema.gov/grants/preparedness/firefighters,* as well as at *https://www.grants.gov.* This notice provides a correction to this information to be used in lieu of the information published January 19, 2024.

DATES: This correction is effective February 12, 2024.

ADDRESSES: DHS/FEMA/GPD, Assistance to Firefighters Grants Branch, 400 C St. SW, 3N, FEMA Headquarters, Washington, DC 20472–3635.

FOR FURTHER INFORMATION CONTACT: Paul Parsons, Chief, Assistance to Firefighters Grants Branch, 1–866–274–0960 or *FireGrants@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 19, 2024, in FR Doc. 2024–00998, on page 3677, in the third column, in the bulleted paragraph entitled ''Micro grants,'' under the section ''Congressional Appropriations,'' ''$50,000'' is corrected to read

''$75,000'' in both instances where mentioned.

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–02839 Filed 2–9–24; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500176946]

Public Meeting of the Northwest District Resource Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Northwest Resource Advisory Council (RAC) is announcing its 2024 winter meeting.

DATES: The Northwest RAC will meet in-person on February 28, 2024, from 10 a.m. to 4 p.m. Mountain Time (MT). The meeting is open to the public.

ADDRESSES: The meeting will be held at the BLM's Little Snake Field Office, 455 Emerson St., Craig, CO 81625. A virtual participation option will be offered through the Zoom platform. Registration for the virtual meeting will be available on the RAC's web page 30 days in advance of the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/colorado/northwest-rac.*

FOR FURTHER INFORMATION CONTACT: JD Emerson, Public Affairs Specialist; BLM Northwest District Office, 455 Emerson St., Craig, CO, 81625; telephone: (970) 826–5101; email: *jemerson@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services for contacting JD Emerson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member Northwest RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in the Northwest District, which includes the Kremmling, Little Snake, and White River Field Offices; and the Upper Colorado River Valley District, which includes the Grand Junction and Colorado River Valley Field Offices along with the Dominguez-Escalante and McInnis Canyons National Conservation Areas. Agenda items include field manager updates, discussions on orphaned wells, planning updates, and a presentation by Colorado Parks and Wildlife on sage grouse.

A public comment period is scheduled for 3 p.m. MT. Comments may be limited due to time constraints. The public may present written comments to the Northwest RAC at least 2 weeks in advance to the meeting to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include ''RAC Comment'' in your submission. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please make requests in advance for sign-language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed meeting minutes for the RAC meetings will be maintained in the Northwest District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Previous minutes and agendas are also available on the RAC's web page listed in the **ADDRESSES** section of this notice.

(Authority: 43 CFR 1784.4–2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2024–02762 Filed 2–9–24; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520; OMB Control Number 1029–0061]

Submission to the Office of Management and Budget for Review and Approval; Permanent Regulatory Program—Small Operator Assistance Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 12, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0061 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the

public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection requirement is needed to provide assistance to qualified small mine operators under 30 U.S.C. 1257. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Title of Collection: Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

Form Number: FS–6.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and state governments.

Total Estimated Number of Annual Respondents: 4.

Total Estimated Number of Annual Responses: 4.

Estimated Completion Time per Response: Varies from 1 hours to 70 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 93.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2024–02803 Filed 2–9–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520; OMB Control Number 1029–0036]

Submission to the Office of Management and Budget for Review and Approval; Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 12, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0036 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of 30 U.S.C. 1201 *et seq.* require applicants to submit operation and reclamation plans for coal mining activities. This information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Title of Collection: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0036.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State governments and businesses.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 3,091.

Estimated Completion Time per Response: Varies from 2 hours to 160 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 96,158.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $791,900.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2024–02802 Filed 2–9–24; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 5, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Massachusetts in *United States and Commonwealth of Massachusetts* v. *City of Lowell, Massachusetts,* 1:24–cv–10290 (D. Mass.).

The United States filed a complaint for injunctive relief and civil penalties under sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), against Defendant, City of Lowell for: (1) unpermitted and illegal discharges from its wastewater collection system, without authorization under a National Pollutant Discharge Elimination System (''NPDES'') permit and in violation of section 301 of the Clean Water Act, 33 U.S.C. 1311; and (2) unpermitted and illegal discharges of pollutants from its Small Municipal Separate Storm Sewer System. The Commonwealth of Massachusetts has moved to file an Intervenor's Complaint alleging violations of the Clean Water Act, the Massachusetts Clean Waters Act, M.G.L. c. 21, sections 26–53, and the regulations promulgated thereunder, 314 C.M.R. sections 3.00, *et seq.,* 7.00, *et seq.,* and 12.00, *et seq.* Under the proposed Consent Decree among the parties, the City of Lowell must take measures necessary to achieve and maintain compliance with the Federal Clean Water Act, the Massachusetts Clean Waters Act, and the City's NPDES permit. These include measures to separate wastewater sewer pipes and stormwater pipes to prevent sewage discharges to the Merrimack and Concord Rivers and Beaver Brook from the combined pipes during rain events. Under the proposed Consent Decree, the City will also update and implement its Illicit Discharge Detection and Elimination program to detect and eliminate illicit connections from wastewater pipes or other sources of wastewater to the stormwater system. Finally, under the proposed settlement, the City will pay a $200,000 civil penalty for past noncompliance.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, and should refer to *United States and Commonwealth of Massachusetts* v. *City of Lowell, Massachusetts,* 1:24–cv–10290 (D. Mass.), D.J. Ref. No. 90–5–1–1–12515. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed consent decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–02738 Filed 2–9–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 5, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of Indiana in the lawsuit entitled *United States and State of Indiana* v. *1500 South Tibbs LLC,* Civil Action No. 1:24–cv–235.

The proposed Consent Decree settles claims brought by the United States and the State of Indiana under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607 against 1500 South Tibbs LLC (''Defendant'') seeking reimbursement of response costs and performance of remedial measures with respect to Reilly Tar and Chemical Superfund Site in Indianapolis, Indiana. The Consent Decree requires Defendant to pay the United States a total of $112,805.24 for EPA's response costs, pay the State a total of $21,061.53 for its past response costs, pay future response costs incurred by the United States and the State, and perform the remedial ''Work'' defined in the Scope of Work, attached to the Consent Decree as Attachment A. The Work consists of designing and implementing a revised Operable Unit 1 (OU1) remedy for the treatment of groundwater underneath the Site and to continue operating and maintaining the remedies for contamination at the other Operable Units.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Indiana* v. *1500 South Tibbs LLC,* D.J. Ref. No. 90–11–3–1028/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the consent decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Patricia A. McKenna,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–02786 Filed 2–9–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0292]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension, With Change, of a Currently Approved Collection; Survey of Sexual Victimization

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 12, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Emily Buehler, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Emily.Buehler@usdoj.gov;* telephone: 202–598–1036).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The SSV collects annual administrative data on allegations and substantiated incidents of sexual victimization from adult correctional and juvenile justice authorities. To meet the requirements of the Prison Rape Elimination Act of 2003 (PREA; Pub. L. 108–79), the survey will be administered to the Federal Bureau of Prisons and all state prison systems, all state juvenile justice systems, all facilities operated by the U.S. Military and U.S. Immigration and Customs Enforcement, all privately operated jails, and all juvenile facilities in Indian country. Representative samples of adult public jails, adult jails in Indian country, adult private prisons, and local and private juvenile justice facilities will also be included. These data are used to provide insight into the total number of allegations being reported to correctional authorities, the outcomes of investigations of allegations, and the characteristics of incidents, victims and perpetrators. Revisions to the collection include revised sampling designs, updated definitions of sexual victimization, and modifications to the survey forms to collect more information about victims and perpetrators of sexual victimization and to make survey forms more user-friendly.

Overview of This Information Collection

1. *Type of Information Collection:* Extension, with changes, of a currently approved collection.

2. *The Title of the Form/Collection:* Survey of Sexual Victimization (SSV).

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Summary Forms: SSV–1, SSV–2, SSV–3, SSV–4, SSV–5, SSV–6. Incident Forms: SSV–IA, SSV–IJ. Bureau of Justice Statistics, Department of Justice.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Respondents will include the Federal Bureau of Prisons; state prison and juvenile justice systems; private prisons; correctional facilities operated by the U.S. Military and U.S. Immigration and Customs Enforcement; local, private and tribal jails; local and private juvenile justice facilities; and juvenile facilities in Indian country. The obligation to respond is required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 1,532 respondents will complete a summary form. System-level Summary Forms (SSV–1, SSV–2, SSV–5) are estimated to require approximately 1 hour to complete. Facility-level Summary Forms (SSV–3, SSV–4, SSV–6) are estimated to require approximately 30 minutes to complete. Incident Forms (SSV–IA and SSV–IJ) are estimated to take approximately 40 minutes to complete for each substantiated incident of sexual victimization.

6. An estimate of the total annual burden (in hours) associated with the collection: The total annual burden is estimated to be 3,047 hours.

7. An estimate of the total annual cost burden associated with the collection, if applicable: PREA requires facilities to track the data collected in SSV. No costs other than the cost of the hour burden exist for this data collection.

Form	Total annual responses	Estimated burden hours per response	Total estimated respondent burden (person hours)
SSV–1	1	1	1
SSV–2	50	1	50
SSV–3	700	0.5	350
SSV–4	198	0.5	99
SSV–5	51	1	51
SSV–6	492	0.5	246
SSV–IA	2,500	0.75	1,875
SSV–IJ	500	0.75	375
Total	1,532 SSV1–6 forms and 3,000 IA/IJ forms		3,047

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 6, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–02757 Filed 2–9–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fire Brigades Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 13, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA does not mandate that employers establish fire brigades; however, if they do so, they must comply with certain provisions of the Standard. The Standard imposes the following paperwork requirements on each employer who establishes a fire brigade: Write an organizational statement; ascertain the fitness of workers with specific medical conditions to participate in fire related operations; and provide appropriate training and information to fire brigade members. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 22, 2023 (88 FR 81435).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Fire Brigades Standard.

OMB Control Number: 1218–0075.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 24,885.

Total Estimated Number of Responses: 3,733.

Total Estimated Annual Time Burden: 2,695 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–02832 Filed 2–9–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240–0060]

Proposed Extension of Information Collection; 1240–0060 Division of Energy Employees Occupational Illness (DEEOIC) Authorization Forms

AGENCY: Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, (OWCP/DEEOIC), Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed

collections of information in accordance with the Paperwork Reduction Act of 1995. This request 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. Currently, the OWCP/DEEOIC is soliciting comments on the information collection for DEEOIC Authorization Forms, EE–22, EE–24, EE–26, EE–28, EE–30, EE–32.

DATES: All comments must be received on or before April 12, 2024.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP/DEEOIC, Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, U.S. Department of Labor, 200 Constitution Ave. NW, Room S3323, Washington, DC 20210.
- OWCP/DEEOIC will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, at *suggs.anjanette@dol.gov* (email) or (202) 354–9660 (voice).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the primary agency responsible for administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.* EEOICPA provides for the payment of compensation to covered employees and, where applicable, survivors of deceased employees, who sustained either an ''occupational illness'' or a ''covered illness'' in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. One element of the compensation provided to covered employees is medical benefits for the treatment of their occupational or covered illnesses that are accepted as compensable. OWCP contracts with a private sector bill processing agent that handles many of the tasks associated with paying bills for medical treatment provided to covered employees under EEOICPA. This bill processing agent uses an automated system that matches incoming bills with the authorized medical treatment of covered employees before it issues payments, and a provider of medical treatment, supplies or services to covered employees must provide the bill processing agent with information necessary for creation of an authorization within the agent's automated system before a bill can be paid. The collection of this information is authorized by 20 CFR 30.400(a) and (c), 30.403, 30.404(b) and 30.700. The information collections in this ICR collect demographic, factual and medical information that OWCP and/or its bill processing agent needs to process bills for medical treatment, supplies or services.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the DEEOIC Authorization Forms, EE–22, EE–24, EE–26, EE–28, EE–30, EE–32. OWCP/DEEOIC is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP/DEEOIC/s estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP/DEEOIC located at 200 Constitution Avenue NW, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns OWCP/DEEOIC Authorization Forms (EE–22, EE–24, EE–26, EE–28, EE–30, EE–32 has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation (OWCP/DEEOIC).

OMB Number: 1240–0060.

Affected Public: Individuals or households; business.

Number of Respondents: 12,890.

Frequency: Varies by form.

Number of Responses: 66,770.

Annual Burden Hours: 11,129 hours.

DEEOIC Forms, EE–22, EE–24, EE–26, EE–28, EE–30, EE–32. DEEOIC Authorization Forms.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–02746 Filed 2–9–24; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Worker's Compensation Programs

[OMB Control No. 1240–0007]

Proposed Extension of Information Collection; Claim for Medical Reimbursement Form (OWCP–915)

AGENCY: Office of Workers' Compensation (OWCP), Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request 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. Currently, OWCP is soliciting comments on the information collection for Claim for Medical Reimbursement (OWCP–915).

DATES: All comments must be received on or before April 12, 2024.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3215, Washington, DC 20210.
- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, OWCP, at *suggs.anjanette@dol.gov* (email); (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three statutes require OWCP to pay for covered medical treatment that is provided to beneficiaries, and to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Form OWCP–915, Claim for Medical Reimbursement, is used for this purpose and collects the necessary beneficiary and medical provider data in a standard format. Beneficiaries must also attach billing information prepared by the medical provider (Form OWCP–1500 for professional medical services, Form OWCP–04 for institutional providers and hospitals, or a paper bill for medications dispensed in the physician's office. The hour and cost burdens to collect the billing information from medical providers in the required attachments to Form OWCP–915 are accounted for in OMB Nos. 1240–0019, 1240–0044, and 1240–0050. This is the same billing information a medical provider reports when it bills OWCP directly. Regulations implementing the FECA, BLBA and EEOICPA programs require the collection of information that is needed to determine if reimbursement claims submitted by beneficiaries can be paid.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection (ICR) titled, ''Claim for Medical Reimbursement'' (OWCP–915). OWCP/DFELHWC is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Avenue NW, Room S–3215, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns Claim for Reimbursement OWCP–915. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, with change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs, OWCP.

OMB Number: 1240–0007.

Affected Public: Individuals or households.

Number of Respondents: 18,023.

Frequency: Annually.

Number of Responses: 7.

Annual Burden Hours: 4 hours.

OWCP–915, Claim for Reimbursement

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov*.

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–02745 Filed 2–9–24; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold four additional meetings, by video conference, of the Humanities Panel, a federal advisory committee, in February 2024, and thirty-nine meetings during March 2024. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: February 26, 2024

This video meeting will discuss applications on the topic of History, for the Public Scholars grant program, submitted to the Division of Research Programs.

2. Date: February 27, 2024

This video meeting will discuss applications on the topics of Literature and Language, for the Public Scholars grant program, submitted to the Division of Research Programs.

3. Date: February 28, 2024

This video meeting will discuss applications on the topic of Biography, for the Public Scholars grant program, submitted to the Division of Research Programs.

4. Date: February 29, 2024

This video meeting will discuss applications on the topic of Arts, for the Public Scholars grant program, submitted to the Division of Research Programs.

5. Date: March 1, 2024

This video meeting will discuss applications on the topics of Film, Media, and Communications, for the Public Scholars grant program, submitted to the Division of Research Programs.

6. Date: March 1, 2024

This video meeting will discuss applications on the topic of History, for the Public Scholars grant program, submitted to the Division of Research Programs.

7. Date: March 4, 2024

This video meeting will discuss applications on the topic of Social Sciences, for the Public Scholars grant program, submitted to the Division of Research Programs.

8. Date: March 4, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Public Scholars grant program, submitted to the Division of Research Programs.

9. Date: March 5, 2024

This video meeting will discuss applications on the topic of American Studies, for the Public Scholars grant program, submitted to the Division of Research Programs.

10. Date: March 5, 2024

This video meeting will discuss applications on the topics of Science, Technology, Medicine, and the Environment, for the Public Scholars grant program, submitted to the Division of Research Programs.

11. Date: March 6, 2024

This video meeting will discuss applications on the topic of Biography, for the Public Scholars grant program, submitted to the Division of Research Programs.

12. Date: March 6, 2024

This video meeting will discuss applications on the topics of History and Studies of the Americas, for the Collaborative Research grant program, submitted to the Division of Research Programs.

13. Date: March 7, 2024

This video meeting will discuss applications on the topics of Social Sciences and Philosophy, for the Collaborative Research grant program, submitted to the Division of Research Programs.

14. Date: March 8, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Public Scholars grant program, submitted to the Division of Research Programs.

15. Date: March 11, 2024

This video meeting will discuss applications on the topic of American Studies, for the Public Scholars grant program, submitted to the Division of Research Programs.

16. Date: March 11, 2024

This video meeting will discuss applications on the topics of History, Literature, and the Arts, for the Collaborative Research grant program, submitted to the Division of Research Programs.

17. Date: March 11, 2024

This video meeting will discuss applications on the topics of Philosophy and Religion, for the Collaborative Research grant program, submitted to the Division of Research Programs.

18. Date: March 12, 2024

This video meeting will discuss applications on the topics of European History and Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

19. Date: March 12, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Public Scholars grant program, submitted to the Division of Research Programs.

20. Date: March 12, 2024

This video meeting will discuss applications on the topics of Philosophy, Politics, and Law, for the Public Scholars grant program, submitted to the Division of Research Programs.

21. Date: March 18, 2024

This video meeting will discuss applications on the topics of Literature and the Arts, for the Collaborative Research grant program, submitted to the Division of Research Programs.

22. Date: March 19, 2024

This video meeting will discuss applications on the topic of Art History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

23. Date: March 19, 2024

This video meeting will discuss applications on the topics of Libraries and Archives, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

24. Date: March 20, 2024

This video meeting will discuss applications on the topic of History, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

25. Date: March 20, 2024

This meeting will discuss applications on the topic of Social Sciences, for the Collaborative Research grant program, submitted to the Division of Research Programs.

26. Date: March 20, 2024

This video meeting will discuss applications on the topics of Arts and Culture, for the Media Projects Production grant program, submitted to the Division of Public Programs.

27. Date: March 20, 2024

This video meeting will discuss applications on the topics of Romance Languages and the Americas, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

28. Date: March 21, 2024

This video meeting will discuss applications on the topic of United States History, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

29. Date: March 21, 2024

This video meeting will discuss applications on the topic of History, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

30. Date: March 21, 2024

This video meeting will discuss applications for the Public Humanities Projects: Humanities Discussions Grants program, submitted to Division of Public Programs.

31. Date: March 22, 2024

This video meeting will discuss applications on the topics of U.S. History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

32. Date: March 22, 2024

This video meeting will discuss applications on the topics of Communication, Technology, and Media Studies, for the Collaborative Research grant program, submitted to the Division of Research Programs.

33. Date: March 22, 2024

This video meeting will discuss applications on the topics of History and Studies of Africa, Asia, and Europe, for the Collaborative Research grant program, submitted to the Division of Research Programs.

34. Date: March 22, 2024

This video meeting will discuss applications on the topics of Anthropology, Archaeology, and Studies of Science, for the Collaborative Research grant program, submitted to the Division of Research Programs.

35. Date: March 22, 2024

This video meeting will discuss applications on the topics of British and American Literature, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

36. Date: March 26, 2024

This video meeting will discuss applications on the topics of Middle East, Africa, and Asia, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

37. Date: March 26, 2024

This video meeting will discuss applications on the topics of Archeology, Anthropology, and Native American, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

38. Date: March 26, 2024

This video meeting will discuss applications on the topic of Scholarly Communication, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

39. Date: March 27, 2024

This video meeting will discuss applications on the topics of Arts, Culture, and Public Humanities, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

40. Date: March 27, 2024

This video meeting will discuss applications on the topics of Libraries and Archives, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

41. Date: March 28, 2024

This video meeting will discuss applications on the topic of Material Culture, for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

42. Date: March 28, 2024

This video meeting will discuss applications on the topics of Philosophy and the Classics, for the Scholarly Editions and Translations grant program, submitted to the Division of Research Programs.

43. Date: March 28, 2024

This video meeting will discuss applications on the topics of Teaching and Learning, for the Digital Humanities Advancement Grants program, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: February 6, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–02761 Filed 2–9–24; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Business and Operations Advisory Committee (#9556).

Date and Time: March 4, 2024; 11 a.m.–5 p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Open.

Contact Persons: Kellie Luurtsema, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8200.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda:

- Welcome/Introductions
- Chief Diversity and Inclusion Officer (CDIO) Introduction
- Organizational Health and Performance
- Chief Information Officer (CIO) Introduction—Vision/Key Priorities
- Subcommittee on NSF's Information Technology and Enterprise Architecture Strategy

Dated: February 7, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–02818 Filed 2–9–24; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, February 15, 2024.

PLACE: 1255 Union Street NE, Suite 500, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The Interim General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

I. Call to Order
II. Sunshine Act Approval of Executive (Closed) Session
III. Executive Session: Report from CEO
IV. Executive Session: Report from CFO
V. Executive Session: GAO Workplan Update
VI. Executive Session: Report from Interim General Counsel
VII. Executive Session: Report from CIO
VIII. Action Item: Approval of Meeting Minutes—November 29 Audit Committee and December 18 Regular Board Meeting
IX. Action Item: Resolution of Recognition of Service for Board Member Rodney Hood
X. Action Item: Election of General Counsel
XI. Action Item: Ratification of Audit Committee Action on GAO

Recommendation #10: Revision to Internal Audit Reports
XII. Action Item: Delegation of Authority for NTI Hotel and Venue Contracts
XIII. Discussion Item: Overview of Organizational Culture Efford
XIV. Management Program Background and Updates
Other Reports
a. 2024 Board Calendar
b. 2024 Board Agenda Planner
c. CFO Report
i. Financials (through 11/30/23)
ii. Single Invoice Approvals $100K and over
iii. Vendor Payments $350K and over
iv. Exceptions
d. Programs Dashboard
e. Housing Stability Counseling Program (HSCP)
f. Strategic Plan Scorecard—FY23 Q4 (with Q4 production)

Portions Open to the Public: Everything except the Executive (Closed) Session.

Portions Closed to the Public: Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION: Jenna Sylvester, Paralegal, (202) 568–2560; *jsylvester@nw.org.*

Jenna Sylvester,

Paralegal.

[FR Doc. 2024–02868 Filed 2–8–24; 11:15 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0102]

Information Collection: Comprehensive Decommissioning Program, Annual Site List and Point of Contact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Comprehensive Decommissioning Program, Annual Site List and Point of Contact.''

DATES: Submit comments by March 13, 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: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0102 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–2023–0102.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23299A248. The supporting statement is available in ADAMS under Accession No. ML23355A039.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Comprehensive Decommissioning Program, Annual Site List and Point of Contact.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 21, 2023, 88 FR 81111.

1. *The title of the information collection:* Comprehensive Decommissioning Program, Annual Site List and Point of Contact.
2. *OMB approval number:* 3150–0206.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All Agreement States who have signed Section 274(b) Agreements with the NRC.

7. *The estimated number of annual responses:* 39.

8. *The estimated number of annual respondents:* 39.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 49.5 hours.

10. *Abstract:* Agreement States will be asked to provide a list of sites undergoing decommissioning, and a point of contact for information about uranium recovery and complex sites undergoing decommissioning that are regulated by the Agreement States. The information request will allow the NRC to compile, in a centralized location, a list of sites and points of contact who can provide information regarding Agreement State sites undergoing decommissioning in the United States. This does not apply to information, such as trade secrets and commercial or financial information provided by the Agreement States, that is considered privileged or confidential.

Dated: February 7, 2024.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–02842 Filed 2–9–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–184 and CP2024–190; MC2024–185 and CP2024–191]

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:* February 14, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
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).:* MC2024–184 and CP2024–190; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage & Parcel Select Contract 5 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 6, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 14, 2024.

2. *Docket No(s).:* MC2024–185 and CP2024–191; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 185 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 6, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 14, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2024–02793 Filed 2–9–24; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99482; File No. SR–CboeBZX–2023–071]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule Relating to the Options Regulatory Fee

February 6, 2024.

On September 12, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–CboeBZX–2023–071) to increase the amount of its Options Regulatory Fee.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98420 (Sept. 18, 2023), 88 FR 65412 (Sept. 22, 2023) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

comment in the **Federal Register** on September 22, 2023.[5] On September 28, 2023, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[6] On February 1, 2024, the Exchange withdrew the proposed rule change (SR–CboeBZX–2023–071).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02755 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99480; File No. SR–CboeBZX–2024–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Minimum Performance Standards Applicable to Primary Equity Securities Under the Lead Market Maker Program as Set forth in Rule 11.8(e)(1)(E), and To Make Corresponding Changes to Its Fee Schedule

February 6, 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 February 2, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to modify the Minimum Performance Standards applicable to Primary Equity Securities under the Lead Market Maker program (''LMM Program'') as set forth in Rule 11.8(e)(1)(E), and to make corresponding changes to its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5 below.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), 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 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 modify the Minimum Performance Standards[3] under the LMM Program as set forth in Rule 11.8(e)(1)(E) applicable to Primary Equity Securities[4] (also referred to as ''Corporate Securities'') listed on the Exchange. The Exchange is not proposing any substantive changes to the LMM Program as it relates to Exchange-Traded Products (''ETPs'') or Closed-End Funds, but is merely proposing to make changes in its Rulebook to clearly delineate the LMM Program applicable to Corporate Securities. The Exchange also proposes to make corresponding changes to its Fee Schedule. The Exchange proposes to implement these changes on February 2, 2024.[5]

On June 2, 2014,[6] the Exchange implemented the LMM Program on the Exchange, which provided enhanced rebates to market makers registered with the Exchange (''Market Makers'') that were also registered as a lead market maker (''LMM'') in an LMM Security and met the Minimum Performance Standards in Exchange-listed exchange-traded products (''ETPs'').[7] On April 8, 2020, the Exchange amended the LMM Program to include Cboe-listed Primary Equity Securities and Closed-End Funds,[8] and made corresponding changes to its Fee Schedule.[9] Now, the Exchange proposes to modify the Minimum Performance Standards applicable to only Primary Equity Securities listed on the Exchange, and separate those Minimum Performance Standards from those applicable to Closed-End Funds in the Exchange's rulebook.

Currently, the Minimum Performance Standards for Primary Equity Securities and Closed-End Funds include the following under Rule 11.8(e)(1)(E)(i)–(v):

(i) Registration as a market maker in good standing with the Exchange;

(ii) Time at the inside requirements, which, for Qualified Securities,[10] require that an LMM maintain quotes at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 15% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. For Enhanced Securities,[11] an LMM must quote at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume

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[5] *See* Notice, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 98597 (Sept. 28, 2023), 88 FR 68822 (Oct. 4, 2023).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. *See* Exchange Rule 11.8(e)(1)(E).

[4] As defined in Rule 14.1(a), the term ''Primary Equity Security'' means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (''ADRs'') or Shares (''ADSs'').

[5] The Exchange initially filed the proposed fee change on February 1, 2024 (SR–Cboe–BZX–2024–012). On February 2, 2024, the Exchange withdrew that filing and submitted this proposal.

[6] *See* the Securities Exchange Act Release Nos. 72020 (April 25, 2014) 79 FR 24807 (May 1, 2014) (SR–BATS–2014–015) (the ''LMM Program filing''); 72333 (June 5, 2014) 79 FR 33630 (June 11, 2014) (SR–BATS–2014–019) (the ''LMM Fee filing'').

[7] *See* Rule 11.8(e)(1)(A).

[8] As provided in Rule 14.8(a), the term ''Closed-End Funds'' means closed-end management investment companies registered under the Investment Company Act of 1940.

[9] *See* Securities Exchange Act Release No. 88617 (April 10, 2020) 85 FR 21056 (April 15, 2020) (SR–CboeBZX–2020–032).

[10] Qualified Securities are BZX-listed primary equity securities and closed-end funds for which LMMs are eligible to receive certain incentives, as set forth in the Exchange's Fee Schedule, if the Minimum Performance Standards applicable to Qualified Securities are met.

[11] Enhanced Securities are BZX-listed primary equity securities and closed-end funds securities for which LMMs are eligible to certain incentives that are higher than those available for Qualified Securities, if the more stringent Minimum Performance Standards applicable to Enhanced Securities are met.

equal to or greater than 500,000 shares and at least 40% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares;

(iii) Auction participation requirements, which, for a Qualified Security, require that the Opening Auction price is within 4% of the last Reference Price, as defined in Rule 11.23(a)(19), and 2% for an Enhanced Security. For a Qualified Security, such requirements provide that the Closing Auction price must be within 3% of the last Reference Price and 1% for an Enhanced Security;

(iv) Market-wide NBB and NBO spread and size requirements, which require 300 shares at both the NBB and NBO during at least 50% of Regular Trading Hours for both Qualified Securities and Enhanced Securities. For Qualified Securities, the NBBO spread of such shares must be no wider than 2% for a security priced equal to or greater than $5 and no wider than 7% for a security priced less than $5. For Enhanced Securities, the NBBO spread of such shares must be no wider than 1% for securities priced equal to or greater than $5 and no wider than 2% for securities priced less than $5; and

(v) Depth of book requirements, which, for securities priced equal to or greater than $5 requires at least $150,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours and, for securities priced less than $5, at least $50,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours. For Qualified Securities, such liquidity must be within 2% of both the NBB and NBO for securities priced equal to or greater than $5 and within 7% of both the NBB and NBO for securities priced less than $5. For Enhanced Securities, such liquidity must be within 1% of both the NBB and NBO for securities priced equal to or greater than $5 and within 2% of both the NBB and NBO for securities priced less than $5.

Now, the Exchange proposes to adopt similar Minimum Performance Standards applicable to Primary Equity Securities under proposed Rule 11.8(e)(1)(E)(i) and move the existing Minimum Performance Standards, which would be applicable only to Closed-End Funds, to proposed Rule 11.8(e)(1)(E)(ii). Specifically, the Minimum Performance Standards applicable to Primary Equity Securities would be set forth in Rule 11.8(e)(1)(E)(i)(a)–(e), as discussed below.

Proposed subparagraph (a) would require that the LMM is registered as a market maker in good standing with the Exchange and is identical to the existing requirement under Rule 11.8(e)(1)(E)(i).

Proposed subparagraph (b) would set forth the time at the inside requirements identical to existing Rule 11.8(e)(1)(E)(ii), except for the percentage of time the LMM must have quotes at the NBB and NBO. Specifically, subparagraph (b) would provide that the time at the inside requirements, which, for Qualified Securities, require that an LMM maintain quotes at the NBB and the NBO at least 10% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 20% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. For Enhanced Securities, an LMM must quote at the NBB and the NBO at least 10% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 20% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. Under the current structure, LMMs in Corporate Securities and Closed-End Funds that meet the Enhanced Security Minimum Performance Standards are eligible to receive higher incentives than such LMMs that meet the Qualified Security Minimum Performance Standards because such Enhanced Security Minimum Performance Standards are more stringent. As proposed, the Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards for Corporate Securities are identical, as are the proposed incentives which are discussed in further detail below. Nonetheless, the Exchange is proposing to keep the concept of Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards in the Exchange's Rulebook as the Exchange expects to modify those Minimum Performance Standards (at a later date through another proposal) so that they are not identical.

Proposed subparagraph (c) would set forth the auction participation requirements identical to existing Rule 11.8(e)(1)(E)(iii), except for the percentage requirements as it relates to Enhanced Securities for both the Opening and Closing Auction. Specifically, subparagraph (c) would require that for a Qualified Security, the Opening Auction price is within 4% of the last Reference Price, as defined in Rule 11.23(a)(19), and 4% for an Enhanced Security. For a Qualified Security, such requirements provide that the Closing Auction price must be within 3% of the last Reference Price and 3% for an Enhanced Security. As described above, while the Exchange acknowledges that the proposed quoting requirements for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another proposal.

Proposed subparagraph (d) would set forth the market-wide NBB and NBO spread and size requirements identical to existing Rule 11.8(e)(1)(E)(iv), except that the requirements would not consider the price of the security, and that the applicable percentage requirements for both Qualified and Enhanced Securities could be different. Specifically, proposed Rule 11.8(e)(1)(E)(i)(d) would require 300 shares at both the NBB and NBO during at least 50% of Regular Trading Hours for both Qualified Securities and Enhanced Securities. For Qualified Securities, the NBBO spread of such shares must be no wider than 5%. For Enhanced Securities, the NBBO spread of such shares must be no wider than 5%. As described above, while the Exchange acknowledges that the proposed spread requirements for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another proposal.

Proposed subparagraph (e) would set forth the depth of book requirements identical to existing Rule 11.8(e)(1)(E)(v), except that the requirements would not consider the price of the security, and the applicable percentage requirements for both Qualified and Enhanced Securities could be different. Specifically, proposed Rule 11.8(e)(1)(E)(i)(E) would require at least $50,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours. For Qualified Securities, such liquidity must be within 5% of both the NBB and NBO. For Enhanced Securities, such liquidity must be within 5% of both the NBB and NBO. As described above, while the Exchange acknowledges that the proposed depth of book requirements

for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another rule filing.

As noted above, to conform the proposal to the Exchange's rulebook, the Exchange proposes to move the existing Minimum Performance Standards for Closed-End Funds to proposed Rule 11.8(e)(1)(E)(ii)(a)–(e). The Exchange is not proposing to modify any of the Minimum Price Standards applicable to Closed-End Funds at this time.

The Exchange also proposes to modify the Exchange's Fee Schedule to delineate the LMM program applicable to Primary Equity Securities from the LMM program applicable to ETPs and Closed-End Funds, as provided in footnote 14 of the Fee Schedule, and to adopt and amend definitions included in the Fee Schedule to clarify the difference in the LMM programs. The Exchange notes that it is not proposing any substantive change to the LMM Pricing under footnote 14 of the Fee Schedule as it relates to ETPs and Closed-End Funds, but is merely extricating Corporate Securities from existing LMM Pricing and establishing new applicable pricing to LMMs in Corporate Securities.

First, the Exchange proposes to modify the current definition of Qualified LMM to apply only to Corporate Securities. Currently, the definition of Qualified LMM applies to all BZX-listed securities, including Corporate Securities, ETPs, and Closed-End Funds. Now, the Exchange proposes to modify the definition of Qualified LMM to provide that it meets the Minimum Performance Standards defined in proposed Rule 11.8(e)(1)(E)(i), which are applicable to Corporate Securities. The Exchange also proposes to adopt a new definition for ''Qualified ETP LMM'', which would mean an LMM in a BZX-listed ETP or Closed-End Fund security that meets Qualified ETP LMM performance standards set forth in Rule 11.8(e)(1)(E).[12] Such Minimum Performance Standards for Closed-End Funds are defined in Rule 11.8(e)(1)(E)(ii). The Exchange is not proposing any substantive change to the term Qualified LMM as it pertains to ETPs or Closed-End Funds, but is simply proposing a new definition in order to clearly delineate Qualified LMMs in Corporate Securities from Qualified LMMs in ETPs and Closed-End Funds. Finally, while not new in concept, the Exchange proposes to adopt a new definition for ''LMM Securities'', which would mean BZX-listed securities for which a Member is an LMM. Currently, the term ''LMM Security'' is defined in footnote 14(A)(i) of the Fee Schedule, but, as described below, the Exchange is proposing to modify the existing definition so that it applies only to ETPs and Closed-End Funds. As the term ''LMM Security'' is used as a defined term elsewhere in the Fee Schedule, the Exchange is proposing to adopt a new definition under the ''Definitions'' section of the Fee Schedule that is substantively identical to the existing term in footnote 14(A)(i).

As noted above, footnote 14 of the Fee Schedule sets forth LMM Pricing on the Exchange. The Exchange proposes to re-letter existing paragraphs (A) through (D) under footnote 14, to (B) through (E), respectively, to provide for new paragraph (A). Proposed paragraph (A) would set forth the Liquidity Provision Rates applicable to Primary Equity Securities (also referred to as ''Corporate Securities'') listed on the Exchange. Specifically, paragraph (A) would provide that Qualified LMMs in BZX-listed Primary Equity Securities are eligible to receive the Corporate LMM Add Liquidity Rebate for such Corporate Securities for a calendar month on a security-by-security basis. For each calendar month the Qualified LMM will receive a rebate of $0.0030 per share (or the greater of any other applicable rebate). Qualified LMMs in Corporate Securities will be subject to the standard remove fee of $0.0030 per share in securities priced at or above $1.00, and 0.30% of the total dollar value for securities priced below $1.00.

Currently, LMMs in Corporate Securities are eligible to receive the LMM Liquidity Provision Rates as provided under paragraph (A) of footnote 14 in the Fee Schedule, which provides for a maximum stipend for LMMs that meet the Minimum Performance Standards. As proposed, LMMs in Corporate Securities will no longer be eligible for the LMM Liquidity Provision Rates program but may have the potential to receive higher incentives under the proposed program as the rebates are transaction-based and therefore have no maximum incentive in a given month.

Similarly, because the Exchange has proposed to modify the Minimum Performance Standards applicable to Corporate Securities, the Exchange is also proposing that LMMs in Corporate Securities will no longer be eligible for the LMM Add Liquidity Rebate as provided under paragraph (B) of footnote 14 in the Fee Schedule. As proposed, the LMM Add Liquidity Rebates would continue to be available to LMMs in ETPs and Closed-End Funds. The LMM Add Liquidity Rebate currently provides that LMMs in BZX-listed securities that have a consolidated average daily volume (''CADV'') greater than or equal to 1,000,000 (an ''ALR Security'') are eligible to receive the LMM Add Liquidity Rebate for such ALR Securities for a calendar month on a security-by-security basis. For each calendar month in which an LMM is a Qualified LMM in an ALR Security, the LMM will receive the greater of an enhanced rebate of $0.0039 per share (instead of any other applicable rebate for transactions in the ALR Security) or the LMM Liquidity Provision Rates described above that would otherwise apply for the LMM in the applicable ALR Security. While the proposed Corporate LMM Liquidity Provision Rates provide a lower rebate than the current LMM Add Liquidity Rebate, the Exchange believes that the proposed rebate is commensurate with the difficulty of meeting the proposed Minimum Performance Standards and transacting volume in Corporate Securities.

The Exchange proposes to modify the naming conventions in proposed paragraph (B) under footnote 14 to make clear that the Liquidity Provision Rates are only applicable to ETPs and Closed-End Funds, and are not applicable to Corporate Securities. Specifically, proposed paragraph (B)(i) under footnote 14 would provide that LMMs in BZX-listed ETP and Closed-End Fund securities (''ETP LMMs'') will receive the applicable rates on a daily basis per security for which the LMM is a Qualified ETP LMM (a ''Qualified ETP Security'') based on the average aggregate daily auction volume of the BZX-listed securities for which the Member is the ETP LMM (''ETP LMM Securities''). Proposed paragraph (B)(ii) under footnote 14 would provide that LMMs in BZX-listed ETP and Closed-End Fund securities will receive the applicable rates on a daily basis per Qualified ETP Security for which they also meet certain enhanced market quality standards (an ''Enhanced ETP Security'') in addition to the Standard Rates provided in paragraph (B)(i) under footnote 14. The Exchange also proposes to modify the description of the rates to

[12] Such standards applicable to ETPs and Closed-End Funds will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see LMM Program Filing.

provide that the daily incentive is applicable to a Qualified ETP Security or Enhanced ETP Security, as applicable. The Exchange is not proposing any changes to the calculation of the ETP and Closed-End Fund LMM Liquidity Provision Rates.

The Exchange proposes to modify proposed paragraph (C) under footnote 14 to provide that the LMM Add Liquidity Rebate is only applicable to ETP and Closed-End Fund securities listed on the Exchange. Accordingly, proposed paragraph (C) would state that ETP LMMs, as defined in paragraph (B)(i) of footnote 14, in BZX-listed securities that have a CADV ≥1,000,000 (an ''ALR Security'') are eligible to receive the ETP LMM Add Liquidity Rebate for such ALR Securities for a calendar month on a security-by-security basis. For each calendar month in which an ETP LMM is a Qualified ETP LMM in an ALR Security, the ETP LMM will receive the greater of an enhanced rebate of $0.0039 per share (instead of any other applicable rebate for transactions in the ALR Security) or the ETP LMM Liquidity Provision Rates described above that would otherwise apply for the ETP LMM in the applicable ALR Security. ETP LMMs in an ALR Security remain eligible to achieve other incentives and tiers unless otherwise explicitly excluded. The Exchange is not proposing to change how the LMM Add Liquidity Rebate is calculated or the amount of the rebate, but is merely modifying it to extricate Corporate Securities from the rebate program.

The Exchange is proposing no changes to proposed paragraph (D) under footnote 14. Closing Auction rates applicable to LMMs in ETP, Closed-End Funds and Corporate BZX-Listed securities will continue to transact for free in the Closing Auction in their LMM Securities.

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.[13] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] 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. Further, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4),[15] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes both issuers of securities and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The LMM Program reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs, Primary Equity Securities, and Closed-End Funds listed on the Exchange.

The Exchange believes that the proposal to adopt separate Minimum Performance Standards applicable to Primary Equity Securities is consistent with the Act because it will enhance market quality in those securities. Under the current LMM Program, LMMs in Corporate Securities are incentivized to provide tightened spreads, deeper liquidity, and provide better execution opportunities. As proposed, LMMs in Corporate Securities will continue to be incentivized to meet Minimum Performance Standards, albeit with slightly less stringent standards than are currently applicable. Nonetheless, the Exchange believes the proposed Minimum Performance Standards are appropriate for Corporate Securities, which are typically more liquid than other types of listed products. Further, the Exchange believes Minimum Performance Standards tailored specifically to Corporate Securities listed on the Exchange will be more attractive to LMMs as they more closely align with quoting and trading activity in those securities, while still generally aligning with the existing Minimum Performance Standards on the Exchange, which LMMs are already familiar with.

The Exchange believes that the proposed rebate under the Proposed Corporate LMM Liquidity Provision Rates is reasonable as they are in-line with other rebates available to Members on the Exchange. For example, under the Add Volume Tiers of footnote 1 of the Fee Schedule, Members are eligible for rebates ranging from $0.0020 up to $0.0031 per share if they meet certain required criteria. Furthermore, as discussed above, LMMs will continue to be eligible for other rebates, such as those available under the Add Volume Tiers, and will receive the greater among the rebates that it qualifies.

The Exchange believes it is reasonable to separate Corporate Securities from ETP and Closed-End Fund securities in the LMM Program. In particular, as the Exchange is proposing to adopt specific liquidity rates applicable to LMMs in Corporate Securities, the Exchange believes it follows to remove Corporate Securities from the existing liquidity provisions of proposed sections (B) and (C) under footnote 14 of the Fee Schedule.

The Exchange also believes that it is reasonable to provide incentives to LMMs in Corporate Securities on a transaction basis rather than solely achieving certain objective market quality metrics. Unlike ETPs, Corporate Securities are valued on the trading price of the security rather than derived from the underlying assets owned by the ETP.[16] Therefore, the Exchange believes it is important to incentivize both transactions and market quality metrics in those securities. The Exchange believes its proposed LMM Program for Corporate Securities strikes an appropriate balance by requiring an LMM to achieve certain Minimum Performance Standards in order to be eligible to receive the Corporate LMM Liquidity Provision Rates on the

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] The end-of-day net asset value (''NAV'') of an ETP is a daily calculation based off of the most recent closing prices of the underlying assets and an accounting of the ETP's total cash position at the time of calculation. ETPs are generally subject to a creation and redemption mechanism to ensure that the ETP's price does not fluctuate too far from the NAV, which mechanisms mitigate the potential for exchange trading to impact the price of an ETP. The ''arbitrage function'' performed by market participants influences the supply and demand of shares, and thus, trading prices relative to NAV. The arbitrage function helps to keep an ETP's price in line with the value of its underlying portfolio, and the Exchange believes that the arbitrage mechanism is generally an effective and efficient means of ensuring that intraday pricing in ETPs closely tracks the value of the underlying portfolio or reference assets.

Exchange, as provided in proposed footnote 14(A) of the Fee Schedule.

Registration as an LMM is and will continue to be available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Where an LMM does not meet the Minimum Performance Standards for Corporate Securities as provided in proposed Rule 11.8(e)(1)(E)(i), they will not receive the Liquidity Provision Rates set forth in proposed footnote 14(A) of the Exchange's Fee Schedule. If an LMM does not meet the applicable Minimum Performance Standards for three out of the past four months, the LMM will continue to be subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

As described above, the Exchange proposes to provide fees and rebates specifically applicable to a Qualified LMM in transactions in BZX-listed Primary Equity Securities as provided in proposed footnote 14(A). The Exchange believes that the proposed fee for liquidity removing transactions in Corporate Securities is reasonable as it is generally consistent with the standard liquidity removing fee on the Exchange which charges a fee of $0.0030 per share for securities priced above $1. The Exchange also believes the proposed rebate for liquidity adding transactions in Corporate Securities is reasonable as it appropriately incentivizes LMMs to meet the proposed Minimum Performance Standards throughout the month in addition to transacting in those Corporate Securities. The Exchange notes that the proposed rebate is generally in-line with other volume adding incentives (*e.g.,* the add volume tiers under footnote 1 of the Fee Schedule offer rebates ranging from $0.0020 up to $0.0031 per share), and the Exchange believes such rebate is reasonably commensurate with the Minimum Performance Standards and transaction requirements of the proposed Corporate LMM Liquidity Provision Rates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed Primary Equity Securities and as a listing venue by enhancing market quality in those securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of issuers, LMMs, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed Primary Equity Securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the applicable Minimum Performance Standards for three out of the past four months, the LMM would continue to be subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiving the operative delay would allow market participants to realize immediately the benefits of the proposal, which the Exchange states include market quality enhancements, and would help the Exchange better compete as a listing venue for Primary Equity Securities without undue delay. The proposed change raises no novel legal or regulatory issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[21]

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–CboeBZX–2024–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–013. This file number should be included on the subject line if email is used. To help the

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeBZX–2024–013 and should be submitted on or before March 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02753 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99479; File No. SR–CboeBZX–2023–087]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Invesco Galaxy Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

February 6, 2024.

On October 20, 2023, Cboe BZX Exchange, Inc. (''BZX'' 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 (''Shares'') of the Invesco Galaxy Ethereum ETF (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on November 8, 2023.[3]

On December 13, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the the spot price of ether as measured by using the Lukka Prime Reference Rate (''Benchmark'') less the Trust's expenses and other liabilities.[8] The Trust's assets will consist of ether held by the Trust's custodian on behalf of the Trust.[9] The Trust will value its Shares daily based on the reported Benchmark.[10] The administrator of the Trust will determine the net asset value (''NAV'') of the Trust on each day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. ET.[11] In determining the Trust's NAV, the administrator values the ether held by the Trust based on the price set by the Benchmark as of 4:00 p.m. ET.[12] When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions with authorized participants in large blocks of Shares.[13]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–087 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[14] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[16]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares?[17]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98846 (Nov. 2, 2023), 88 FR 77116 (''Notice''). Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-087/srcboebzx2023087.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99151, 88 FR 87822 (Dec. 19, 2023). The Commission designated February 6, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 77118. Invesco Capital Management (''Sponsor'') is the sponsor of the Trust. *See id.* at 77116.

[9] *See id.* at 77116. The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust would unexpectedly hold cash on a temporary basis. *See id.* at 77116–17.

[10] *See id.* at 77118.

[11] *See id.* at 77119.

[12] *See id.*

[13] *See id.* at 77117.

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] BZX Rule 14.11(e)(4)(C)(i) defines the term ''Commodity-Based Trust Shares'' as a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such

2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (''Bitcoin ETPs''). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether's susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the ether markets and the ether markets' susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,[18] do commenters agree with the Exchange that the Chicago Mercantile Exchange (''CME''), on which CME ether futures trade, represents a regulated market of significant size related to spot ether? [19] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? [20] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market? [21]

5. The Exchange states that ether is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices ''exist to justify dispensing with the requisite surveillance sharing agreement'' with a regulated market of significant size related to spot ether.[22] In support, the Exchange states, among other things, that the geographically diverse and continuous nature of ether trading make it difficult and prohibitively costly to manipulate the price of ether, and that the fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging.[23] Do commenters agree with the Exchange's statements regarding the ether market's resistance to price manipulation?

6. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. (''Coinbase'') that is intended to supplement the Exchange's market surveillance program.[24] According to the Exchange, the agreement is ''expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [ether] trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.'' [25] Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters' views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be ''helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares''? [26]

7. The Exchange states that the ''Sponsor's research indicates daily correlation between the spot [ether] and the CME [ether] [f]utures is 0.998.'' [27] The Exchange further states that this ''high correlation'' indicates that there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on the CME ether futures market.[28] What are commenters' views on the correlation between the ether spot market and the CME ether futures market? What are commenters' views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded product (''ETP'') that holds spot ether, and on whether the Sponsor's daily price correlation analysis provides any evidence to this effect? What are commenters' views generally on whether an ETP that holds CME ether futures and an ETP that holds spot ether are similar products?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[29]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by March 4, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 18, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–087. This

specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

[18] *See* Notice, 88 FR at 77120–25.

[19] *See id.* at 77120–23.

[20] *See id.* at 77123.

[21] *See id.*

[22] *See id.* at 77122 n.29.

[23] *See id.*

[24] *See id.* at 77124.

[25] *See id.* The Exchange states that ''[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.'' *Id.*

[26] *See id.*

[27] *See id.* at 77121. The Exchange states that this is based on data from September 1, 2022, through September 1, 2023. *See id.*

[28] *See id.* at 77123.

[29] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–CboeBZX–2023–087 and should be submitted on or before March 4, 2024. Rebuttal comments should be submitted by March 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02752 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 15, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 8, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–02932 Filed 2–8–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–118, OMB Control No. 3235–0095]

Proposed Collection; Comment Request; Extension: Rule 236—Exemption of Shares Offered in Connection With Certain Transactions

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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.

Securities Act Rule 236 (17 CFR 230.236) provides an exemption from registration under the Securities Act for the offering of shares of stock or similar securities to provide funds to be distributed to security holders in lieu of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction. Issuers wishing to rely upon the exemption are required to furnish specified information to the Commission at least 10 days prior to the offering. The information is needed to provide notice that the issuer is relying on the exemption. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total annual reporting burden of 15 hours (1.5 hours per response × 10 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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 in writing within 60 days of this publication by April 12, 2024.

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.

Please direct your written comment 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: February 6, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02751 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99481; File No. SR–CBOE–2023–038]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend its Fee Schedule Relating to the Options Regulatory Fee

February 6, 2024.

On August 1, 2023, Cboe Exchange, Inc. (''Cboe'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–CBOE–2023–038) to increase the amount of its Options Regulatory Fee.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on August 16, 2023.[5] On September 28, 2023, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[6] On February 1, 2024, the Exchange withdrew the proposed rule change (SR–CBOE–2023–038).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02754 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98106 (Aug. 10, 2023), 88 FR 55796 (Aug. 16, 2023) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 98596 (Sept. 28, 2023), 88 FR 68793 (Oct. 4, 2023).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99487; File No. SR–FINRA–2023–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Dissemination of Information on Individual Transactions in U.S. Treasury Securities and Related Fees

February 7, 2024.

I. Introduction

On November 2, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 (1) amend FINRA Rules 6710 and 6750 to provide for end-of-day dissemination of data for individual transactions in U.S. Treasury Securities that are On-the-Run Nominal Coupons reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'') with specified dissemination caps for large trades, and (2) amend FINRA Rule 7730 to include U.S. Treasury Securities within the existing fee structure for end-of-day and historic TRACE data. The proposed rule change was published for comment in the **Federal Register** on November 9, 2023.[3] The Commission received comments in response to the proposal.[4] FINRA responded to the comments on December 14, 2023.[5] On December 19, 2023, the Commission extended until February 7, 2024, the time 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.[6] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98859 (November 3, 2023), 88 FR 77388 (November 9, 2023) (''Notice'').

[4] Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2023-015/srfinra2023015.htm*. One comment did not address the substance of FINRA's proposal. *See* Letter to Vanessa Countryman, Secretary, Commission, from Adam Deyo (November 18, 2023) (''Deyo Letter'').

[5] Letter to Vanessa Countryman, Secretary, Commission, from Racquel Russell, Senior Vice President, Director of Capital Markets Policy, FINRA (December 14, 2023) (''FINRA Response Letter'').

[6] *See* Securities Exchange Act Release No. 99204 (December 19, 2023), 88 FR 88997 (December 26, 2023).

II. Description of the Proposed Rule Change

Since 2016, FINRA has undertaken a series of initiatives in consultation with the U.S. Department of the Treasury (''Treasury Department'') to increase transaction reporting and transparency in the market for U.S. Treasury Securities.[7] On July 10, 2017, FINRA members began reporting information on transactions in U.S. Treasury Securities to TRACE.[8] On March 10, 2020, FINRA began to publicly disseminate aggregate data on U.S. Treasury Securities trading volume on a weekly basis.[9] In February 2023, FINRA increased the cadence of the aggregated volume data it publishes for U.S. Treasury Securities to daily, and enhanced the content of the aggregate data.[10] Information reported to TRACE regarding individual transactions in U.S. Treasury Securities is currently used for regulatory and other official sector purposes, but not disseminated publicly.[11] In November 2022, the Treasury Department proposed a policy of publicly releasing secondary market transaction data for On-the-Run Nominal coupons,[12] with end-of-day

[7] ''U.S. Treasury Security'' means a security, other than a savings bond, issued by the Treasury Department to fund the operations of the federal government or to retire such outstanding securities. The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that have been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (''STRIPS'') program operated by the Treasury Department. *See* FINRA Rule 6710(p).

[8] *See* FINRA Regulatory Notice 16–39 (October 2016); *see also* Securities Exchange Act Release No. 79116 (October 18, 2016), 81 FR 73167 (October 24, 2016) (Order Granting Accelerated Approval of File No. SR–FINRA–2016–027).

[9] *See* FINRA Press Release, FINRA Launches New Data on Treasury Securities Trading Volume, *https://www.finra.org/media-center/newsreleases/2020/finra-launches-new-data-treasury-securities-trading-volume; see also* Securities Exchange Act Release No. 87837 (December 20, 2019), 84 FR 71986 (December 30, 2019) (Order Approving File No. SR–FINRA–2019–028). FINRA also made historical weekly aggregate data for transactions in U.S. Treasury Securities reported since January 2019 available for download on its website.

[10] *See* Technical Notice, Enhancements to Aggregated Reports and Statistics for U.S. Treasury Securities, *https://www.finra.org/filing-reporting/trace/enhancements-weekly-aggregated-reports-statistics-jan2023*.

[11] FINRA makes data regarding individual transactions in U.S. Treasury Securities available to the official sector to assist in monitoring and analysis of the U.S. Treasury Securities market. The Treasury Department, the Board of Governors of the Federal Reserve, the Federal Reserve Bank of New York, the Commission, and the Commodity Futures Trading Commission comprise the Inter-Agency Working Group for Treasury Market Surveillance (''IAWG'' or ''official sector'').

[12] *See infra* text accompanying notes 14–15 for a definition of On-the-Run Nominal Coupon.

dissemination and with appropriate cap sizes.[13]

Dissemination of Transaction-Level Information

Under the proposed rule change, FINRA would begin disseminating individual transaction information for On-the-Run Nominal Coupon U.S. Treasury Securities on an end-of-day basis. The disseminated transaction information would be anonymized, *i.e.,* it would not include the market participant identifier (''MPID'') or other information that could be used to identify parties to the trade. However, consistent with other TRACE products, the disseminated transaction information would include counterparty type (*i.e.,* dealer, customer, affiliate, or alternative trading system (''ATS'')), a flag to indicate whether the trade was executed on an ATS, and other trade modifiers and indicators.

To implement such dissemination, FINRA proposed to amend Rule 6750(c)(5) (to be redesignated as Rule 6750(d)(5)) to provide that FINRA would not disseminate information on a transaction in a TRACE-Eligible Security that is a U.S. Treasury Security ''other than an On-the-Run Nominal Coupon.'' FINRA also proposed to add a new paragraph (c) to Rule 6750 providing that FINRA would disseminate information on individual transactions in On-the-Run Nominal Coupons on an end-of-day basis.[14] To further clarify the scope of transactions subject to individual dissemination under amended Rule 6750, FINRA proposed to add as new paragraph (ll) of Rule 6710 (Definitions) a definition of ''On-the-Run Nominal Coupon,'' defined as the most recently auctioned U.S. Treasury Security that is a Treasury note or bond paying fixed rate nominal coupons starting after the close of the TRACE system on the day of its Auction through the close of the TRACE system on the day of the Auction of a new issue for the next U.S. Treasury Security of the same maturity. The definition would specify that On-the-Run Nominal Coupons do not include Treasury bills, STRIPS, Treasury Inflation-Protected Securities, floating rate notes, or any U.S. Treasury Security that is a Treasury note or bond paying a fixed rate nominal coupon that is not the most recently issued U.S. Treasury Security of a given maturity (*i.e.,* off-the-run nominal coupons).[15]

Dissemination Protocols

To mitigate concerns about information leakage for large trades, FINRA proposed to implement transaction size caps above which the exact size of the transaction would not be disseminated. In consultation with the Treasury Department, FINRA proposed to apply the following transaction size dissemination caps based on the maturity of the On-the-Run Nominal Coupon at issuance:[16]

- Two Years: $250 million;
- Three Years: $250 million;
- Five Years: $250 million;
- Seven Years: $150 million;
- 10 Years: $150 million;
- 20 Years: $50 million; and
- 30 Years: $50 million.

Thus, for example, a $200 million transaction in a 10-year On-the-Run Nominal Coupon would be disseminated with a trade size of ''150MM+'' rather than the actual dollar amount of the trade.[17] In consultation with the Treasury Department and based on ongoing analysis of the data, FINRA may in the future adjust the dissemination caps to maintain an appropriate balance between the benefits of transparency and the threat of information leakage. Any proposed changes to the dissemination caps would be filed with the Commission pursuant to Section 19(b)(1) of the Act.

Dissemination Fees

FINRA also proposed to expand the existing fee framework for the TRACE End-of-Day Transaction File[18] and the Historic TRACE Data[19] to include data products providing information on individual transactions in On-the-Run Nominal Coupons. Generally, Historic TRACE Data includes the same information as provided in the End-of-Day TRACE Transaction File, except that the Historic TRACE Data does not include dissemination caps for large transactions. Historic Treasury Data would also be subject to a minimum six-month delay, as is the case for the existing Historic Corporate Bond and Historic Agency Data sets.[20] FINRA proposed that the End-of-Day TRACE Transaction File and Historic Data include a new set of data for U.S. Treasury Securities with the same fees that exist for other sets of TRACE-Eligible Securities.[21]

III. Summary of Comments and FINRA's Response

The Commission received comments on the proposed rule change[22] and a

[13] *See* Treasury Department, Additional Public Transparency in Treasury Markets, 28–29 (November 2022), *https://home.treasury.gov/system/files/221/TBACCharge1Q42022.pdf;* Remarks by Under Secretary for Domestic Finance Nellie Liang at the 2022 Treasury Market Conference (November 16, 2022), *https://home.treasury.gov/news/press-releases/jy1110.*

[14] To accommodate the addition of new paragraph 6750(c), the proposed rule change would redesignate current Rule 6750(c) as Rule 6750(d). The proposed rule change would also make conforming changes to the paragraph cross-references in Rule 6750(a) and Supplementary Material .01 to Rule 6750.

[15] FINRA will identify the most recently auctioned U.S. Treasury Security that is a Treasury note or bond paying fixed rate nominal coupons as an ''On-the-Run Nominal Coupon'' in TRACE reference data beginning on the business day after its auction.

[16] FINRA would incorporate information about these dissemination caps in the TRACE dissemination protocols published on its website, available at *https://www.finra.org/filing-reporting/trade-reporting-and-compliance-engine-trace/trace-reporting-timeframes.* Specifically, information about the dissemination caps would be added as a new bullet in the ''Transparency'' column of the row of the table describing the protocols for ''Treasury Bonds,'' to read as follows: ''Individual transactions in On-the-Run Nominal Coupons are disseminated on an end-of-day basis with security identifiers (*e.g.,* CUSIP) and the following transaction size caps based on the maturity of the security at issuance: 2 Years: $250 million; 3 Years: $250 million; 5 Years: $250 million; 7 Years: $150 million; 10 Years: $150 million; 20 Years: $50 million; 30 Years: $50 million.''

[17] As described further below, these dissemination caps would apply for the end-of-day dissemination file. Consistent with its approach to other TRACE data products, FINRA also plans to provide a Historic TRACE data product covering the same scope of transactions, which would provide the actual, uncapped transaction sizes on a six-month delay.

[18] The End-of-Day TRACE Transaction File includes all Real-Time TRACE transaction data collected from that day. The File is separately available for each data set for which Real-Time TRACE transaction data is available (*i.e.,* the Corporate Bond Data Set, Agency Data Set, Securitized Product (''SP'') Data Set, and Rule 144A Data Set) and made public after the TRACE system closes each day.

[19] The Historic TRACE Data is also made separately available for each data set after a fixed delay period that varies by asset type. Historic Corporate Bond and Historic Agency Data are delayed a minimum of six months; Historic SP Data is delayed a minimum of 18 months; and Historic Rule 144A Data carries a delay consistent with the delay period applicable to the component security type (*e.g.,* the delay for a Rule 144A transaction in a SP is 18 months, while the delay for a Rule 144A transaction in a corporate bond is six months).

[20] A conforming change would also be made in the description of Historic TRACE Data in Rule 7730(d) to add the Historic Treasury Data Set to the list of data sets comprising Historic TRACE Data.

[21] The current fee for the End-of-Day TRACE Transaction File is $750/month per data set, with a lower $250/month per data set fee available to qualifying Tax-Exempt Organizations. The fee for Historic TRACE Data is $2,000/calendar year per data set, with a lower $500/calendar year per data set fee available to qualifying Tax-Exempt Organizations. A single fee of $2,000 for development and set-up to receive Historic TRACE Data also applies, with a lower $1,000 development and set-up fee available to qualifying Tax-Exempt Organizations. *See* Rule 7730. As for other types of TRACE-Eligible Securities, FINRA also anticipates making transaction information for On-the-Run Nominal Coupons available free of charge for personal, non-commercial purposes only through FINRA's Fixed Income Data website, available at *https://www.finra.org/finra-data/fixed-income.*

[22] *See supra* note 4.

response letter from FINRA.[23] Several commenters support the proposal and advocate further expansion of the reporting framework to include transactions in different classes of securities and shortened reporting timeframes.[24] Of these commenters, one advocates setting concrete parameters for evaluating the effects of the proposal and a timeline for expanding reporting obligations.[25] Three of these commenters underscore the positive influence of market transparency on fairness, efficiency, and pricing.[26]

Some commenters state that the scope of securities subject to transaction-level dissemination in the proposal should not have been limited to On-the-Run Nominal Coupons.[27] One commenter suggests transaction-level dissemination be expanded to include transactions in every security in the U.S. Treasury Security market,[28] while two others suggest initially subjecting to dissemination transactions in first, second, and third old off-the-run U.S. Treasury Securities.[29] Two of these commenters further suggest (1) shortening the reporting timeframe to at most 15 minutes to harmonize Treasury market data with data in other TRACE-eligible securities;[30] and (2) calculating transaction size caps based on a percentage of notional volume to ensure market participants have a timely view of a sufficient portion of transaction and pricing data.[31] One of these commenters also requests information regarding the percentage of notional volume that would be capped under FINRA's proposed thresholds.[32] Notwithstanding its suggestions, this commenter describes FINRA's proposal as a ''welcome first step.''[33]

In response to suggestions that FINRA expand the scope of U.S. Treasury Securities subject to reporting and shorten reporting timeframes, FINRA states that future proposals would be based on careful analysis and subject to proposed rule changes filed with the Commission pursuant to Section 19(b)(1) of the Act.[34] FINRA also produces data showing the percentage of notional transaction volume that would have been capped under the proposed thresholds during the period from September 1, 2022, to February 28, 2023, for different duration U.S. Treasury Securities.[35]

While two commenters support the proposal's stated objective to increase transparency in the market for U.S. Treasury Securities, they raise concerns that transaction-level transparency, if mandated without careful calibration, could cause information leakage, discourage transactions, and hurt market liquidity, especially in any potential future expansions of the proposal.[36] One of these commenters states that FINRA should collect and analyze at least 12 months of data under the proposed regime before expanding the scope of reporting obligations in any way.[37]

Both of these commenters refer to the importance of disclosure limitations as a means of reducing information leakage.[38] Both commenters support aspects of the proposal that limit transaction-level dissemination to transactions in On-the-Run Nominal Coupons,[39] cap disclosed transactions at set thresholds,[40] and delay dissemination to the end of each day.[41] One of these commenters, despite supporting dissemination caps in principle, states that FINRA has not made clear the methodology and metrics used to determine cap levels.[42] The commenter requests FINRA explain how it determined the caps and provide data supporting the thresholds it proposed.[43]

FINRA replies in its letter that it set dissemination caps based on careful analysis and in consultation with the Treasury Department.[44] FINRA also lists some of the factors relevant in setting dissemination caps, which include public feedback provided to the Treasury Department by primary dealers,[45] the impact of interest rates on U.S. Treasury Securities trades across maturities (''dollar duration'' or ''DV01''), and a market liquidity analysis for U.S. Treasury Securities of different maturities.[46]

Specifically, FINRA explains that it considered the notional cap sizes suggested by primary dealers' feedback to the Treasury Department and translated these values to DV01.[47] When translated to DV01, the median suggested transaction caps ranged between $70,000 and $190,000.[48] FINRA, in consultation with the Treasury Department, opted to consider as a baseline caps that approximately equated to $100,000 DV01, though it also considered the percentage of traded market volume that would be disseminated (versus reported) across each maturity and the estimated amount of time it would take to liquidate a position at the size of the cap. In addition, FINRA states that the

[23] *See supra* note 5.

[24] *See* Letter to Vanessa Countryman, Secretary, Commission, from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel (November 30, 2023) (''Citadel Letter'') at 1–2; Letter to Vanessa Countryman, Secretary, Commission, from Gerard O'Reilly, Co-CEO and Chief Investment Officer, and David A. Plecha, Global Head of Fixed Income, Dimensional (November 30, 2023) (''Dimensional Letter'') at 1; Letter to Vanessa Countryman, Secretary, Commission, from Joanna Mallers, Secretary, FIA Principal Traders Group (November 30, 2023) (''FIA PTG Letter'') at 1; Letter to Vanessa Countryman, Secretary, Commission, from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA (December 20, 2023) (''AIMA Letter'') at 2.

[25] *See* FIA PTG Letter at 2. Additionally, this commenter recommends the Commission reassess the economic analyses for certain Commission rule proposals taking into consideration the impact of this FINRA proposal on the economic baselines. *See id.* This comment is out of scope for this proposed rule change because it does not address the substance of this specific proposed rule change.

[26] *See* Citadel Letter at 1; Dimensional Letter at 1; AIMA Letter at 2.

[27] *See generally* Dimensional Letter; Citadel Letter; AIMA Letter.

[28] *See* Dimensional Letter at 2.

[29] *See* Citadel Letter at 2; AIMA Letter at 2.

[30] *See* Citadel Letter at 2; AIMA Letter at 2.

[31] *See* Citadel Letter at 3; AIMA Letter at 2.

[32] *See* Citadel Letter at 2–3.

[33] Citadel Letter at 1.

[34] *See* FINRA Response Letter at 3, n.5.

[35] ''For the two-year, three-year, and five-year notes (which would be subject to a $250 million cap), 14.21 percent, 14.76 percent, and 5.96 percent of notional volume traded, respectively, would have been capped upon dissemination (*i.e.,* because the size of the trade was greater than $250 million); for the seven-year and 10-year notes (which would be subject to a $150 million cap), 15.27 percent and 6.49 percent of notional volume traded, respectively, would have been capped upon dissemination (*i.e.,* because the size of the trade was greater than $150 million); and for the 20-year and 30-year bonds (which would be subject to a $50 million cap), 19.87 percent and 14.87 percent of notional volume traded, respectively, would have been capped upon dissemination (*i.e.,* because the size of the trade was greater than $50 million). Across all maturities, 10.30 percent of notional volume traded would have been capped.'' FINRA Response Letter at 3.

[36] *See* Letter to Vanessa Countryman, Secretary, Commission, from Robert Toomey, Head of Capital Markets, Managing Director and Associate General Counsel, SIFMA, and Lindsey Weber Keljo, Head, SIFMA Asset Management Group (November 30, 2023) (''SIFMA AMG Letter'') at 2–3; Letter to Vanessa Countryman, Secretary, Commission, from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute (November 30, 2023) (''ICI Letter I'') at 2; Letter to Vanessa Countryman, Secretary, Commission, from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute (December 15, 2023) (''ICI Letter II'') at 2.

[37] *See* SIFMA AMG Letter at 4.

[38] *See* SIFMA AMG Letter at 3–5; ICI Letter I at 2; ICI Letter II at 2.

[39] *See* SIGMA AMG Letter at 4–5; ICI Letter I at 2; ICI Letter II at 2.

[40] *See* SIFMA AMG Letter at 3; ICI Letter I at 2; ICI Letter II at 2.

[41] *See* SIFMA AMG Letter at 4–5; ICI Letter I at 2; ICI Letter II at 2.

[42] *See* SIFMA AMG Letter at 3–4.

[43] SIFMA AMG Letter at 4.

[44] FINRA Response Letter at 4.

[45] Primary dealers are trading counterparties of the New York Fed in its implementation of monetary policy and are expected, among other things, to bid on a pro-rata basis in all Treasury auctions. *See https://www.newyorkfed.org/markets/primarydealers.html. See also https://home.treasury.gov/policy-issues/financing-the-government/quarterly-refunding/primary-dealers.*

[46] FINRA Response Letter at 5–6.

[47] FINRA Response Letter at 5.

[48] FINRA Response Letter at 5.

proposed caps were calibrated to the maturity, liquidity, and trading concentration of the underlying security to preserve the anonymity of market participants trading large transactions.[49] FINRA explains that it ultimately sought to balance the benefits of providing similar levels of transparency across maturities with the risk that dissemination of the largest transactions could permit market participants to reverse engineer the identities, positions, and trading strategies of others.[50]

IV. Discussion and Commission Findings

After carefully reviewing the proposal and comment letters received, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[51] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[52] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets.[53] To further the goal of increasing price transparency in the debt markets in general and the U.S. Treasury Securities market in particular, it is reasonable and consistent with the Act for FINRA to extend post-trade price transparency to transactions in U.S. Treasury Securities in the manner set forth in the proposal. Since 2017, FINRA has collected post-trade transaction information for U.S. Treasury Securities through TRACE.[54] In 2020, FINRA commenced public dissemination of aggregate data on U.S. Treasury Securities trading volume on a weekly basis.[55] In 2023, FINRA shortened the publication time of aggregate data on U.S. Treasury Securities from a weekly to a daily basis and increased the information publicly disseminated to include, among other things, pricing information for certain U.S. Treasury Securities.[56] FINRA's current proposal will further increase price transparency by making individual transaction data available with an end-of-day dissemination and with appropriate cap sizes and on a historical basis for U.S. Treasury Securities that are On-the-Run Nominal Coupons.

The proposal is reasonably designed to preserve the confidentiality of individual market participants and transactions. While commenters described concerns that transaction-level transparency could cause information leakage, discouraging transactions and impairing market liquidity, the proposal is reasonably designed to mitigate these concerns by incorporating transaction size dissemination caps, delaying dissemination until the end of each day, and limiting the scope to On-the-Run Nominal Coupons. This scope limitation is a reasonable first step, instead of including every security in the U.S. Treasury Security market, or specifically transactions in first, second, and third old off-the-run U.S. Treasury Securities, as some commenters suggested.[57] FINRA has affirmed that any changes in the level of transparency it provides, including changes to the dissemination cap sizes or scope of transactions included, would be based on careful analysis and filed with the Commission as proposed rule changes pursuant to Section 19(b)(1) of the Act.[58] In response to commenters, FINRA addressed the request for additional information regarding FINRA's methodology for setting the transaction size dissemination caps[59] and the request for data detailing the portion of notional value that may exceed the transaction size dissemination caps.[60] The proposal strikes an appropriate balance between fulfilling the goal of increased transparency and mitigating risks that could impair liquidity in the market for U.S. Treasury Securities. While some commenters suggested using a notional amount calculation method for the dissemination caps,[61] the proposal makes a reasonable choice of method of calculating dissemination caps by calibrating them to the maturity, liquidity, and trading concentration of the underlying securities to preserve the anonymity of market participants trading large transactions.

Lastly, the proposed dissemination fees are consistent with the Act. The TRACE U.S. Treasury Security end-of-day and historic data sets are comparable, in terms of granularity and timeliness, to existing data sets for other TRACE-eligible securities. Thus, charging the same fee level for TRACE end-of-day and historic data products that include U.S. Treasury Securities data as is currently charged for TRACE end-of-day and historic data products that include data about securities other than U.S. Treasury Securities, while maintaining the current fee levels for those data products, is reasonable. Section 15A(b)(5) of the Act requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The rules that establish the current TRACE end-of-day and historic data products have been approved by the Commission, and the fees that FINRA proposes to charge for information on individual transactions in U.S. Treasury Securities are identical to those that currently apply for end-of-day and historic data products for other types of TRACE-eligible securities,[62] which have been in effect for some time.[63]

Pursuant to Section 19(b)(5) of the Act,[64] the Commission consulted with and considered the views of the Treasury Department in determining to approve the proposed rule change. The Treasury Department indicated its support for the proposal.[65] Pursuant to

[49] FINRA Response Letter at 5.

[50] FINRA Response Letter at 5 (citing Notice, 88 FR at 77395).

[51] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78*o*–3(b)(6).

[53] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8136 (January 29, 2001).

[54] *See supra* note 8.

[55] *See supra* note 9.

[56] *See supra* note 10.

[57] *See supra* note 27.

[58] *See supra* note 34.

[59] *See supra* notes 47 through 50.

[60] *See supra* note 35.

[61] *See supra* note 31.

[62] *See* FINRA Rule 7730.

[63] *See* Securities Exchange Act Release No. 81995 (November 1, 2017), 82 FR 51658 (November 7, 2017) (SR–FINRA–2017–033) (notice of filing and immediate effectiveness of fee for end-of-day data product); Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (SR–FINRA–2007–006) (approval order for the historic data product and related fee).

[64] *See* 15 U.S.C. 78s(b)(5) (providing that the Commission ''shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor'').

[65] *See, e.g.,* Remarks by Under Secretary for Domestic Finance Nellie Liang at the 2023 Treasury Market Conference (November 16, 2023) (''We are hopeful that, after a review of the public comments, the SEC will approve a final rule and the proposed dissemination by FINRA for on-the-runs can begin soon afterwards.''), available at *https://home.treasury.gov/news/press-releases/jy1917.*

Section 19(b)(6) of the Act,[66] the Commission has considered the sufficiency and appropriateness of existing laws and rules applicable to government securities brokers, government securities dealers, and their associated persons in approving the proposal. The proposal will benefit investors and market participants by promoting greater transparency into the U.S. Treasury Securities market while also maintaining the confidentiality of individual market participants and transactions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[67] that the proposed rule change (SR–FINRA–2023–015) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–02804 Filed 2–9–24; 8:45 am]

BILLING CODE 8011–01–P

[66] 15 U.S.C. 78s(b)(6).

[67] 15 U.S.C. 78s(b)(2).

[68] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2023–0051]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections, and two new collections for OMB-approval.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAmain* by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA–2023–0051] in your submitted response.

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 12, 2024. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Representative Availability Portal for Social Security Administration Hearings—20 CFR 404.929, 404.933, 404.1740, 416.1429, 416.1433, 416.1540, 418.1350, 422.203—0960–NEW. As part of the appeals process, claimants can request a hearing with an Administrative Law Judge (ALJ). Approximately 80 percent of claimants have appointed representatives at the hearing level. When the Social Security Administration (SSA) schedules hearings before an ALJ, it usually considers the availability of appointed representatives, if applicable. Appointed representatives may be members of large firms, appearing at hearings nationwide, or may be solo practitioners servicing a specific geographic location or hearing office. In both situations, it is typical for appointed representatives to represent more than one claimant at any given moment; some represent hundreds of claimants at once.

Historically, the process of seeking, tracking, and considering representative availability has been a manual and time-intensive activity. In the past, hearing offices sought representative availability information by contacting each representative individually. More recently, Office of Hearings Operations' Regional Offices representatives collected availability information. Representatives provided Regional Office staff with their hearing availability via telephone or email. However, the process for gathering and considering representative availability was not standardized and varied greatly amongst Regional Offices. The appointed representative community informed SSA they would appreciate a consistent and standardized electronic process to submit their availability for hearing appearances.

In the Spring of 2023, SSA initiated the Enhanced Representative Availability Process (ERAP) to provide representatives with a more standardized and streamlined process to email their availability for hearings. In the interim, SSA obtained OMB approval to test a new Representative Availability Portal (Portal) to offer the representative community a web-based option to submit their monthly availability to SSA, as per *20 CFR 404.1740(b)(3)(iii)* and *416.1540(b)(3)(iii)* and in a manner consistent with ERAP. SSA tested the portal among 11 appointed representative practice groups nationwide. We are currently seeking OMB approval for the national rollout of the Portal, which collects standardized information regarding appointed representative availability for the purpose of scheduling hearings.

SSA plans to roll the Portal out to all appointed representatives registered with the Registration, Appointment and Services for Representatives (RASR) application, other professional representatives who regularly conduct hearing business with SSA but are not registered with RASR, and delegated officials from appointed representative's Designated Scheduling Groups (DSG). A DSG is a representative-identified scheduling group which can include one representative, or multiple representatives. Respondents will need to have a *mySocial Security* account to use the Portal and be registered into the Portal by SSA systems. Respondents who wish to use the Portal, but who are not registered with RASR, or who do not have a Representative ID, must provide SSA systems with the necessary data, including name and SSN, to complete the Portal registration process.

Portal respondents, once registered, are authorized representatives and delegated officials from appointed representatives' DSG. SSA will use the Portal to track availability for hearings for the DSG. Representatives provide hearing availability for the DSG monthly (as described above), and SSA considers the DSG-provided availability when scheduling hearings. SSA will announce the response window for the Portal each month via a reminder email, approximately ten days prior to the deadline for Portal submissions. Following the submission deadline, the Portal will ''lock,'' and respondents will not be able to submit availability through the Portal at that time. However, SSA has some discretion to approve a request for a late submission

or modification and plans to have the capacity to unlock the Portal, when warranted. Portal response options will include DSG group, hearing region, availability during the period of submission, and respondent-preferred case maximums. The Portal will allow SSA to obtain the information we require to schedule hearings for attendees.

If the respondents choose not to submit their availability via the Portal, the option of submitting their availability through email submission (as is the current practice) will remain. If a representative elects not to timely submit any availability via the Portal or email, SSA will schedule their hearings without their input.

We expect use of the Portal will result in receiving consistent structured data from appointed representatives, which will allow for a more streamlined and effective hearing scheduling process. The Portal also meets a longstanding customer-experience request by the representative community, one of SSA's key stakeholders in the process.

The respondents are appointed representatives, and delegated officials from appointed representatives' DSGs who need to submit their availability to SSA for hearings.

Type of Request: Request for a new information collection.

This is a Correction Notice: SSA published the incorrect information for this new collection at 88 FR 71067, on 10/13/23. We are correcting this error here.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
Representative Availability Portal for SSA Hearings	* 3,000	12	36,000	20	12,000	** $71.17	*** $854,040

* This figure represents the approximate number of individual representatives registered with RASR who regularly schedule hearings with the agency.

** We based this figure on the mean hourly wage for the average lawyer in the United States as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Statement of Death by Funeral Director and State Death Match Collections—20 CFR 404.301, 404.310–404.311, 404.316, 404.330–404.341, 404.350–404.352, 404.371, 404.715, 404.720, and 416.912—0960–0142. The death of a beneficiary is an event that terminates the individual's entitlement to Social Security benefits. As regulated, states must furnish death information to SSA to compare to SSA's payment files. SSA employs two modalities for ensuring it efficiently receives accurate information regarding the deaths of SSA-insured workers and beneficiaries: (1) Form SSA–721, Statement of Death by Funeral Director; and (2) the Electronic Death Registration (EDR). SSA operates the State Death Match collections, which includes the EDR process for electronically reporting death records to SSA. The states furnish death certificate information to SSA via a manual registration process (the SSA–721), or via the Electronic Death Registration Process (EDR). Both death match processes are automated electronic transfers between the states and SSA. This collection, via paper form SSA–721 or the EDR, allows for the funeral director or funeral home responsible for the individual's burial or cremation to report the death to SSA. SSA uses this information for three purposes: (1) to establish proof of death for the insured worker; (2) to determine if the insured individual was receiving any pre-death benefits SSA needs to terminate; and (3) to ascertain which surviving family member is eligible for the lump-sum death payment or for other death benefits. The respondents for this information collection are funeral directors who handled death arrangements for the insured individuals, and the states' bureaus of vital statistics.

Type of Request: Revision of an OMB-approved information collection.

EDR

Modality of completion	Number of respondents	Frequency of response	Average cost per record request	Estimated total annual burden hours (cost)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
State Death Match—EDR *	54	3,164,477	$2.77	$473,342,469	** $21.33	*** $67,498,294
States Expected to Become—State Death Match—EDR Within the Next 3 Years *	1	1,247	3.73	4,651	** 21.33	*** 26,598
Totals:	55	.....	.....	473,347,120	.....	*** 67,524,892

* Please note that both of these data matching processes are electronic, and nearly immediate. Therefore, there is only a cost burden, and no hourly burden for the respondent to provide this information.

We estimated the frequency of responses by taking the total number of actual records received for calendar year 2022 for each category and dividing by the number of respondents, per category.

We have 54 States and Jurisdictions currently using EDR. Guam recently showed interest in becoming an EDR site. Estimated sometime mid to late next year 2024.

** We based this figure on the average Records Clerk hourly wages as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA–721

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
SSA–721	437,449	1	4	29,163	* $27.98	** $815,981

* We based this figure on average funeral home manager's hourly salary in May 2022, as reported by Bureau of Labor Statistics data (Morticians, Undertakers, and Funeral Arrangers).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Retaining Employment and Talent After Injury/Illness Network (RETAIN)—0960–0821. The SSA and the U.S. Department of Labor (DOL) are conducting the Retaining Employment and Talent After Injury/Illness Network (RETAIN) demonstration. The RETAIN demonstration tests the impact of early intervention strategies that improve stay-at-work/return-to-work (SAW/RTW) outcomes of individuals who experience work disability while employed. We define ''Work disability'' as an injury, illness, or medical condition that has the potential to inhibit or prevent continued employment or labor force participation. SAW/RTW programs succeed by returning injured or ill workers to productive work as soon as medically possible during their recovery process, and by providing interim part-time or light duty work and accommodations, as necessary. We loosely modeled the RETAIN Demonstration Projects after promising programs operating in Washington State, including the Centers of Occupational Health and Education (COHE), the Early Return to Work (ERTW), and the Stay at Work programs. While these programs operate within the state's workers' compensation system, and are available only to people experiencing work-related injuries or illnesses, the RETAIN Demonstration Projects provide opportunities to improve SAW/RTW outcomes for both occupational and non-occupational injuries and illnesses of people who are employed, or at a minimum in the labor force, when their injury or illness occurs.

The primary goals of the RETAIN Demonstration Projects are:

1. To increase employment retention and labor force participation of individuals who acquire, and/or are at risk of developing, work disabilities; and

2. To reduce long-term work disability among RETAIN service users, including the need for Social Security Disability Insurance and Supplemental Security Income.

The Retain Demonstration aims to validate and expand evidence-based strategies to accomplish these goals. DOL funds intervention approaches and programmatic technical assistance, while SSA funds evaluation support, including technical assistance and the full evaluation for the demonstration. The demonstration consists of two Phases. The first involves the implementation and assessment of cooperative awards to eight states to conduct planning and start-up activities, including the launch of a small pilot demonstration. During Phase 1, SSA provided evaluation-related technical assistance and planning, and conducts evaluability assessments to assess which states' projects would allow for a rigorous evaluation if continued beyond the pilot phase. SSA completed Phase 1 on May 16, 2021. DOL selected a subset of states and continued to Phase 2 full implementation and evaluation on May 17, 2021, which will end in October 2025. During Phase 2, DOL funds the operations and program technical assistance activities for the recommended states, and SSA funds the full set of evaluation activities. The four components of this evaluation, completed during site visits, interviews with RETAIN service users, surveys of RETAIN enrollees, and surveys of RETAIN service providers, include:

- *The participation analysis:* Using RETAIN service user interviews and surveys, this analysis provides insights into which eligible workers choose to participate in the program, in what ways they participate, and how services received vary with participant characteristics. Similarly, it will assess the characteristics of, and if possible, reasons for non-enrollment of non-participants.

- *The process analysis:* Using staff interviews and logs, this analysis produces information about operational features that affect service provision; perceptions of the intervention design by service users, providers, administrators, and other stakeholders; relationships among the partner organizations; each program's fidelity to the research design; and lessons for future programs with similar objectives.

- *The impact analysis:* This analysis produces estimates of the effects of the interventions on primary outcomes, including employment and Social Security disability applications, and secondary outcomes, such as health and service usage. SSA identifies evaluation designs for each state to generate impact estimates, which could include experimental or non-experimental designs.

- *The cost-benefit analysis:* This analysis assesses whether the benefits of RETAIN justify its costs, conducted from various perspectives, including participants, state and Federal governments, SSA, and society as a whole. The purpose and proposed use of this information collection is to gather qualitative and quantitative data needed to conduct the analysis. These activities, include (1) surveys of RETAIN enrollees and (2) follow-up interviews with RETAIN service users. The qualitative data collection consists of: (1) semi-structured interviews with program staff and service users; and (2) staff activity logs. Program staff interviews focus on staff's perceptions of the successes and challenges of implementing each states program, while staff activity logs house information on staff's time to inform the benefit-cost analysis. Service user interviews inform SSA's understanding of users' experiences with program services. The quantitative data include SSA's program records and survey data. The survey data collection consists of: (1) two rounds of follow-up surveys, focusing on individual-level outcomes, with enrollees, all of whom who have experienced a disability onset; and (2) two rounds of surveys with RETAIN providers. Respondents learn of the RETAIN program data collection efforts through various outreach methods, including, but not limited to mailings, phone calls, and from other individuals. SSA is constantly reviewing our outreach strategies to ensure maximum exposure and accessibility to the materials. the respondents are staff members selected for staff interviews

and staff activity logs, and RETAIN service users, enrollees, and providers.

Type of Request: Request for renewal of an information collection.

RETAIN 2024 BURDEN FIGURES

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ****
Enrollee Survey Round 1 (Respondents)	1,872	1	20	624	* $29.76	** 19	*** $20,177
Enrollee Survey Round 1 (Nonrespondents)	468	1	3	23	* 29.76	** 0	*** 684
Enrollee Survey Round 2 (Respondents)	4,493	1	26	1,947	* 29.76	** 19	*** 100,291
Enrollee Survey Round 2 (Nonrespondents)	1,123	1	3	56	* 29.76	** 0	*** 1,667
Follow-up interviews with service users (Respondents)	20	1	141	47	* 29.76	** 19	*** 1,577
Follow-up interviews with service users (Nonrespondents)	30	1	6	3	* 29.76	** 0	*** 89
Totals	8,006			2,700			*** 124,485

RETAIN 2025 BURDEN FIGURES

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Enrollee Survey Round 2 (Respondents)	1,123	1	26	487	* $29.76	** 19	*** $25,088
Enrollee Survey Round 2 (Nonrespondents)	281	1	3	14	* 29.76	** 0	*** 417
Totals	1,404			501			*** 25,505
Grand Total							
Totals	9,410			3,201			*** 149,990

* We based these figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on average FY 2023 wait times for teleservice centers (approximately 19 minutes per respondent), based on SSA's current management information data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete these tasks; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the tasks. *There is no actual charge to respondents to complete the tasks.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 13, 2024. Individuals can obtain copies of these OMB clearance packages by writing to the *OR.Reports.Clearance@ssa.gov.*

1. Beyond Benefits Study (BBS)—0960–NEW. The BBS will provide SSA with information regarding the needs of individuals who, due to medical improvement or a change in eligibility, have ''exited'' (called Exiters), or are likely to ''exit'' (called Possible Exiters) the Social Security Disability Insurance (SSDI) program, the Supplemental Security Income (SSI) program, or both. The BBS will provide SSA with a clearer understanding of the challenges and needs of the target population as Exiters leave the safety net and security of disability benefits and attempt to return to work. SSA will use the findings from the BBS to identify potential interventions and policies to help Exiters and Possible Exiters achieve sustainable, substantial work leading to self-sufficiency.

In seeking to understand the needs (*e.g.,* service, medical, and employment) of Exiters and Possible Exiters, the study aims to answer three primary research questions: (1) what are the service, medical, and employment needs required to achieve sustainable, substantive employment among individuals who exit SSDI/SSI programs; (2) what are the types of services, resources, and interventions that will help exiting individuals obtain and retain employment, and should SSA consider a larger test study; and (3) what policy recommendations will facilitate substantive and sustainable employment among individuals who exit SSDI/SSI programs?

The BBS will help SSA answer these questions by collecting data through surveys, interviews, and focus groups. Quantitative data collection via the survey will include 4,000 participants stratified by exit status and other criteria. The sample will include 2,000 Possible Exiters, 1,000 Short-term Exiters (have exited within the last year), and 1,000 Long-term Exiters (have exited within the last 1–5 years) with 75% of respondents in each group having a high-scoring likelihood of medical improvement based on the Continuing Disability Review (CDR) profiling model. The sample will be further stratified by program type (SSDI versus SSI) and by recommended determinants of self-sufficiency (*e.g.,* age, type of impairment, and urban or rural locality).

The Motivational Interviewing Pilot Test will recruit 50 Exiters to participate in six sessions. During these sessions, motivational interviewers assess each participant's readiness to return to work using a standardized screener and explore the interest and motivation relating to obtaining and retaining employment as well as career advancement. Participants who drop out after the first session will be replaced.

Data collection via the interviews and focus groups will include (1) qualitative in-depth interviews with Exiters and Possible Exiters (70 individuals); (2) ten focus groups with Exiters and Possible Exiters (140 individuals, total); (3) two focus groups with service providers (20 individuals, total); (4) in-depth interviews with state and agency leadership (30 individuals); and, (5) a focus group with the motivational

interview (MI) practitioners (five individuals).

The respondents are individuals who have volunteered to take part in the study and are exiting (Exiters) or may be exiting (Possible Exiters) SSA's disability program(s) due to medical improvement or changes in eligibility; vocational service providers; state and agency leadership; and motivational interviewers.

Type of Request: Request for a new information collection.

Study component	Number of respondents	Frequency of responses	Average burden per response (minutes)	Total burden hours	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
Interviews with Exiters and Possible Exiters (icl. informed consent and pre-collection questions)	70	1	65	76	*$12.81	**$974
Focus groups with Exiters and Possible Exiters (icl. informed consent and pre-collection questions)	140	1	65	152	*12.81	**1,947
Focus group with service providers (icl. informed consent and pre-collection questions)	20	1	65	22	*24	**528
Focus group with motivational interviewer practitioners (icl. informed consent)	5	1	65	5	*35	**175
In-depth interviews with state and agency leadership (icl. informed consent and pre-collection questions)	30	1	65	33	*56	**1,848
Survey (icl. informed consent and pre-collection questions)	4,000	1	50	3,333	*12.81	**42,696
MI Pilot (icl. informed consent and pre-collection questions)	50	6	60	300	*12.81	**3,843
Total	4,315	4,565		3,921		**52,011

*We base this figure on average DI payments wages for disability recipients as reported by SSA data (*https://www.ssa.gov/legislation/2023factsheet.pdf*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Help America Vote Act—0960–0706. House Rule 3295, the Help America Vote Act of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have driver's licenses or State-issued ID cards, they must supply the last four digits of their Social Security number to their local State election agencies for verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA) and the State MVA inputs the data into the American Association of MVAs, a central consolidation system that routes the voter data to SSA's Help America Vote Verification (HAVV) system. Once SSA's HAVV system confirms the identity of the voter, the information returns along the same route in reverse until it reaches the State election agency. The respondents are the State MVAs seeking to confirm voter identities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Total annual opportunity cost (dollars)**
HAVV	48	102,200	4,905,600	2	163,520	*$22.07	**$3,608,886

*We based this figure on average local government information and records clerk's salary shown on the Bureau of Labor Statistic's website (*https://www.bls.gov/oes/current/oes434199.htm*).

**This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2024–02766 Filed 2–9–24; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0027]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Office of Personnel Management (OPM). Under this matching program, OPM will disclose civil service benefit and payment data to SSA. SSA is legally required to offset specific benefits by a percentage of civil service benefits received (Spousal and Survivors benefits, Supplemental Security Income (SSI) benefits, and Retirement and Disability Insurance Benefits are offset by a percentage of the recipients' own Federal Government pension benefits). SSA administers the Old Age, Survivors, Disability Insurance (OASDI), SSI, and Special Veterans' Benefits (SVB) programs. SSA will use the match results under this agreement to meet its civil service benefit offset obligations. SSA's Office of the Chief Actuary (OCA) will also use OPM's data for statistical and research purposes in tracking the size of, and impact on, subpopulations of government annuitants affected by the Government Pension Offset, the Windfall Elimination Provision, and in cost estimates of proposals to change the two provisions.

DATES: Submit comments on the proposed matching program no later than March 13, 2024.

The matching program will be applicable on March 11, 2024, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of four methods—internet, fax, mail, or email. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state

that your comments refer to Docket No. SSA–2023–0027 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the *Search* function to find docket number SSA–2023–0027 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (833) 410–1631.

3. *Mail:* Submit comments to Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, or by emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–1943, or by sending an email to *Cynthia.Scott@ssa.gov.*

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and OPM.

Authority for Conducting the Matching Program: The legal authority for SSA to conduct this matching activity for SSI purposes is section 1631(e)(1)(B) and (f) of the Social Security Act (Act) (42 U.S.C. 1383(e)(1)(B) and (f)). The legal authority for SVB purposes is section 806 of the Act (42 U.S.C. 1006). The legal authority for SSA to conduct this matching activity for OASDI includes section 224 of the Act (42 U.S.C. 424a), which provides for the reduction of Social Security disability benefits when the disabled worker is also entitled to a Public Disability Benefit (PDB). Also, section 215a(7)(A) of the Act (42 U.S.C. 415) requires a modification to the computation formula reducing the Primary Insurance Amount of a retired and disabled worker entitled to a pension from employment not covered under Social Security. Section 202k(5)(A) (42 U.S.C. 402) provides for the reduction of spousal and survivors benefits by a percentage of a pension received based on work not covered by Social Security.

Section 1631(f) of the Act (42 U.S.C. 1383(f)) requires Federal agencies to furnish SSA with information necessary to verify eligibility for benefits. Section 224(h)(1) of the Act (42 U.S.C. 424a(h)(1)) requires any Federal agency to provide SSA with information in its possession that SSA may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Act (42 U.S.C. 424a).

This agreement is executed in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and the regulations and guidance promulgated thereunder.

Purpose(s): This agreement sets forth the terms, conditions, and safeguards under which OPM will disclose civil service benefit and payment data to SSA. SSA will use the match results under this agreement to meet its civil service benefit offset obligations. SSA is legally required to offset specific benefits by a percentage of the benefit recipients' Federal Government pension benefits.

SSA's OCA will also use OPM's data for statistical and research purposes in tracking the size of, and impact on, subpopulations of government annuitants affected by the Government Pension Offset and the Windfall Elimination Provision. Additionally, the OCA will use OPM's data in cost estimates of proposals to change the two provisions.

Categories of Individuals: The individuals whose information is involved in this matching program are those individuals who are receiving civil service benefits and payments as well as either Spousal and Survivors benefits, SSI or SVB benefits, or Retirement and Disability Insurance benefits.

Categories of Records: OPM will provide SSA with an electronic file containing civil service benefit and payment data from the annuity and survivor master file. Each month, OPM will provide SSA with an electronic file that will include updated payment information for new civil service annuitants and annuitants whose civil service annuity has changed. This monthly file contains approximately 25,000 records. OPM will provide SSA with the entire master annuity file of approximately 2.7 million records once yearly for the month of the civil service cost-of-living allowance. OPM will furnish SSA with the following civil service benefit and payment data: payment status code; prefix; name; Social Security number (SSN); Social Security verification code; date of birth; award date; civil service claim number; first potential month and year of eligibility; date of eligibility indicator; first month, day, and year of entitlement; disability indicator; Federal Insurance Contributions Act covered months indicator; total service months; amount of current gross civil service benefits; effective date (month, day, and year) of civil service amount; SSNs for disabled children; retroactive payments; date of death; payments that are currently coded 'special pay'; OPM code that indicates OPM used pre-1957 military service in the benefit computations; actual military service dates that OPM used in computing the OPM pension amount; OPM code for voluntary contributions; amount of the pension from voluntary contributions; months of employment after 1956 not covered by Social Security that are used to determine the pension; period of employment upon which pension is based; and Federal Employees Retirement System transfer case data.

SSA will attempt to verify the SSNs furnished by OPM using the SSA Enumeration System database and the individuals' name, date of birth, and SSN. SSA will only use verified SSNs in the matches with its systems of records (SOR). SSA will match the SSN-verified OPM data against the Supplemental Security Record or Master Beneficiary Record to identify: SSI/SVB recipients who are also receiving a civil service pension; individuals who may be subject to PDB offset; and beneficiaries subject to a Federal pension offset.

System(s) of Records: OPM will provide SSA with electronic files from the OPM SOR published as OPM/Central-1 (Civil Service Retirement and Insurance Records) at 73 FR 15013 (March 20, 2008), as amended at 80 FR 74815 (November 30, 2015). SSA will

conduct the match using the individual's SSN, name, and date of birth on both the OPM file and SSA's databases covered under the following SSA SORs: the Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System), 60–0058, as published at 87 FR 263 (January 4, 2022); the Master Beneficiary Record (MBR), 60–0090, as published at 71 FR 1826 (January 11, 2006), as amended at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018); and the Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), 60–0103, as published at 71 FR 1830 (January 11, 2006), as amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018).

[FR Doc. 2024–02789 Filed 2–9–24; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12325]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 24 Letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc* public and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2776) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner.

The following comprise recent such notifications and are published to give notice to the public.

April 3, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Kosovo of fully automatic machineguns [sic].

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–074.

April 6, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Mexico to support the manufacture, test, inspection and rework of parts and components of various gas turbine engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–020.

April 14, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Mexico to support the manufacturing and assembling of electro-mechanical components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–025.

April 24, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia to support the operations, maintenance, modification, training, and sustainment of aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–081.

April 24, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles to Switzerland to support the integration of E.O./IR surveillance systems on vehicles.

The U.S. government is prepared to license the export of these items having taken into

account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–010.

April 24, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to the UAE of 5.56mm machine guns.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–034.

April 27, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives*.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles to the Republic of Serbia of HUMVEE military vehicles.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–046.

April 27, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm automatic carbines to Kosovo.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–071

April 27, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia to support the integration, installation, operation, training, testing, maintenance, and repair of radar equipment.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–073.

April 27, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Denmark to support the system operation, operational-level maintenance, repair, overhaul, training, and base activities required for the operation and sustainment of F135 propulsion systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–004.

April 27, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Norway of fully automatic machine guns.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–011.

May 9, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Germany, the Netherlands, and the UK to support the manufacturing of a guided missile weapon system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–066.

May 9, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to the UK of fully automatic rifles, sound suppressors, and upper receiver assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–001.

May 9, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan and Israel to support the manufacture of aircraft helmet mounted display systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–005.

May 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Ukraine, Poland, Finland, and Norway to support the integration, engineering, assembly, operation, repairing, testing, training, and maintenance of a surface to air missile system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–088.

May 23, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm fully automatic rifles to Malaysia.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–072.

May 23, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Luxembourg to support the maintenance, update, upgrade, modification, and enhancement activities for unmanned aerial systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–003.

May 23, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia, Singapore, and Taiwan to support the integration, installation, operation, training, testing, maintenance, and repair of communication systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–008.

May 23, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Ukraine of fully automatic machine guns.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–016.

May 25, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Japan for Rocket Motors, Steering Control Sections, and Control Surface Assemblies.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–065.

June 7, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Taiwan to support the installation of a Weapon System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–082.

June 7, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Israel and Singapore to support the integration, development, operation, maintenance, training, and follow-on support related to a chain gun system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–012.

June 29, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Jamaica of 5.56mm automatic carbines, spare parts, and components.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–035.

June 29, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more and the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Norway to support the design, development, assembly, engineering, integration, operation, modification, test, analysis, qualification, training, and manufacture of missile propulsion sections.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–002.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2024–02811 Filed 2–9–24; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12324]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 12 Letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc* public and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2776) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner.

The following comprise recent such notifications and are published to give notice to the public.

January 5, 2023

The Speaker of the House of Representatives.

Dear Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Argentina to support the standardization, removal of obsolescence, and upgrade of avionics and mission systems equipment.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–055.

January 5, 2023

The Speaker of the House of Representatives.

Dear Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Sweden to support the operational support, overhaul, repair, assembly, inspection, test, and depot level support of aircraft engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–057.

January 5, 2023

The Speaker of the House of Representatives.

Dear Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the manufacture of the Mk 45 Naval Gun System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–061.

January 12, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia and Israel to support the operation, installation/integration, maintenance, repair, support, and training for radio equipment, and corresponding ancillary equipment.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–058.

January 12, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of 100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea supporting the manufacture, assembly, and testing of subassemblies for the MK45 Gun Mount.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–060.

January 19, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 9mm fully automatic rifles with spare parts to Brazil.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–063.

January 19, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 9mm automatic rifles to Brazil.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–067.

January 26, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms parts and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm sound suppressors to Canada.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–069.

February 7, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to India to support the maintenance and sustainment of maritime patrol aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–075.

February 16, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to the UK of 5.56mm fully automatic rifles and sound suppressors.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–085.

February 21, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Norway of .50 caliber machine guns and spare parts.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw
Acting Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 22–068.

March 2, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Ukraine of .50 caliber machine guns.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.
Enclosure: Transmittal No. DDTC 23–009

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2024–02779 Filed 2–9–24; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 12326]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 20 Letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc* public and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2776) requires that notifications

to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner.

The following comprise recent such notifications and are published to give notice to the public.

July 3, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Taiwan, the Republic of Korea, Canada, and the UK to support a submarine combat management system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip G. Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–087.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more and the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Australia, Belgium, Canada, Denmark, Germany, Greece, the Netherlands, Norway, Portugal, Spain, and Türkiye to support the designing, development, production, manufacturing, assembly, operation, repairing, testing, integration, maintenance, modification, and demonstration of a ship-based missile.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–062.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Jordan of fully automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–084.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Japan to support the integration, configuration, operation, specifications, test reports, analysis, and maintenance of a long-range radar system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–086.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to the UK to support the maintenance, repair, and modification of military cargo aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–015.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm automatic rifles to Singapore.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–033.

July 11, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Ukraine of 7.62mm machine guns.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–034.

July 18, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Taiwan, Malaysia, ''and'' Greece in support of the procurement, installation, support services, training, and testing of a fire control radar weapon system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–025.

July 20, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia, Saudi Arabia, and UAE to support the preparation, shipment, delivery, inspection, acceptance, testing, and maintenance of PATRIOT missiles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–076.

July 28, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to India to support the assembly, manufacture, and test of engines and engine hardware.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–032.

July 31, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more and the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the manufacture, assembly, test maintenance, and repair of radios.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–035.

August 16, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act (AECA), please find enclosed a certification of a proposed license for the export of firearms, parts, and components controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of fully automatic rifles to Israel.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–051.

August 17, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to France, Germany, the Netherlands and Switzerland to support the manufacture, production, test, inspection, modification, enhancement, rework, and repair of aircraft wing flaps.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Philip Laidlaw,
Acting Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–039.

September 8, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the

export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Mexico of M134D 7.62mm machineguns and associated parts.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary of State, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 20–093.

September 8, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Saudi Arabia, UK, and UAE to support the delivery, installation, training, operation, maintenance, repairs, upgrades, and testing of radars.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–077.

September 8, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Australia to support the development and delivery of a submarine tactical control subsystem.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–028.

September 8, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Canada, Germany, Spain, and the UK related to the manufacture, overhaul, repair, modification, refurbishment, rework, inspection, quality assurance activities and testing of landing gear assemblies, sub-assemblies, parts, and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–036.

September 8, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Ukraine of fully automatic rifles.

The U.S. government is prepared to license the export of these items having considered political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–046.

September 15, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data, and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services, to Canada, Germany, Israel, and the UK to support software support and upgrades to simulation training system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,
Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 23–043.

September 20, 2023

The Honorable Kevin McCarthy, *Speaker of the House of Representatives.*

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act (AECA), please find enclosed a certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Kuwait, UAE, and the UK to support the marketing, sale, delivery, and sustainment activities of Kuwait Air Force cargo aircraft fleet, associated support equipment, and training systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoğlu,

Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 22–079.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2024–02810 Filed 2–9–24; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–0366]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Pilot Professional Development

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves requirements primarily applicable to air carriers conducting domestic, flag, and supplemental operations to enhance the professional development of pilots in those operations. The action requires air carriers conducting domestic, flag, and supplemental operations to provide new-hire pilots with an opportunity to observe flight operations and become familiar with procedures before serving as a flightcrew member in operations. Additionally, it requires air carriers who have not previously revised the upgrade training to include professional development and to provide leadership and command and mentoring training for all pilots in command. The information to be collected is necessary to mitigate incidents of unprofessional pilot behavior and reduce pilot errors that can lead to a catastrophic event.

DATES: Written comments should be submitted by April 12, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0802.

Title: Pilot Professional Development.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The collection involves requirements primarily applicable to air carriers conducting domestic, flag, and supplemental operations to enhance the professional development of pilots in those operations. These amendments to part 121 set out prerequisites and levy requirements that must be met by certificate holders using part 121 pilot training and qualification programs and by those individuals who serve in given capacities for those certificate holders.

The FAA anticipates that certificate holders will incur costs for the following groups of provisions:

- Operations familiarization for new-hire pilots (§ 121.435);
- Leadership and command and mentoring ground training for pilots currently serving as pilot in command (PIC) (§ 121.429) and recurrent PIC leadership and command and mentoring ground training (§§ 121.409(b) and 121.427);
- Leadership and command training and recurrent leadership and command training for pilots serving as second in command (SIC) in operations that require three or more pilots (§ 121.432(a));
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Part 121, Appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an Advanced Qualification Program (AQP) (§ 121.909).

The development and approval of new and revised curriculums will be a one-time occurrence for each certificate holder. The documentation regarding training in leadership and command and mentoring for current PICs will be a one-time occurrence. Similarly, the documentation regarding training in leadership and command for current SICs serving in operations that require three or more pilots will be a one-time occurrence. The documentation of operations familiarization for new-hire pilots will occur once for each new-hire pilot. The documentation of recurrent PIC leadership and command and mentoring training will occur every three years for each PIC. The documentation of recurrent leadership and command training for SICs serving in operations that require three or more pilots will occur every three years for each such SIC.

Respondents: Part 121 Air Carriers.

Frequency: Varies per Requirement.

Estimated Average Burden per Response: Varies per Requirement.

Estimated Total Annual Burden: 341 Hours.

Issued in Washington, DC, on February 7, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–02784 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1480]

Agency Information Collection Activities: Requests for Comments; Clearance of Continued Approval of Information Collection: Limited Recreational Unmanned Aircraft Operation Applications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 7, 2023. The collection involves information related to recreational flying under the Exception for Limited Recreational Operations of Unmanned Aircraft. The information collected will be used to recognize Community Based Organizations (CBOs), administer an aeronautical knowledge and safety test, establish fixed flying sites, approve standards and limitations for Unmanned

Aircraft Systems (UAS) weighing more than 55 pounds, and designate FAA Recognized Identification Areas (FRIAs).

DATES: Written comments should be submitted by March 13, 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.

FOR FURTHER INFORMATION CONTACT: Alvin A. Brunner by email at: *alvin.a.brunner@faa.gov;* phone: (405) 666–1024.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0794.

Title: Limited Recreational Unmanned Aircraft Operation Applications.

Form Numbers: Online collection.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 7, 2023 (88 FR 52240). In 2018, Congress passed the FAA Reauthorization Act of 2018 (Pub. L. 115–254). Section 44809 of Public Law 115–254 allows a person to operate a small unmanned aircraft (UA) without specific certification or operating authority from the FAA if the operation adheres to certain limitations. These limitations require the FAA to recognize community-based organizations (CBOs), develop and administer an aeronautical knowledge and safety test, establish fixed flying sites, approve standards and limitations for unmanned aircraft weighing more than 55 pounds, and designate FAA Recognized Identification Areas (FRIAs).

The information will be collected online, primarily through the FAA's DroneZone website. The information collected will be limited to only that necessary for the FAA to complete a review of an application under the following statutory requirements:

- Section 44809(c)(1), Operations at Fixed Sites
- Section 44809(c)(2)(a), Standards and Limitations—UA Weighing More Than 55 Pounds
- Section 44809(c)(2)(b), Operations at Fixed Sites—UA Weighing More Than 55 Pounds
- Section 44809(g)(1), Aeronautical Knowledge and Safety Test
- Section 44809(i), Recognition of Community-Based Organizations

Respondents: The FAA estimates that there will be approximately 1,143 respondents per year. Respondents comprise individuals and organizations operating under the Exception for Limited Recreational Operations of Unmanned Aircraft who wish to be recognized as CBOs, administer the aeronautical knowledge and safety test, establish fixed flying sites, have standards and limitations for unmanned aircraft weighing more than 55 pounds approved, and establish designated FRIAs.

Frequency: On occasion.

Estimated Average Burden per Response: Varies depending on the type of stakeholder application. Fixed flying site applications (including more than 55 pound UAS and FRIA) are estimated to take 0.5 hours per applicant. CBO recognition and more than 55 pound UAS standards and limitations applications are estimated to take 1.0 hours per applicant.

Estimated Total Annual Burden: 1,218 hours.

Issued in Washington, DC, on February 7, 2024.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2024–02833 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Land at the Gwinnett County Airport—Briscoe Field

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release .426 acres of federally obligated airport property at the Gwinnett County Airport.

DATES: Comments must be received on or before March 13, 2024.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA to the following address: Atlanta Airports District Office Attn: Krishina Green, Planner, 1701 Columbia Ave., Suite 220, College Park, GA 30337.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Gwinnett County Airport Authority, Attn: Mr. Matt Smith, 600 Briscoe Blvd., Lawrenceville, GA 30046.

FOR FURTHER INFORMATION CONTACT: Krishina Green, Airport Planner, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, (404) 305–6749. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release a parcel of land totaling 0.426 acres at the Gwinnett County Airport—Briscoe Field. The FAA determined this request to release submitted by the Sponsor meets the procedural requirements of the FAA and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

Issued in Atlanta, Georgia, on February 6, 2024.

Joseph Parks Preston,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2024–02792 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0011]

Agency Information Collection Activities: Request for Comments for the Reinstatement of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a reinstatement of an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID 2024–0011 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amber Reimnitz, 202–366–2997, Office of Freight Management & Operations (HOFM–1), Office of Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue Southeast, Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: USDOT Survey and Comparative Assessment of Truck Parking Facilities.

OMB Control #: 2125–0638.

Background: US Department of Transportation (USDOT) is directed to complete a survey and comparative assessment of truck parking facilities in each State as required by section 1401(c) of *Moving Ahead for Progress in the 21st Century* (MAP–21). MAP–21 section 1401(c) required the survey in order to evaluate the capability of the States to provide adequate parking and rest facilities for commercial motor vehicles engaged in interstate transportation. Other work activities required under this section of MAP–21 were: an assessment of the volume of commercial motor vehicle traffic in each State and the development of a system of metrics designed to measure the adequacy of commercial motor vehicle truck parking facilities in each state. A survey was conducted in 2014 and is available at: *https://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/jasons_law/truckparkingsurvey/index.htm.* A second survey was conducted in 2019 and a presentation of the results is available at: *https://ops.fhwa.dot.gov/Freight/infrastructure/truck_parking/coalition/2020/mtg/jasons_law_results.pdf.* MAP–21 section 1401(c)(3) called for periodic updates to the survey, which is the intent of the proposed updated survey. The results of this updated survey shall be made available on a publicly accessible Department of Transportation website and updated periodically USDOT seeks to continue to collect data to support updates to the survey.

Respondents: State Transportation and Enforcement Officials, Port Authorities, Private Sector Facility Owners/Operators, Trucking Company owners or their designee, and Truck Drivers. The target groups of respondents are individuals who are responsible for providing or overseeing the operation of truck parking facilities and stakeholders that depend on such facilities to safely conduct their business. The target group identified in the legislation is ''state commercial vehicle safety personnel;'' the Federal Highway Administration (FHWA) has interpreted this term to include the Department of Transportation personnel in each State involved in commercial vehicle safety program activities and State enforcement agency personnel directly involved in enforcing highway safety laws and regulations and in highway incident and accident response. FHWA recognizes the importance of ports when discussing this topic; input from Port Authorities must be obtained to complete the public inventory. In addition, FHWA finds that the survey on the adequacy of truck parking opportunities is not limited to publicly owned facilities; input from private sector facility owners/operators must be obtained to adequately complete the required work provided in the federal legislation. FHWA also finds that input obtained from trucking company representatives (owners or their designees, especially those in logistics or who schedule drivers) and truck drivers, key stakeholders for truck parking facilities who are most likely to know where truck parking is needed, will be necessary to complete the survey requirements. As per MAP–21 section 1401(c)(3), this survey will be conducted periodically to allow for required updates.

Types of Survey Questions: FHWA intends to survey Department of Transportation personnel in each State on the location, number of spaces, availability and demand for truck parking in their State, including at rest facilities, truck parking information systems, truck parking plans, as well as any impediments to providing adequate truck parking capacity (including but not limited to legislative, regulatory, or financial issues; zoning; public and private impacts, approval, and participation; availability of land; insurance requirements and other issues). FHWA intends to survey Port Authority personnel on number of spaces, availability, and demand for truck parking at their facility, truck parking information systems, reservation systems, as well as future plans for expansion or reduction of truck parking. FHWA intends to survey private truck stop operators in each State on the location, number of truck parking spaces, availability and demand they observe at their facilities. FHWA intends to survey public safety officials in each State on their records and observations of truck parking use and patterns, including the location and frequency of trucks parked adjacent to roadways and on exit and entrance ramps to roadway facilities. FHWA intends to survey trucking companies and truck drivers regarding the location and frequency of insufficient truck parking and capacity at rest facilities, future truck parking needs and locations, availability of information on truck parking capacity, and other impediments to identification, access and use of truck parking. Other questions may be included as needed as a result of input from the focus groups, stakeholder outreach or at FHWA's discretion, or as follow-up to the survey.

Estimate:

State Departments of Transportation = 52 (4 hours each) = up to 208 hours;

State Enforcement Personnel = 52 (1 hour each) = up to 52 hours;

Port Authorities = 205 (1 hour each) = up to 205 hours;

Private Facility Owners/Operators = 300 (1 hour each) = up to 300 hours; and

Trucking Company Representatives and Drivers = 800 (30 minutes each) = up to 400 hours;

Total number of respondents = 1,409 for the survey.

Total burden hours = no more than 1,165 hours (as allocated above).

Estimated Total Annual Burden: This survey will be updated periodically; the estimated total burden for each survey cycle for all respondents is no more than 1,165 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 7, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–02840 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Project—METRORapid University Corridor Project, Houston, Harris County, Texas

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

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding the METRORapid University Corridor Project, Houston, Harris County, Texas. The purpose of this notice is to publicly announce FTA's environmental decisions on the subject project, and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), section 4(f) requirements (49 U.S.C. 303), section 106 of the National Historic Preservation Act (54 U.S.C. 306108). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project modifications and actions that are the subject of this notice follow:

Project name and location: METRORapid University Corridor Project (Project), Houston, Harris County, Texas. *Project Sponsor:* Metropolitan Transit Authority of Harris County (METRO), Houston, Texas. *Project description:* The project would construct an approximately 25-mile bus rapid transit (BRT) line from Westchase Park & Ride to Tidwell Transit Center in the City of Houston, Texas (City). The BRT line would operate in dedicated, METRO-owned right-of-way from Westchase Park & Ride to Interstate-610 then transition to the center of City-owned and maintained streets. The project would also include 42 stations plus one stop at each end with accessible platforms, level boarding, next-bus arrival signs, security cameras, lighting, and offboard fare payment via ticket vending machines, electronic fare cards, or mobile devices.

Final agency actions: Section 4(f) *de minimis* impact determination, dated November 22, 2023; Section 106 No Adverse Effect determination, dated October 24, 2023; and Determination of the applicability of a categorical exclusion pursuant to 23 CFR 771.118(d), dated November 22, 2023. *Supporting documentation:* Documented Categorical Exclusion (CE) and supporting materials, dated November 22, 2023. The CE and associated documents can be viewed and downloaded from: *https://www.ridemetro.org/about/metronext/metrorapid/metrorapid-university-corridor-project.*

Authority: 23 U.S.C. 139(l)(1).

Megan Blum,

Acting Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2024–02778 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Solicitation of Nominations for Membership for the U.S. Maritime Transportation System National Advisory Committee

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of solicitation for membership.

SUMMARY: Pursuant to authority delegated by the Secretary of Transportation (Secretary) to the Maritime Administrator (Administrator) and the Federal Advisory Committee Act implementing regulations, the Maritime Administration (MARAD) requests nominations for membership on the U.S. Maritime Transportation System National Advisory Committee (Committee or MTSNAC).

DATES: Nominations for immediate consideration for appointment must be received on or before 5 p.m. ET on March 15, 2024. After that date, MARAD will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise. The Agency encourages nominations submitted any time before the deadline.

ADDRESSES:

- *Email: MTSNAC@dot.gov,* subject line: MTSNAC Application.
- *Mail:* MARAD–MTSNAC Designated Federal Officer, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590; please include name, mailing address, and telephone number.

FOR FURTHER INFORMATION CONTACT: Capt. Jeffrey Flumignan, Designated Federal Officer, at *MTSNAC@dot.gov* or (347) 491–2349. Please visit the MTSNAC website at *http://www.marad.dot.gov/ports/marine-transportation-system-mts/marine-transportation-system-national-advisory-committee-mtsnac/.*

For supplemental information: *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0.*

SUPPLEMENTARY INFORMATION:

I. Who should be considered for nomination as MTSNAC members?

The Maritime Administration seeks nominations for immediate consideration to fill approximately 6–8 positions on the Committee for the upcoming 2024–2026 Charter term and will continue to accept nominations

under this notice on an ongoing basis for two years for consideration to fill vacancies that may arise during the charter term. Members will be selected in accordance with applicable Agency guidelines based on their ability to advise the Administrator on marine transportation issues. Members will be selected with a view toward a varied perspective of the marine transportation industry, including (1) active mariners; (2) vessel operators; (3) ports and terminal operators; (4) shippers or beneficiary cargo owners; (5) shipbuilders; (6) relevant policy areas such as innovative financing, economic competitiveness, performance monitoring, safety, labor, and environment; (7) freight customers and providers; and (8) government bodies. Registered lobbyists are prohibited from serving on Federal Advisory Committees in their individual capacities. The prohibition does not apply if registered lobbyists are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons, or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.) or state or local governments. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81).

II. Do MTSNAC members receive compensation and/or per diem?

Committee members will receive no salary for participating in MTSNAC activities. While attending meetings or when otherwise engaged in Committee business, members may be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations. Reimbursement is subject to funding availability.

III. What is the process for submitting nominations?

Individuals can self-apply or be nominated by any individual or organization. To be considered for the MTSNAC, nominators should submit the following information:

(1) Contact Information for the nominee, consisting of:

a. Name
b. Title
c. Organization or Affiliation
d. Address
f. City, State, Zip
g. Telephone number
h. Email address

(2) A statement of interest limited to 250 words on why the nominee wants to serve on the MTSNAC and the unique perspectives and experiences the nominee brings to the Committee;

(3) A resume limited to 3 pages describing professional and academic expertise, experience, and knowledge, including any relevant experience serving on advisory committees, past and present;

(4) An affirmative statement that the nominee is not a federally registered lobbyist seeking to serve on the Committee in their individual capacity and the identity of the interests they intend to represent if appointed as a member of the Committee;

(5) A 200 to 300-word professional biography; and

(6) A letter(s) of support, if available.

Please do not send company, trade association, organization brochures, or any other promotional information. Materials submitted should total five pages or less and must be in a 12 font, formatted in Microsoft Word or PDF. Should more information be needed, MARAD staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources. If you are interested in applying to become a member of the Committee, send a completed application package by email to *MTSNAC@dot.gov* or by mail to MTSNAC-DFO, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Applications must be received on or before 5 p.m. ET on March 31, 2024; however, candidates are encouraged to send application any time before the deadline.

IV. How will MARAD select MTSNAC members?

A selection team comprised of representatives from the Maritime Administration will review the application packages. The selection team will make recommendations regarding membership to the Administrator based on the following criteria: (1) professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; and (4) relevant experience in working in committees and advisory panels. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. sections 1–16)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–02785 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 2012–0028]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, this notice announces the Department of Transportation's (DOT) Office of Aviation Consumer Protection's (OACP) intention to request the reinstatement of an Office of Management and Budget (OMB) control number for the collection of emergency contingency plans for tarmac delays from U.S. carriers and U.S. airports as required by the FAA Modernization and Reform Act. On February 23, 2017, OMB issued a DOT control number 2105–0566 authorizing these collections of information related to the submission by U.S. carriers and U.S. airports of tarmac delay contingency plans for review and approval by the DOT, as well as the public posting of those plans. The control number expired on February 29, 2020.

DATES: Comments on this notice must be received by April 12, 2024. Interested persons are invited to submit comments regarding this proposal.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W–12/140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W–12/140, 1200 New Jersey Ave., SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- *Instructions:* You must include the agency name and docket number DOT–OST–2010–0211 at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone can search the electronic form of all comments received in any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *www.dot.gov/privacy.*

- *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley, Office of the Secretary, Office of Aviation Consumer Protection (C–70), U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, at *Daeleen.Chesley@dot.gov* (Email) or (202) 366–6792. Arrangements to receive this document in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION: The FAA Modernization and Reform Act (Act), which was signed into law on February 14, 2012, requires U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit emergency contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval. In addition to requiring the initial submission of emergency contingency plans, the Act requires U.S. air carriers to submit an updated plan every 3 years and U.S. airport operators to submit an updated plan every 5 years. The Act further requires each covered carrier and airport to ensure public access to its plan after DOT approval by posting the plan on its website.

DOT has an online system allowing covered U.S. air carriers and U.S. airports to submit plans online.[1] On June 2, 2015, DOT published a 60-day FR Notice to renew/reinstate the OMB control number (80 FR 31455) and on June 17, 2016, a 30-day FR notice was published (81 FR 39750). On February 23, 2017, OMB reinstated the OMB control number, which expired on February 29, 2020. DOT is issuing this 60-day notice to reinstate the OMB control number.[2]

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices, a 60-day notice followed by a 30-day notice, seeking public comment on information collection activities before OMB may approve paperwork packages. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to monetary penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. *Requirement to submit tarmac delay contingency plan to DOT for review and approval.*

Title: Filing of Tarmac Delay Contingency Plan to DOT.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 391 U.S. airports[3] and 76 U.S. airlines.[4]

Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. airlines.

Estimated Total Burden on Respondents:

For U.S. airports—195.5 hours (391 existing airports × .5 hours = 195.5 hours). This estimate is based on the following facts/assumptions: Tarmac delay plans for submission are general in nature and do not consist of extensive airport-specific customization. Airport associations prepared templates for use by U.S. airports which require very little additional information to be customized for individual airports and have been the templates for most of the airport plans submitted. For U.S. airports that have already prepared and submitted a plan and will continue to be subject to this requirement, they will need to review and update the plan through the DOT's electronic submission system. We estimate .5 hour for these 391 airports to review, update, and submit the plan through the DOT's electronic submission system.[5]

For U.S. airlines—54.5 hours [(65 existing carriers × .5 hours = 32.5 hours) + (11 new carrier × 2 hours = 22 hours) = 54.5 hours]. Although airlines often choose to prepare more detailed plans for internal use, airline plans for submission generally are not very detailed and provide only the level of information required to meet the statutory requirement. In addition, currently operating U.S. carriers are already required to have such plans in place as this is a continuing requirement and the statute has been in place since 2012. Therefore, we estimate that the 65 covered U.S. carriers will spend .5 hour to review, update, and submit the plan through the DOT's electronic submission system. For the 11 carriers that had not prepared and submitted a plan to meet the requirement in 2017, we estimate 2 hours to review and prepare the templates, and to submit the plan through the DOT's electronic submission system.[6]

2. *Requirement to ensure public access to tarmac delay plan after DOT approval (as required by the Act).*

Title: Posting of Tarmac Delay Contingency Plan on websites.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service operating to or from the United States, using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 391 U.S. airports and 76 U.S. airlines.

Estimated Total Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. airlines (if not already posted or if there are updates).

Burden on Respondents: 116.75 hours [(391 airports × .25 hours = 97.75 hours) + (76 airlines × .25 hours = 19 hours) =

[1] OACP is modernizing its consumer complaints database to provide a more efficient means for air carriers and airports to submit their plans. Should the submission process change prior to the date plans are due, OACP will give covered entities advance notice of the revised procedure for plan submission.

[2] We note that the information collection requirements are specifically required by statute and are not imposed as an exercise of the DOT's discretion.

[3] Based on FAA CY22 information, there are 31 large, 33 medium, 73 small, and 254 non-hub covered airports. See, *https://www.faa.gov/sites/faa.gov/files/2023-09/cy22-commercial-service-enplanements.pdf.*

[4] The number of covered airlines was calculated using current data provided to OACP by the Bureau of Transportation Statistics (BTS).

[5] The total number of airports required to submit plans has decreased from 401 to 391 (-10 airports). The burden is calculated with the assumption that no new airports need to submit a plan. However, if there are any new airports that are required to submit a plan, the burden estimate for such an airport would be two hours.

[6] Based on CY 2022 information provided by the Bureau of Transportation Statistics (BTS), the number of covered carriers that must submit plans increased from 65 to 76 (+11 carriers). As such, the estimated burden for U.S. carriers has slightly increased.

116.75 hours]. We estimate that the time to upload a plan to a website is 15 minutes as covered U.S. carriers and airports are already required to have such plans in place and plans are generally short and do not take long to upload.

We invite comments on (a) whether the collection of information is necessary for the proper performance of the functions of the DOT, including whether the information will have practical utility; (b) the accuracy of the DOT's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record on the docket.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.26, 1.27, 1.48 and 1.49; DOT Order 1351.29.

Signed in Washington, DC, on this 1st day of February 2024, under authority delegated at 49 U.S.C. 1.27(n).

Livaughn Chapman Jr.,

Deputy Assistant General Counsel for the Office of Aviation Consumer Protection.

[FR Doc. 2024–02472 Filed 2–9–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Uniform Interagency Transfer Agent Registration and Deregistration Forms

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Uniform Interagency Transfer Agent Registration and Deregistration Forms.''

DATES: Comments must be received by April 12, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0124, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0124'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0124'' or ''Uniform Interagency Transfer Agent Registration and Deregistration Forms.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection.

Title: Uniform Interagency Transfer Agent Registration and Deregistration Forms.

Form Numbers: Form TA–1 & TA–W.

Estimated Frequency of Response: On occasion.

Affected Public: National banks and their subsidiaries, Federal savings associations and their subsidiaries.

OMB Control No.: 1557–0124.

Type of Review: Regular.

Form TA–1

Estimated Number of Respondents: Registrations: 1; Amendments: 17.

Estimated Average Time per Response: Registrations: 1.25 hours; Amendments: 10 minutes.

Estimated Total Annual Burden: 4 hours.

Form TA–W

Estimated Number of Respondents: Deregistrations: 5.

Estimated Average Time per Response: Deregistrations: 30 minutes.

Estimated Total Annual Burden: 2.5 hours.

Section 17A(c) of the Securities Exchange Act of 1934 (the Act) requires all transfer agents for qualifying securities registered under section 12 of the Act, as well as for securities that

would be required to be registered except for the exemption from registration provided by section 12(g)(2)(B) or section 12(g)(2)(G), to file with the appropriate regulatory agency (ARA) an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.[1] In general, an entity performing transfer agent functions for a qualifying security is required to register with its appropriate regulatory agency. The OCC's regulations at 12 CFR 9.20 implement these provisions of the Act.

To accomplish the registration of transfer agents, Form TA–1 was developed in 1975 as an interagency effort by the Securities and Exchange Commission (SEC) and the Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation). The agencies primarily use the data collected on Form TA–1 to determine whether an application for registration should be approved, denied, accelerated, or postponed, and they use the data in connection with their supervisory responsibilities. In addition, when a national bank or Federal savings association no longer acts as a transfer agent for qualifying securities or when the national bank or Federal savings association is no longer supervised by the OCC, *i.e.,* liquidates or converts to another form of financial institution, the national bank or Federal savings association must file Form TA–W with the OCC, requesting withdrawal from registration as a transfer agent.

Forms TA–1 and TA–W are mandatory, and their collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)(1)). Additionally, section 3(a)(34)(B)(i) of the Act (15 U.S.C. 78c(a)(34)(B)(i)) provides that the OCC is the ARA in the case of a national banks and Federal savings associations and subsidiaries of such institutions. The registrations are public filings and are not considered confidential. The OCC needs the information contained in this collection to fulfill its statutory responsibilities. Section 17A(c)(2) of the Act (15 U.S.C. 78q–1(c)(2)), as amended, provides that all those authorized to transfer securities registered under section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate in furtherance of the purposes of this section.

[1] 15 U.S.C. 78q–1(c).

Request for Comment

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2024–02822 Filed 2–9–24; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Capital Adequacy Standards

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, ''Capital Adequacy Standards.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by March 13, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0318, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0318'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0318'' or ''Capital Adequacy Standards.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View

Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Capital Adequacy Standards.

OMB Control No.: 1557–0318.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Abstract: The OCC is seeking renewal with revision of an information collection approval for the recordkeeping, reporting, and disclosure requirements associated with capital adequacy standards applicable to national banks and Federal savings associations. The OCC is proposing revisions in connection with this extension to reflect more granular detail for certain existing reporting and recordkeeping provisions and is improving prior estimates regarding the number of respondents and burden associated with these existing provisions. In addition, reporting burden associated with 12 CFR 3.304 is being removed as that portion of the rule is no longer in effect.

Section-by-Section Analysis

Twelve CFR part 3 sets forth the OCC's minimum capital requirements and overall capital adequacy standards for national banks and Federal savings associations.

Minimum Regulatory Capital Ratios

Reporting Requirements

Section 3.3(c) allows for the recognition of netting across multiple types of transactions or agreements if the national bank or Federal savings association obtains a written legal opinion verifying the validity and enforceability of the agreement under certain circumstances.

Section 3.22(b)(2)(iv) permits, with prior notice to the OCC, a national bank or Federal savings association resulting from a merger, acquisition, or purchase transaction that is not an advanced approaches national bank or Federal savings association to change its AOCI opt-out election.

Section 3.22(c)(4) provides that, with the prior written approval of the OCC, a national bank or Federal savings association that underwrites a failed underwriting is not required to deduct an investment in the capital of an unconsolidated financial institution to the extent the investment is related to the failed underwriting.

Section 3.22(c)(5)(i) provides that, with the prior written approval of the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, for the period of time stipulated by the OCC, is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument to the extent the investment is related to the failed underwriting.

Section 3.22(c)(6) provides that, with prior written approval of the OCC and for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct the significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument if such investment is related to such failed underwriting.

Section 3.22(d)(2)(i)(C) provides that, with the prior written approval of the OCC and for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock if such investment is related to such failed underwriting.

Section 3.22(d)(2)(iii) permits an advanced approaches national bank or Federal savings association to change its exclusion preference to exclude deferred tax assets (DTAs) and deferred tax liabilities (DTLs) relating to adjustments relating to common equity tier 1 capital after obtaining the prior approval of the OCC.

Section 3.22(h)(2)(iii)(A) permits the use of a conservative estimate of the amount of an institution's investment in its own capital or the capital of unconsolidated financial institutions held through an index security with prior approval by the OCC.

Recordkeeping Requirements

Section 3.3(d) allows for the recognition of an agreement as a qualifying master netting agreement if the national bank or Federal savings association conducts a sufficient legal review and maintains sufficient written documentation of that legal review to conclude that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement that a relevant court would find to be legal, valid, binding, and enforceable. Section 3.3(d) further requires national banks and Federal savings associations to establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement.

Standardized Approach

Reporting Requirements

Section 3.37(c)(4)(i)(E) requires that a bank or Federal savings association obtain the prior approval of the OCC for, and notify the OCC if it makes, any material changes to the policies and procedures describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used.

Recordkeeping Requirements

Section 3.35(b)(3)(i)(A) requires for a cleared transaction with a qualified central counterparty (QCCP), that a client bank apply a risk weight of two percent, provided that the collateral posted by the national bank or Federal savings association to the QCCP is subject to certain arrangements and the client bank has conducted a sufficient legal review (and maintains sufficient written documentation of the legal review) to conclude with a well-founded basis that the arrangements, in the event of a legal challenge, would be found to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

Section 3.37(c)(4)(i)(E) requires that a national bank or Federal savings association have policies and procedures in place describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be

able to provide empirical support for the period used.

Section 3.41(b), which sets forth operational requirements for securitization exposures, allows a national bank or Federal savings association to recognize for risk-based capital purposes, in the case of synthetic securitizations, a credit risk mitigant to hedge underlying exposures if certain conditions are met. Section 3.41(b)(3) includes a requirement that the national bank or Federal savings association obtain a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions.

Section 3.41(c)(2)(i) requires that a national bank or Federal savings association demonstrate its comprehensive understanding of a securitization exposure by conducting an analysis of the risk characteristics of each securitization exposure prior to its acquisition, taking into account a number of specified considerations and documenting the analysis within three business days after acquiring the exposure.

Section 3.41(c)(2)(ii) requires a national bank or Federal savings association, on an on-going basis (no less frequently than quarterly), to evaluate, review, and update as appropriate the analysis required under § 3.41(c)(1) for each securitization exposure.

Disclosure Requirements

In a case where a national bank or Federal savings association provides non-contractual support (*i.e.,* implicit support) to a securitization, § 3.42(e)(2) requires the national bank or Federal savings association to publicly disclose that it has provided implicit support to the securitization and the risk-based capital impact to the bank or savings association of providing such implicit support.

Section 3.62 sets forth disclosure requirements related to the capital requirements of a national bank or Federal savings association. Section 3.61 provides that these requirements apply to an institution with total consolidated assets of $50 billion or more that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.62. For national banks or Federal savings associations subject to the disclosure requirements, § 3.62(a) requires quarterly disclosure of information in the applicable tables in § 3.63 and, if a significant change occurs, such that the most recent reported amounts are no longer reflective of the institution's capital adequacy and risk profile, § 3.62(a) requires the national bank or Federal savings association to disclose as soon as practicable thereafter a brief discussion of the change and its likely impact. Section 3.62(a) also permits annual disclosure of qualitative information that typically does not change each quarter, provided that any significant changes are disclosed in the interim.

Section 3.62(b) requires that a national bank or Federal savings association have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. Section 3.62(c) permits a national bank or Federal savings association to disclose more general information about certain subjects if the national bank or Federal savings association concludes that the specific commercial or financial information required to be disclosed under § 3.62 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the national bank or Federal savings association provides the reason the specific items of information have not been disclosed.

Currently, § 3.63 sets forth the specific disclosure requirements for a non-advanced approaches national bank or Federal savings association with total consolidated assets of $50 billion or more that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.62. Section 3.63(a) requires those institutions to make the disclosures in Tables 1 through 10 in § 3.63 and in § 3.63(b) for each of the last three years beginning on the effective date of the rule. Section 3.63(b) requires quarterly disclosure of an institution's common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios; total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and a reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements. Tables 1 through 10 in § 3.63 set forth qualitative and/or quantitative requirements for scope of application, capital structure, capital adequacy, capital conservation buffer, credit risk, counterparty credit risk-related exposures, credit risk mitigation, securitizations, equities not subject to Subpart F (Market Risk requirements) of the rule, and interest rate risk for non-trading activities.

Advanced Approaches

Reporting Requirements

Section 3.121(b)(2) requires a national bank or Federal savings association to submit an implementation plan, together with a copy of the minutes of the board of director's approval, to the OCC at least 60 days before the national bank or Federal savings association proposes to begin its parallel run, unless the OCC waives prior notice.

Section 3.121(c) requires that during a parallel run, a national bank or Federal savings association report to the OCC on a calendar quarterly basis its risk-based capital ratios.

Section 3.122(d)–(g) requires a national bank or Federal savings association to obtain the prior written approval of the OCC under § 3.132 to use the internal models methodology for counterparty credit risk and the advanced CVA approach for the CVA capital requirement, § 3.135 to use the double default treatment, § 3.153 to use the internal models approach for equity exposures, and § 3.122(g)(3) to generate an estimate of its operational risk exposure using an alternative approach.

Section 3.123 references ongoing qualification requirements that would require an institution to notify the OCC of any material change to an advance system and establish and submit to the OCC a plan for returning to compliance with the qualification requirements.

Section 3.124 requires a national bank or Federal savings association to submit to the OCC, within 90 days of consummating a merger or acquisition, an implementation plan for using its advanced systems for the merged or acquired company.

Section 3.132(b)(2)(iii)(A) addresses internal estimates for haircuts for counterparty credit risk of repo-style transactions, eligible margin loans, and over-the-counter (OTC) derivative contracts. With the prior written approval of the OCC, a national bank or Federal savings association may calculate haircuts using its own internal estimates of the volatilities of market prices and foreign exchange rates. The

section requires national banks and Federal savings associations to satisfy certain minimum quantitative standards in order to receive OCC approval to use its own internal estimates.

Section 3.132(b)(3) covers counterparty credit risk of repo-style transactions, eligible margin loans, OTC derivative contracts, and simple Value-at-Risk (VaR) methodology. With the prior written approval of the OCC, a national bank or Federal savings association may estimate exposure at default (EAD) for a netting set using a VaR model that meets certain requirements.

Section 3.132(d)(1)(i) permits the use of the internal models methodology (IMM) to determine EAD for counterparty credit risk for derivative contracts with prior written approval from the OCC.

Section 3.132(d)(1)(iii) permits the use of the internal models methodology for derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement with prior written approval from the OCC.

Section 3.132(d)(2) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, and risk-weighted assets using IMM. Under the IMM, an institution uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. A national bank or Federal savings association must calculate two EEs and two EADs (one stressed and one unstressed) for each netting as outlined in this section. Section 3.132(d)(2)(iv) provides that a national bank or Federal savings association may use a conservative measure of EAD subject to prior written approval of the OCC.

Section 3.153(b) outlines the Internal Models Approach (IMA) for calculating risk-weighted assets for equity exposures and specifies that a national bank or Federal savings association must receive prior written approval from the OCC before it can use IMA by demonstrating to the OCC that the national bank or Federal savings association meets certain criteria.

Recordkeeping Requirements

Section 3.121 requires a national bank or Federal savings association subject to the advanced approaches risk-based capital requirements to adopt a written implementation plan to address how it will comply with the advanced capital adequacy framework's qualification requirements and also develop and maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. Section 3.122 further requires these institutions to: develop processes for assessing capital adequacy in relation to an organization's risk profile; establish and maintain internal risk rating and segmentation systems for wholesale and retail risk exposures, including comprehensive risk parameter quantification processes and processes for annual reviews and analyses of reference data to determine their relevance; document their processes for identifying, measuring, monitoring, controlling, and internally reporting operational risk; verify the accurate and timely reporting of risk-based capital requirements; and monitor, validate, and refine their advanced systems.

Section 3.132(d)(3)(vi) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. To obtain OCC approval to calculate the distributions of exposures upon which the EAD calculation is based, a national bank or Federal savings association must demonstrate to the satisfaction of the OCC that it has been using for at least one year an internal model that broadly meets the minimum standards with which the national bank or Federal savings association must maintain compliance. The national bank or Federal savings association must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure and they must include stress testing and scenario analysis.

Section 3.132(d)(3)(viii) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. When estimating model parameters based on a stress period, a national bank or Federal savings association must use at least three years of historical data that include a period of stress to the credit default spreads of its counterparties. The national bank or Federal savings association must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The national bank or Federal savings association must demonstrate at least quarterly that the stress period coincides with increased credit default swap (CDS) or other credit spreads of the institution's counterparties. The national bank or Federal savings association must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the national bank's or Federal savings association's portfolio. The OCC may require the institution to modify its stress calibration to better reflect actual historic losses of the portfolio.

Section 3.132(d)(3)(ix), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, requires that a national bank or Federal savings association must subject its internal model to an initial validation and annual model review process that includes consideration of whether the inputs and risk factors, as well as the model outputs, are appropriate. The section requires national banks and Federal savings associations to have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied.

Section 3.132(d)(3)(x), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, provides that a national bank or Federal savings association must have policies for the measurement, management, and control of collateral and margin amounts.

Section 3.132(d)(3)(xi), concerning counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, states that a national bank or Federal savings association must have a comprehensive stress testing program that captures all credit exposures to counterparties and incorporates stress testing of principal market risk factors and creditworthiness of counterparties.

Section 3.133(b)(3)(i)(A) permits a national bank or Federal savings association to assign a two percent risk weight to an exposure to a qualifying central counterparty (QCCP), if the institution conducts sufficient legal review, and maintains written documentation of that review.

Section 3.141(b)(3) requires a national bank or Federal savings association to obtain a well-reasoned legal opinion confirming the enforceability of the credit risk mitigant in all relevant jurisdictions in order to recognize the transference of risk in connection with a synthetic securitization.

Sections 3.141(c)(1) and 3.141(c)(2)(i) require a national bank or Federal savings association to demonstrate its comprehensive understanding of a securitization exposure for each securitization exposure by conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure.

Section 3.141(c)(2)(ii) requires that institutions, on an on-going basis (at least quarterly), evaluate, review, and

update as appropriate the analysis required under this section for each securitization exposure.

Disclosure Requirements

Section 3.142, which outlines the capital treatment for securitization exposures, requires a national bank or Federal savings association to disclose publicly that it has provided implicit support to a securitization and the regulatory capital impact to the institution of providing such implicit support. Specifically, § 3.124(a) requires a national bank or Federal savings association that merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems and uses subpart D to determine the risk-weighted asset amounts for the merged or acquired company's exposures, the national bank or Federal savings association must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this subpart for the bank or savings association and under subpart D for the acquired company.

Section 3.172 specifies that each national bank or Federal savings association that is an advanced approaches national bank or Federal savings association, that has completed the parallel run process, must publicly disclose its total and tier 1 risk-based capital ratios and their components.

Section 3.173 addresses disclosures by an advanced approaches national bank or Federal savings association that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.172. An advanced approaches institution that is subject to the disclosure requirements must make the disclosures described in § 3.173, Tables 1 through 12. The national bank or Federal savings association must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E. The tables in § 3.173 require qualitative and quantitative public disclosures for capital structure, capital adequacy, capital conservation and countercyclical buffers, general disclosures related to credit risk, credit risk disclosures for portfolios subject to IRB risk-based capital formulas, general disclosures related to counterparty credit risk of OTC derivative contracts, repo-style transactions, and eligible margin loans, credit risk mitigation, securitization, operational risk, equities not subject to the market risk capital requirements, and interest rate risk for non-trading activities.

Estimated Burden:

Estimated Number of Respondents: 1,014 national banks and Federal savings associations.[1]

Estimated Total Annual Burden Hours: 87,087.

Estimated Frequency of Response: On occasion.

Comments: On November 21, 2023, the OCC published a 60-day notice for this information collection, (88 FR 81176). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2024–02736 Filed 2–9–24; 8:45 am]

BILLING CODE 4810–33–P

[1] Respondents represent all active national banks and Federal savings associations as of September 30, 2023.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports by Financial Institutions of Suspicious Transactions and FinCEN Form 111—Suspicious Activity Report

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, of existing information collection requirements relating to reports of suspicious transactions. Under Bank Secrecy Act regulations, financial institutions are required to report suspicious transactions using FinCEN Form 111 (the suspicious activity report, or SAR). This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments are welcome and must be received on or before April 12, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0004 and the specific Office of Management and Budget (OMB) control numbers 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061, and 1506–0065.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0004 and OMB control numbers 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061, and 1506–0065.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA [1] and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter*

[1] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[2] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[3] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[4]

Under 31 U.S.C. 5318(g), the Secretary is authorized to require financial institutions to report any suspicious transaction relevant to a possible violation of law or regulation. Regulations implementing 31 U.S.C. 5318(g) are found at 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.

II. Paperwork Reduction Act of 1995

Title: Reports by Financial Institutions of Suspicious Transactions (31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, and 1029.320).

OMB Control Numbers: 1506–0001, 1506–0006, 1506–0015, 1506–0019, 1506–0029, 1506–0061, and 1506–0065.[5]

Form Number: FinCEN Form 111—Suspicious Transaction Report (SAR).

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for the SAR regulations and form.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 11,458 financial institutions.[6]

Estimated Total Annual Responses: 4,367,197 SARs.[7]

Estimated Reporting and Recordkeeping Burden per Response: The average estimated PRA burden, measured in hours per SAR, is approximately 1.98 hours.[8] On May 26, 2020, FinCEN issued a 60-day notice to renew the SAR OMB controls numbers (''2020 Notice''). In the 2020 Notice, FinCEN proposed to expand the scope of factors to consider as part of the PRA burden of complying with SAR requirements. In addition, as described in the 2020 Notice, to better estimate the burden associated with complying with SAR requirements, FinCEN conducted an in-depth analysis of the population of 2019 SAR filing statistics. FinCEN analyzed the 2019 SAR filings grouped by a number of different factors, including the following: (i) the distribution of SAR submissions by type of filing (original or continuing SAR); (ii) the filer's financial institution type; (iii) how many SARs the filer filed in a year; (iv) the method of filing (batch filing versus discrete filing); (v) the SAR narrative length; and (vi) the number of suspicious activities per report. The analysis and calculations detailed in the 2020 Notice ultimately resulted in an estimate of approximately 1.98 hours in filer burden per SAR.

FinCEN received 22 public comments in response to the 2020 Notice. Commenters were generally supportive of FinCEN's efforts to more accurately estimate the PRA burden associated with the SAR filing requirements. Some commenters had specific recommendations regarding factors for FinCEN to consider in future in-depth analysis of the SAR filing population. However, none of those commenters provided specific sources of data to contradict the burden estimate of 1.98 hours of burden per SAR filed. In the absence of public comments to suggest otherwise, FinCEN considers it reasonable to continue to use the estimate of 1.98 hours per SAR filed for the population of 2022 SAR filing statistics as outlined in this notice. In connection with a variety of initiatives FinCEN is undertaking to implement the AML Act, FinCEN intends to conduct, in the future, additional assessments of the PRA burden associated with BSA requirements, including SAR requirements.

Estimated Total Annual Reporting and Recordkeeping Burden: 8,647,050 hours.[9]

Estimated Total Annual Reporting and Recordkeeping Cost: $326,772,020. This estimate applies the weighted average hourly labor cost of $37.79 per hour[10] to the estimated total annual reporting and recordkeeping burden hours above (8,647,050 hours).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of

[3] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] The SAR regulatory reporting requirements are currently covered under the following OMB control numbers: 1506–0001 (31 CFR 1020.320—Reports by banks of suspicious transactions); 1506–0006 (31 CFR 1021.320—Reports by casinos of suspicious transactions); 1506–0015 (31 CFR 1022.320—Reports by money services businesses of suspicious transactions); 1506–0019 (31 CFR 1023.320—Reports by brokers or dealers in securities of suspicious transactions, 31 CFR 1024.320—Reports by mutual funds of suspicious transactions, and 31 CFR 1026.320—Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions); 1506–0029 (31 CFR 1025.320—Reports by insurance companies of suspicious transactions); and 1506–0061 (31 CFR 1029.320—Reports by loan or finance companies of suspicious transactions). The PRA does not apply to reports by one government entity to another government entity. For that reason, there is no OMB control number associated with 31 CFR 1030.320—Reports of suspicious transactions by housing government sponsored enterprises. OMB control number 1506–0065 applies to FinCEN Report 111—SAR. An administrative burden of one hour is assigned to each of the SAR regulation OMB control numbers to maintain the requirements in force.

[6] This estimate is based on the observed number of unique filers associated with at least one SAR filing received in calendar year 2022, as reported by the BSA E-Filing System as of 12/31/2022.

[7] This estimate is based on the observed number of SAR filings received in calendar year 2022, as reported by the BSA E-Filing System as of 12/31/2022.

[8] *See* FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Bank Secrecy Act Reports by Financial Institutions of Suspicious Transactions at 31 CFR 1020.320, 1021.320, 10022,320, 1023.320, 1024.320, 1025.320, 1026.320, and 1029.320, and FinCEN Report 111—Suspicious Activity Report,* 85 FR 31598 (May 26, 2020). *See* 85 FR 31600 in the 2020 Notice for the total number of SARs filed in calendar year 2019 (2,751,694 SARs). *See* 85 FR 31611 in the 2020 Notice for the total estimated recordkeeping and reporting annual PRA burden of complying with the SAR requirements (5,462,026 hours). We are using the estimated hourly burden per SAR calculated for purposes of the 2020 Notice.

[9] This estimate is derived from the calculation 4,367,197 SARs multiplied by 1.98 hours per SAR.

[10] We are using the weighted average hourly labor cost calculated for purposes of the 2020 Notice, which is based on data for calendar year 2019. *See* 85 FR 31611 for the total estimated recordkeeping and reporting annual PRA burden of complying with the SAR requirements in the 2020 Notice (5,462,026 hours). *See* 85 FR 31611 for the total estimated recordkeeping and reporting cost of complying with the SAR requirements in the 2020 Notice ($206,422,989). The average estimated hourly cost per SAR burden hour in the 2020 Notice is $37.79 per hour ($206,422,989 divided by 5,462,026 total burden hours).

information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–02747 Filed 2–9–24; 8:45 am]

BILLING CODE 4810–02–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: February 15, 2024, 10:00 a.m. to 11:00 a.m., Eastern Time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 918 9852 6957, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJUlfuGtrD0jH9PAZzhAv7i2mFNRQGrONRAm.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Finance Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The agenda will be reviewed, and the Subcommittee will consider adoption of the agenda.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes From the November 7, 2023, Meeting—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the November 7, 2023, Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

V. Discussion and Recommendation for the Selection of an External Auditor for the Audit of the Unified Carrier Registration Plan Depository for the Year Ended December 31, 2022—UCR Depository Manager

The UCR Depository Manager will discuss his efforts to find an external auditor to conduct an audit of the Unified Carrier Registration Plan Depository for the year ended December 31, 2022, including identifying a recommended auditor for the Subcommittee's consideration. The Subcommittee may take action to recommend to the UCR Board the hiring of an external auditor to conduct an audit of the United Carrier Registration Plan Depository for the year ended December 31, 2022.

VI. Other Business—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

VII. Adjourn—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, February 7, 2024 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2024–02958 Filed 2–8–24; 4:15 pm]

BILLING CODE 4910–YL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: February 15, 2024, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 972 3166 8162, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJMvdOiuqDMrHNaT-3tstxIHDqNE9dpN4MnI.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes From the August 17, 2023 Subcommittee Meeting—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the August 17, 2023 Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

V. Project Development—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will discuss the development of key projects. The projects that will be discussed include the optimization and redesign of the website, the educational audit taskforce, and the creation of a video explaining the purpose and value of the UCR Plan and the National Registration System it operates.

VI. Other Business—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

VII. Adjournment—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, February 7, 2024 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2024–02962 Filed 2–8–24; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activity: Statement of Dependency of Parent(s)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 12, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 102, 1315, and 501, 38 CFR 3.4 and 3.250.

Title: Statement of Dependency of Parent(s) (VA Form 21–509).

OMB Control Number: 2900–0089.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–509 is the prescribed form used by VBA to gather income and dependency information from claimants who are seeking payment of benefits as, or for dependent parent(s). VA Form 21–509 is used by a Veteran seeking to establish their parent(s) as dependent(s) and by a surviving parent seeking death compensation. This information is used to determine the dependency of the parent and make determinations which affect the payment of monetary benefits to the claimant. Without this information, determination of entitlement would not be possible. No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,653.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,306.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–02739 Filed 2–9–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Tribal and Indian Affairs, Notice of Meeting, Amended

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10., that the Advisory Committee on Tribal and Indian Affairs will meet on February 27, 28 and 29, 2024 at the Choctaw Nation Headquarters, 1802 Chukaa Hina Drive, Durant, OK 74701. The meeting sessions will begin, and end as follows:

Dates	Times
February 27, 2024 ...	8 a.m. to 5 p.m.—central standard time (CST).
February 28, 2024 ...	8 a.m. to 4 p.m. CST.
February 29, 2024 ...	8 a.m. to 4 p.m. CST.

The meeting sessions will be open to the public.

The purpose of the Committee is to advise the Secretary on all matters

relating to Indian tribes, tribal organizations, Native Hawaiian organizations, and Native American Veterans. This includes advising the Secretary on the administration of healthcare services and benefits to American Indian/Alaska Natives (AI/AN) and Native Hawaiian Veterans; thereby assessing those needs and whether VA is meeting them.

On February 27, 2024, the agenda will include opening remarks from the Chief of the Choctaw Nation, Committee Chair, Executive Sponsor, and other VA officials. There will be a recap of prior the Committee's recommendations and follow-up from the agency, including updates regarding the co-pay exemption implementation for American Indian/Alaska Natives; cultural healers/natural helpers; cultural awareness training; VA/Indian Health Service (IHS) Memorandum Of Understanding Implementation Plan and suicide prevention. Further updates include Section 403 of the Mission Act on establishing VA's authority to establish medical residency in covered facilities to include non-VA facilities, such as IHS facilities or facilities operated by Indian tribes or tribal organizations. The Committee will tour the Choctaw Nation Healthcare Center/Oklahoma State University Residency Clinic.

On February 28, 2024, the agenda will include updates on Native American Direct Loan Program; Homeless Programs; Choctaw Nation Behavioral Health/VA Staff Sergeant Fox Grant for the suicide prevention, family counseling, women's domestic violence program; Tribal Veteran Service Officer Representation Expansion Project; Reimbursement Agreement Program/Tribal Health Programs/Purchase Referred Care expansion; Claims Clinic Events in Indian Country; and VA Office of Connected Care. The Committee will tour the VA Community Based Outpatient Clinic in Bonham, Texas.

On February 29, 2024, the meeting will start at 8 a.m. Public comment will be from 11 a.m. to 12 p.m.

The meetings are open to the public to attend in person and will be recorded. Individuals who wish to speak during the public comment session are invited to submit a 1–2-page summary of their comments no later than February 21, 2024, for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Peter Vicaire, at *Peter.Vicaire@va.gov.* Any member of the public seeking additional information should contact Peter Vicaire at the email address above or by calling 612–558–7744.

Dated: February 6, 2024.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–02740 Filed 2–9–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0788]

Agency Information Collection Activity: Description of Materials

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 12, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0788'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0788'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Description of Materials, VA Form 26–1852.

OMB Control Number: 2900–0788.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–1852 is completed by builders in Specially Adapted Housing (SAH) projects involving construction as authorized under Title 38, U.S.C., section 2101(a), section 2101(b), and the Temporary Residence Adaptations (TRA) grant under Title 38, U.S.C., section 2102A. This form is also completed by builders who propose to construct homes to be purchased by veterans using their VA home loan benefit as granted in Title 38 U.S.C., section 3710(a)(1). SAH field staff review the data furnished on the form for completeness and it is essential to determine the acceptability of the construction materials to be used. In cases of new home construction, a technically qualified individual, not VA staff, is required to review the list of materials and certify they meet or exceed general residential construction material requirements, as specified by the International Residential Code and residential building codes adopted by local building authorities, and are in substantial conformity with VA Minimum Property requirements.

Affected Public: Private Sector.

Estimated Annual Burden: 1,122 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: SAH usage—2,194 per year; Native American Direct Loan usage—50 per year = total predicted usage of 2,244 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–02765 Filed 2–9–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity Under OMB Review: Department of Veterans Affairs (VA) Veteran Readiness and Employment (VR&E) Longitudinal Study Survey Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0786.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0786'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 110–389, sec. 334.

Title: Department of Veterans Affairs (VA) Veteran Readiness and Employment (VR&E) Longitudinal Study Survey Questionnaire.

OMB Control Number: 2900–0786.

Type of Review: Extension of a currently approved collection.

Abstract: As part of Public Law 110–389, Veteran Readiness and Employment (VR&E) is conducting a Longitudinal Study of veterans participating in VR&E. This study will take place over the next 20 years.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 84875 on December 6, 2023, FR Doc. 2023–26759.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,695.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,084.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–02806 Filed 2–9–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Monday,

No. 29 February 12, 2024

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13 and 22

Permits for Incidental Take of Eagles and Eagle Nests; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–HQ–MB–2020–0023; FF09M30000–234–FXMB12320900000]

RIN 1018–BE70

Permits for Incidental Take of Eagles and Eagle Nests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are revising the regulations for the issuance of permits for eagle incidental take and eagle nest take. The purpose of these revisions is to increase the efficiency and effectiveness of permitting, improve clarity for the regulated community, and increase the conservation benefit for eagles. In addition to continuing to authorize specific permits, we created general permits for certain activities under prescribed conditions, including general permit options for qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take. We also made improvements to the specific permit requirements and process. We also revised permit fees and clarified definitions.

DATES: Effective April 12, 2024.

Information Collection Requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the **Federal Register**. Therefore, comments should be submitted to OMB by March 13, 2024.

ADDRESSES:

Document availability: The finding of no significant impact, final environmental assessment, and supplementary information used in development of this rule, including a list of references cited, technical appendices, and public comments received are available at *https://www.regulations.gov* in Docket No. FWS–HQ–MB–2020–0023. Documents and additional information can also be found at: *https://www.fws.gov/regulations/eagle.*

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted 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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–0167 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director—Migratory Birds Program, U.S. Fish and Wildlife Service, telephone: (703) 358–2606, email: *jerome_ford@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated with the primary responsibility for managing bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) under the Bald and Golden Eagle Protection Act 16 U.S.C. 668–668d; [hereinafter the ''Eagle Act'']). The Eagle Act prohibits the take, possession, and transportation of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act authorizes the Secretary of the Interior to issue regulations to permit the ''taking'' of eagles for various purposes, including when ''necessary . . . for the protection of other interests in any particular locality,'' provided the taking is compatible with the preservation of eagles (16 U.S.C. 668a). Regulations pertaining to eagle permits are set forth in title 50 of the Code of Federal Regulations (CFR) at 50 CFR part 22. These regulations authorize the take of eagles by an activity: They do not purport to nor can they authorize the underlying activity itself.

In 2009, subsequent to the delisting of the bald eagle from the List of Endangered and Threatened Wildlife at 50 CFR 17.11, the Service promulgated regulations (74 FR 46836, Sept. 11, 2009 [hereinafter the ''2009 Eagle Rule'']) at 50 CFR part 22 that established two new permit types for the incidental take of eagles and eagle nests. Incidental take means foreseeable take that results from, but is not the purpose of, an activity. These regulations were revised in 2016 (81 FR 91494, December 16, 2016 [hereinafter the ''2016 Eagle Rule'']) to extend tenure, update the Service's Eagle Management Unit (EMU) boundaries, require preconstruction monitoring for wind-energy projects, and to amend the preservation standard. The 2016 Eagle Rule was supported by a programmatic environmental impact statement (PEIS), and the Service's final decision was described in a record of decision, both of which are available at *https://www.regulations.gov* in Docket No. FWS–R9–MB–2011–0094.

On September 14, 2021, the Service published an advance notice of proposed rulemaking (ANPR) to inform the public of changes the Service is considering that expedite and simplify the permit process authorizing incidental take of eagles (86 FR 51094). The ANPR also advised the public that the Service may prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. In the ANPR, we invited input from Tribes, Federal agencies, State agencies, nongovernmental organizations, and the general public for any pertinent issues we should address, including alternatives to our proposed approach for authorizing eagle incidental take. The public comment period closed on October 29, 2021. The Service used these comments to prepare a proposed rule and a draft environmental assessment (DEA) which we released on September 30, 2022 (87 FR 59598). The 60-day public comment period was extended to December 29, 2022 (87 FR 72957, November 28, 2022). The DEA and proposed rule are available in Docket No. FWS–HQ–MB–2020–0023 (available at *https://www.regulations.gov*).

Comments and materials we received, as well as supporting documentation we use in preparing the environmental analysis, are available for public inspection. For more information on public comments see the *Response to Public Comments* below. The Service also announces the availability of the finding of no significant impact (FONSI) for the Service's final environmental assessment (FEA). The FONSI is the final step in the National Environmental Policy Act (NEPA) process for this eagle rulemaking action, which includes revisions to the regulations governing permits for incidental take of eagles and take of eagle nests. The FONSI and FEA are available in Docket No. FWS–HQ–

MB–2020–0023 (available at *https://www.regulations.gov*).

With this rulemaking, we do not change the 2016 preservation standard or PEIS management objectives. The Eagle Act and existing regulations require that any authorized take of eagles be ''compatible with the preservation'' of bald and golden eagles (16 U.S.C. 668a). Under existing regulations, the preservation standard is defined as consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species (50 CFR 22.6).

In 2009, the Service adopted different management criteria for bald eagles and golden eagles because of the different population statuses and growth rates of each species. We determined this approach is necessary both to achieve the preservation standard and to avoid being unnecessarily restrictive. We do not alter this approach with this rulemaking. In this rulemaking, the Service uses the recently updated population-size estimates and allowable take limits for bald eagles (87 FR 5493, February 1, 2022).

This Rulemaking

Overview

The Service creates a new subpart E within 50 CFR part 22 for eagle permit regulations authorizing take that is necessary for the protection of other interests in any particular locality (eagle take for other interests). This new subpart includes revised provisions for processing specific permits and creates general permits. General permits authorize incidental take by activity type that occur frequently enough for the Service to have developed a standardized approach to permitting and ensure permitting is consistent with the preservation standard. These regulations also restructure the existing specific permit regulations. These regulations apply, regardless of whether infrastructure is constructed before or after the final regulations.

We amend these regulations to better align with the purpose and need described in the 2016 PEIS. In the 2016 Eagle Rule, the Service sought to:

(1) increase compliance by simplifying the permitting framework and increasing certainty;

(2) allow for consistent and efficient administration of the program by Service staff;

(3) regulate based on best available science and data; and

(4) enhance protection of eagles throughout their ranges by increasing implementation of avoidance, minimization, and mitigation of adverse impacts from human activities.

In this rulemaking, we create a new subpart E for regulations governing the permitting of eagle take for other interests. We adopt two regulations for administering permitting: specific permits (§ 22.200) and general permits (§ 22.210). We further specify activity-specific eligibility criteria and permit requirements in four sections based on activity and type of eagle take:

- incidental take for permitting wind energy (§ 22.250),
- incidental take for permitting power lines (§ 22.260),
- disturbance take (§ 22.280), and
- nest take (§ 22.300).

For clarity and consistency, we have also moved regulatory content on permit conditions to a new section (§ 22.215) and content on compensatory mitigation standards to a new section (§ 22.220). We have created new definitions to define ''general permit'' and ''incidental take'' and included clarifying modifications to the definitions of ''eagle management unit,'' ''eagle nest,'' and ''in-use nest'' (§ 22.6). We have redesignated related regulations pertaining to permit requirements for take of golden eagle nests (moved from § 22.75 to § 22.325) and permits for bald eagle take exempted under the Endangered Species Act (moved from § 22.90 to § 22.400) to a new subpart E, with only the modification of a nonsubstantive change to the section title for § 22.325. Finally, we have adopted administrative updates to 50 CFR part 13, General Permit Procedures, to update the text regarding information-collection requirements and the table of application fees. These changes to the designated section numbers for previous regulations are as follows:

Previous regulations in 50 CFR part 22	Regulatory subject matter	New sections in 50 CFR part 22, subpart E
§§ 22.80 and 22.85	Specific permits	§ 22.200
	General permits	§ 22.210
§§ 22.80 and 22.85	Permit conditions	§ 22.215
§ 22.80	Compensatory mitigation	§ 22.220
§ 22.80	Wind energy project incidental take	§ 22.250
§ 22.80	Power line incidental take	§ 22.260
§ 22.80	Eagle disturbance take	§ 22.280
§ 22.85	Eagle nest take	§ 22.300
§ 22.75	Golden eagle nest take for resource recovery operations	§ 22.325
§ 22.90	Bald eagle take exempted under the Endangered Species Act	§ 22.400

Specific Permits and General Permits for Eagle Take

Under these new and updated regulations, the Service will authorize eagle take using general permits and specific permits. General permits simplify and expedite the permitting process for activities that have relatively consistent and low risk to eagles and well-established avoidance, minimization, and compensatory mitigation measures. General-permit applicants self-identify eligibility and register with the Service. This includes providing required application information and fees and certifying that they meet eligibility criteria and will implement permit conditions and reporting requirements.

The Service will implement general permits for the following activities: (1) certain categories of bald eagle nest take, (2) certain activities that may cause bald eagle disturbance take, (3) eagle incidental take associated with power line infrastructure, and (4) eagle incidental take associated with certain wind energy projects. These are described in more detail in the following sections. The Service will audit general permits to ensure applicants are appropriately interpreting and applying eligibility criteria and complying with permit conditions. Audits will include reviewing submitted application materials and reports. The Service will also request and review any plans or strategies

required by permit conditions, like adaptive management plans.

The Service will continue to issue specific permits, which require submission of application materials to the Service for review and development of permit conditions. To maintain a review process adequate to meet the preservation standard for eagles, the Service retains the specific-permit approach for situations that have increased or uncertain risks to eagles. The applicant is responsible for submitting a qualifying application. The Service will determine, based on the materials provided, whether the application meets regulatory requirements. The Service is responsible for identifying and using the best available information in making these determinations. If an applicant is unable to meet Service data standards in applying, the Service may waive these data standards provided: (1) the application otherwise meets issuance criteria, (2) the Service has adequate information to estimate take, and (3) the waiver will be consistent with preservation of the eagle species. There is no process to petition the Service for a waiver; rather, this process will be at the Service's discretion and documented in the permit file. Specific permit conditions must meet or exceed the requirements of general permits, except when not practicable or when site-specific data warrants customization.

If the best available information indicates that continuing implementation of a general permit program is inconsistent with the preservation of bald eagles or golden eagles, the Service may suspend the general permit program temporarily or indefinitely. This suspension may apply to all or part of general-permit authorizations. Consistent with 50 CFR part 21 and part 22 permitting, Tribes or States may choose to be more restrictive than Federal regulations. Permittees must comply with Tribal and State laws and regulations to be in compliance with Federal eagle permits.

Eagle Incidental Take Permits for Wind Energy

With this rulemaking, the Service seeks to implement efficiencies in authorizing incidental take associated with wind energy projects. This final rule creates a general permit option for projects in areas that are low risk to eagles. We also revise the specific permit process to provide clarity to applicants and ensure processing is efficient and consistent with the preservation standard. With broader participation in permitting, the Service anticipates increased benefits to eagle populations as more projects implement avoidance, minimization, and mitigation measures.

The Service uses a combination of eagle relative abundance and proximity to eagle nests as eligibility criteria for wind energy general permits. The Service uses the Cornell Status and Trends definition of relative abundance and relative abundance products (Cornell Lab of Ornithology, Ithaca, New York, available at: *https://science.ebird.org/en/status-and-trends*). Relative abundance values determined for a project must be based on these publicly available Status and Trends relative abundance products for bald eagles and golden eagles. To help project proponents quickly determine eagle relative abundance, the Service will maintain an online mapping tool (*https://arcg.is/CKLKy1*).

For first-time applicants, general-permit eligibility is based on eagle relative abundance and proximity to eagle nests at the time of application. All turbines must be located in an area with eagle relative abundance less than the threshold identified by regulation (§ 22.250(c)(1)(ii) for both bald eagles and golden eagles). All turbines, including the space occupied by blades or other turbine infrastructure, must also be located at least 2 miles from a golden eagle nest and at least 660 feet from a bald eagle nest (§ 22.250(c)(1)(i)). Project proponents are expected to survey for eagle nests with due diligence and in accordance with any Service guidance for nest surveys.

The Service considered allowing general permit applicants to select authorization for just one species. By requiring both species, the Service is able to reduce administration costs and keep the general permit process simple. Both species are widely distributed and co-occur in most States. The Service recognizes that the risk to each species is not uniform, and we factored in the relative risk to each species into the relative abundance criteria, the nest buffers, and the compensatory mitigation requirements.

The Service added an eligibility criterion for wind energy projects that are renewing a general permit (§ 22.250(c)). A general permittee remains eligible to renew their permit, even if the Service revises eagle relative abundance thresholds or eagles construct a nest within the species-specific setback distances, as long as the project remains in compliance with all other general permit requirements. This includes provisions regarding the discovery of eagle remains or injured eagles remaining fewer than four eagles of the same species within a 5-year permit tenure (§ 22.210(b)(2)(i)). This eligibility applies to the turbines authorized under the original general permit and does not apply if there was a lapse in permit coverage or if any turbines are added to the project. It does apply if the turbines change ownership. If a project adds turbines, the new turbines must meet the qualifications for a first-time general permit (§ 22.250(c)(1)) when renewing a general permit for a project. If there is a lapse in coverage, the project must qualify for a first-time general permit (§ 22.250(c)(1)) and may then renew (§ 22.250(c)(2)), if eligible, or apply for a specific permit.

The Service acknowledges that existing wind projects have less ability to adapt to the location-based nature of the general permit eligibility criteria (as defined in § 22.250(b)). After extensive review, the Service could not identify general permit eligibility criteria with which a project could self-certify that did not add extensive complexity or uncertainty. However, the Service retained the proposed eligibility criterion that any existing project that does not meet general permit eligibility criteria can submit an application for a specific permit (§ 22.200(b)) and request a letter of authorization to obtain a general permit (§ 22.250(c)). The Service will review all information provided in the application, including any site-specific, pre- or post-construction data. The Service will issue a letter of authorization to apply for a general permit if we determine that the take rates at the existing project are likely to be consistent with or lower than eagle take rates expected at similar-sized wind facilities that qualify for general permits. If an applicant receives a letter of authorization, we may refund the specific-permit application fee, but to cover the cost of review, we will not refund the administration fee. The letter of authorization may require additional avoidance, minimization, or compensatory mitigation requirements if appropriate (for example, when needed to ensure consistency with general permit take rates).

The Service estimates that more than 80 percent of existing land-based wind turbines in the lower 48 States may be eligible for general permits. Wind projects in Alaska, Hawaii, island territories, and the offshore environment should apply for a specific permit if authorization for eagle incidental take is sought. Authorization for incidental take due to power line infrastructure is not included under a general permit for wind. The Service expects wind projects to avoid risk to eagles by ensuring

power line infrastructure is avian-safe, either by design or use of covers. In the rare circumstance associated power line infrastructure poses an electrocution or collision risk to eagles, authorization under the power line regulation is most appropriate. Specific permits are available for wind projects that do not meet general permit eligibility criteria or request the customization of a specific permit. We have created multiple tiers within specific permits: Tier 1, Tier 2, and Tier 2 with reimbursable agreement. Changes to the fee structure associated with these tiers are described in the Changes to the Fees section below. Tier 1 specific permits are for low-complexity wind project applications (1) that can comply with general permit conditions or require only minor modifications, (2) where fatality estimates can be calculated with site-specific data collected to Service standards and submitted using the Service's information reporting template or where the applicant agrees to use the Service's generalized fatality estimation process (*i.e.,* using the nationwide specific permit priors) for specific permits, (3) that agree to use a Service-approved conservation bank or in-lieu fee program to complete required compensatory mitigation, and (4) where the Service's decision can be categorically excluded under NEPA. The Service anticipates expediting Tier 1 specific permit application processing.

Tier 2 specific permits are for moderately complex applications that (1) need modifications to general-permit conditions, including negotiated compensatory-mitigation requirements or (2) for which fatality estimation requires more evaluation of site-specific data, or (3) negotiation of other requirements. For the highest complexity applications, such as applications that require more extensive permit-condition negotiations, cannot be categorically excluded from additional procedural requirements of NEPA, or other unique circumstances, the Service will charge the Tier 2 fee and require applicants, including government agencies, to enter into a reimbursable agreement with the Service to offset additional Service costs associated with this added complexity and review time in excess of 275 hours.

The Service will no longer specify an authorized number of eagles that may be incidentally killed or injured on the face of general or specific permits. Permits will authorize the incidental take of eagles. This means that permittees will not be considered out of compliance for exceeding an authorized level of eagle take. General permittees, however, must remain in compliance with the discovered eagle provisions, which are different from estimated eagle take. However, to ensure consistency with our preservation standard, we will estimate the number of eagles taken for internal tracking and calculating compensatory mitigation requirements. The Service will track estimated take that has been authorized for bald eagles and golden eagles within each eagle management unit (EMU) and local area population (LAP). We will use the best-available information and tools in making these calculations, including compiling information on discovered eagle remains and injured eagles, applying statistical modeling to estimate eagle take that has been authorized under permits, and comparing estimated take and provided compensatory mitigation with EMU take limits and LAP thresholds.

The Service received numerous comments regarding the Service-led monitoring in the proposed rule. The Service reexamined the potential of using operations and maintenance staff to conduct concurrent monitoring instead. Ultimately, we decided to reduce the requirement for general permits to concurrent monitoring because that will still provide the information the Service requires while resulting in a substantial cost savings to the regulated community compared to the proposed Service-led monitoring. The Service intends to publish monitoring standards for specific permits that will be designed to maximize flexibility to the regulated community so permittees can select the best fatality monitoring method for their project, while still giving the Service the information needed to ensure we are authorizing take consistent with our preservation standard. Monitoring must be conducted in accordance with permit conditions and, if available, Service guidance. The Service may use administration fees to validate concurrent monitoring methods and analyze concurrent monitoring data. Under specific permits, additional monitoring may be included in the permit conditions, such as for permittees wanting to reduce mitigation requirements by implementing experimental technology or post-construction monitoring. The Service will require only third-party monitoring when warranted (*e.g.,* addressing compliance concerns or applying controversial approaches).

Compensatory mitigation is required for general permits. General permits must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project (§ 22.250(f)(7)(ii)). An eagle credit is the amount of compensatory mitigation needed to offset the take of an eagle. Service-approved in-lieu fee programs and conservation banks will be authorized for particular EMUs, consistent with the methodology approved by the Service. However, the Service will retain the right to direct funds from an EMU-scale to an LAP-scale, if the Service identifies concerns with a particular LAP.

Compensatory mitigation is also required for specific permits for wind energy. Applicants must include their expected method of compensatory mitigation in the permit application (§ 22.250(f)(7)(i)). The Service will derive the amount of compensatory mitigation required using a project-specific fatality estimate, based upon either site-specific data that meets the Service's data collection standards or the Service's generalized fatality estimation process (*i.e.,* using the nationwide specific permit priors). These priors are probability distributions, created using information from a range of projects under Service review and others described with sufficient detail in Whitfield (2009), that describe exposure and collision probability in the Service's collision risk model before any site-specific information is taken into account. All compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation:take) ratio. The Service expects Tier 1 specific permits to use a Service-approved conservation bank or in-lieu fee program to meet mitigation requirements. Tier 2 specific permit applications may use a Service-approved conservation bank or in-lieu fee program or submit a plan to the Service for implementing compensatory mitigation consistent with § 22.200 and Service-wide mitigation policies. To ensure consistency with the preservation standard, wind energy projects that are eligible for general permits but choose to obtain a specific permit will be required to meet or exceed the general permit mitigation requirements. Compensatory mitigation is not required for wind turbine infrastructure that is considered baseline. Baseline, as described in the 2016 PEIS, refers to infrastructure that existed and was operating in its current configuration and size prior to September 11, 2009.

The Service retains the maximum 30-year tenure for specific permits for wind projects. This tenure is appropriate given the amount of time that wind energy projects typically operate on the landscape. Specific permits may be requested and authorized for any duration (in 1-year increments) up to 30

years. General permits for wind projects are valid for 5 years from the date of registration. Upon expiration of general permits, project applicants may reapply and obtain a new 5-year general permit. General permits for eagle take cannot be amended during each 5-year term.

For both general and specific permits, the Service will continue requiring implementation of all practicable avoidance and minimization measures to reduce the likelihood of take. These conditions would likely include reducing eagle attractants at a site (*e.g.,* minimizing prey populations or perch locations), minimizing human-caused food sources at a site (*e.g.,* roadkill, livestock), and implementing adaptive-management plans that modify facility operations at a site if certain circumstances occur, such as when a certain number of eagle mortalities are detected. General permit conditions will be nonnegotiable and fixed for the term of the permit. Renewed general permits will have the most current version of general permit conditions. Specific permit conditions will use the general permit conditions as a foundation but may be modified or added to as appropriate. The appropriate fee tier will be charged based on the amount of negotiation and modification required.

Permittees must train relevant employees to look for, recognize, and report eagle take as part of their regular duties. Permit conditions will specify a minimum frequency required (*e.g.,* once every 3 months) and require that trained employees visually scan for injured eagles and eagle remains while in the vicinity of project infrastructure. Permit conditions will direct disposal (*e.g.,* shipped to National Eagle Repository) and reporting (*e.g.,* summary emailed to the Service) requirements and timelines.

When three or four eagles of one species are discovered within the general permit tenure, we require additional conditions. If three eagles of one species are found, the permittee must notify the Service and implement an adaptive management plan. If a fourth eagle of that same species is found, these steps must be repeated, and the project would no longer qualify for future general permits. The discovered-eagles provision aids in identifying the rare project eligible for a general permit but experiencing more take than other projects covered by general permits. By requiring notification from projects operating under general permits if three and four eagles are found, we ensure that the overall take authorized by the general-permit program remains within the range we predict and is appropriately offset to the degree necessary for the preservation of each eagle species. It is important to note that found eagle remains at any project represent only the minimum number of eagles that may have been killed by a project. Depending on the probability of detection, which is determined by factors like site topography and vegetation, the number of eagles actually taken may be close to the number of eagles found, or the number actually taken could be substantially higher.

We will allow time for project proponents to adjust to these amended regulations. Project proponents who have submitted a permit application will have 6 months from the publication date of the final rule to choose whether to have their application reviewed and administered under all the provisions of the prior regulations, as amended in 2016, or all the provisions of the current regulations. Any application fees paid prior to the publication date of the final rule may be used to pay for application and administration fees required under the new regulations. However, the Service will not refund any application fees paid prior to the publication date of the final rule because the Service will have already undergone substantial processing of the application. Project proponents who hold a permit under the 2016 regulations may continue under that permit's conditions until the permit expires. Permittees that want to modify existing permits to comply with current regulations may contact their permitting office to determine if a substantive amendment request or a new application is most appropriate.

Eagle Incidental Take Permits for Power Lines

Power line entities have expressed interest in obtaining authorization for eagle incidental take caused by powerline infrastructure; however, a number of barriers have limited participation in permitting. We create a general permit option for power line entities that can comply with standardized conditions. We also revise the specific permit process to provide as an option for power line entities that require more customization. The Service anticipates increased benefits to eagle populations as more power line entities obtain permits and implement required avoidance, minimization, and mitigation measures.

All power line entities are eligible for general permits. The Service recommends a general permit for any power line entity that can comply with standardized general permit conditions. Specific permits are available for power line entities that seek customized permit conditions. We have created multiple tiers within specific permits: Tier 1, Tier 2, and Tier 2 with reimbursable agreement. Tier 1 specific permits are for low-complexity applications that require minor modifications to the general-permit conditions and where the Service's decision can be categorically excluded under NEPA. The Service anticipates expediting Tier 1 application processing. Tier 2 specific permits are for moderately complex applications that can be categorically excluded from additional NEPA procedural requirements and need unique or substantive modifications to the general-permit conditions, such as negotiated compensatory mitigation requirements. In the rare circumstance a power line application exceeds 275 hours in review time, the Service will charge the Tier 2 fee and require applicants, including government agencies, to enter into a reimbursable agreement with the Service to offset additional Service costs associated with this added complexity and increased review time exceeding 275 hours. Exceeding 275 hours is expected only in rare cases; for example, if the Service's decision cannot be categorically excluded under NEPA or permit conditions require extensive negotiations.

The Service will not specify a number of eagles authorized on the face of general or specific permits. However, the Service will use annual reports submitted by permittees to estimate the number of eagles taken for internal tracking and to ensure consistency with our preservation standard. We will use the best-available information and tools in making these calculations. The monitoring required for general permits and most specific permits will be limited to concurrent monitoring by operations and maintenance personnel while onsite. Monitoring must be conducted in accordance with permit conditions and, if available, Service guidance. The Service may use administration fees to validate concurrent monitoring methods and analyze concurrent monitoring data. Specific permits may require concurrent monitoring or additional monitoring.

For both general and specific permits, the Service will require implementation of all practicable avoidance and minimization measures to reduce the likelihood of take. To aid in assessing what measures are practicable to implement, the Service will refer to the Avian Power Line Interaction Committee (APLIC) suggested practices, including *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* and *Reducing Avian Collisions with Power Lines: The State*

of the Art in 2012, as well as updated versions or new suggested practice documents, as they become available. General permits for power line entities include the conditions listed in § 22.260(d). Specific permit conditions will use the general permit conditions as a foundation but may be modified or added to as appropriate. The appropriate fee tier will be charged based on the amount of negotiation and modification required.

As part of general-permit conditions, the Service requires power line entities to develop four strategies: collision response, proactive retrofit, reactive retrofit, and shooting response, as defined in § 22.260(b). The Service encourages power line entities with an Avian Protection Plan (APP) to incorporate these strategies into the APP. However, power line entities may choose to include these four strategies as part of an APP or as stand-alone strategies.

Collision response strategy describes the process to identify collision-caused mortality events, evaluate factors, and implement risk-reduction strategies (see § 22.260(b) and (d)). The Service expects risk-reduction strategies to be commensurate with future collision risk. For example, an entity would implement all practicable risk-reduction strategies for a power-line segment with repeat mortality events in a high-risk location but for power-line segments with rare or no known collision events, no action or continued monitoring may be appropriate.

Proactive retrofit strategy describes how existing infrastructure will be converted to avian-safe (as defined in § 22.260(b)) within a set timeline (see § 22.260(b) and (d)). Investor-owned utilities must have a 50-year proactive retrofit strategy to convert poles in high-risk eagle areas to avian-safe; therefore, 10 percent of poles in high-risk eagle areas must be converted during each general-permit 5-year tenure (§ 22.260(d)(2)(i)). High-risk eagle areas occur where eagles are likely to be present and interact with power line infrastructure. Conversely, low-risk eagle areas occur where eagles are not present or unlikely to interact with power line infrastructure, such as urban areas. Applicants will be responsible for the assessment of high-risk eagle areas, based on this standard. Other utilities (publicly owned or cooperative) must have a 75-year proactive retrofit strategy to convert poles in high-risk eagle areas to avian-safe; therefore, 7 percent of poles in high-risk eagle areas must be converted during each permit tenure (§ 22.260(d)(2)(ii)). The Service uses the U.S. Energy Information Administration definitions for investor-owned, publicly owned, and cooperative utilities. The Service recognizes that this strategy may take more time than the other strategies to develop. As a condition of the general permit, general permittees that do not already have a proactive retrofit strategy will have 3 years from the effective date of this final rule to develop one.

Reactive retrofit strategy describes how infrastructure will be retrofit to avian-safe in response to an eagle electrocution or death (see § 22.260(b) and § 22.260(d)). A total of 13 poles or a half-mile segment of line must be retrofit. The typical pole selection is the pole that caused the electrocution and six poles in each direction. However, if retrofitting other poles in the circuit provides more benefit to eagles, those poles may be retrofitted by prioritizing the highest risk poles closest to the electrocution event. Poles outside of the circuit that caused the electrocution may be counted towards this retrofit requirement only if all poles in the circuit are already avian-safe. Converting poles to buried line is an avian-safe retrofit.

To implement the above strategies, power line entities evaluate the electrocution or collision incident within 90 days and implement a response within 1 year of the incident. If extenuating circumstances occur in implementing the strategies, such as catastrophic weather, extensive fire, or other event that substantively disrupts power delivery, the power line entity must do the following: (1) Document and maintain records of the relevant circumstances, including why circumstances are extenuating and the plan to implement the delayed retrofits or collision reduction measures. (2) If implementation of delayed retrofits or collision reduction measures will extend past the expiration of the current general permit tenure and the permittee wants to renew the general permit, notify the Service at least 180 days prior to permit expiration. (3) If the general permit is renewed, any delayed retrofits or collision reduction measures must be implemented during the renewed general permit tenure. Otherwise, the permittee is no longer eligible for a general permit; however, the permittee may apply for a specific permit.

Shooting response strategy describes the process the permittee follows when eagles are found killed or injured near power line infrastructure to identify if shooting is suspected, communicate with law enforcement, and identify and implement appropriate shooting-reduction strategies (see § 22.260(b) and § 22.260(d)). Power line entities are not responsible for law enforcement of nor liable for shooting events. At a minimum, power line entities must immediately contact the Service's Office of Law Enforcement if an eagle is found killed or injured near power line infrastructure and shooting is suspected. Where there are repeated shooting events, the power line entity should develop other strategies, including coordinating with the relevant land-management agency if the death or injury occurs on government property. The Service is working with APLIC and others to develop resources and suggested practices. It is generally assumed that eagle remains or injured eagles discovered in the vicinity of power line infrastructure are taken by that power line infrastructure, unless necropsy or other information proves otherwise.

In addition to the above strategies, power line entities must also consider eagles in siting and design for new construction and rebuild projects and ensure that all poles constructed in high-risk areas are avian-safe, as practicable. This provision is not required if it would impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources. Permittees must also train onsite personnel to scan for and appropriately report discovered eagle remains. Under specific permits, additional monitoring may be required.

Compensatory mitigation is required for both general permits and specific permits. General permits must implement a proactive retrofit strategy (§ 22.260(d)(3)). Compensatory mitigation for specific permits will be determined for each application and included in permit conditions (§ 22.260(e)(2)). The Service will track take that has been authorized for bald eagles and golden eagles within each eagle management unit (EMU) and local area population (LAP).

General permits for power line entities are valid for 5 years from the date of registration. Upon expiration of a general permit, a project applicant may reapply and obtain a new 5-year general permit. General permits cannot be amended during each 5-year term. The Service retains a maximum tenure of 30 years for specific permits for power line entities. The 30-year tenure is appropriate given the extended time power line infrastructure is expected to operate on the landscape. Specific permits may be requested and authorized for any duration (in 1-year increments) up to 30 years.

Eagle Disturbance Take Permits

More than two-thirds of the eagle-take permits the Service currently issues are for incidental disturbance by activities conducted near bald eagle nests. Incidental take by disturbance is different from incidental take resulting in injury or mortality. To reduce complexity and improve clarity, this final rule creates a new stand-alone regulatory section for the incidental take of bald eagles or golden eagles by disturbance (§ 22.280). This regulation revises portions of the previous disturbance-take regulation (50 CFR 22.80). The Service retains the existing definition of ''disturb'' (50 CFR 22.6) and clarifies further what does and does not constitute disturbance take (§ 22.280(b)).

The Service creates general permits for eagle incidental take by disturbance in § 22.280. The Service uses the standardized approach to permitting based on the 2007 Activity-Specific Guidelines of the National Bald Eagle Management Guidelines (hereinafter the ''Guidelines''). Between publication of the Guidelines in 2007 and nationwide eagle-population surveys in 2018, we estimate that bald eagle populations have quadrupled in the Lower 48 United States (USFWS. 2021. Final Report: Bald Eagle Population Size: 2020 Update. December 2020. Division of Migratory Bird Management, Washington DC U.S.A.). This includes growth into environments that are developed or in the process of being developed, increasing the demand for permits for eagle disturbance. By creating general permits, the Service will better align the conservation value gained from permitting with ensuring the preservation of eagles. We estimate about 85 percent of projects that cause disturbance will qualify for general permits.

General permits are available for the disturbance of bald eagles when the disturbance will be a result of one or more of the following activities: building construction, linear infrastructure construction and maintenance, alteration of shorelines and water bodies, alteration of vegetation, motorized recreation, nonmotorized recreation, aircraft operation, prescribed burn operations, and loud intermittent noises. General permits cover conducting the activity, as well as pre-construction work, including geotechnical work. The Service did not include prescribed-burn operations in the proposed rule because, at the time, we considered such activities part of alteration of vegetation. However, after considering public comment on the issue and to ensure clarity for the regulated community, we included prescribed burning as a potential disturbance activity in the final regulation. Prescribed burning includes the footprint of the burn as well as where biproducts of the burn will be present, such as smoke, ash, or embers. Specific permits are available for disturbance to bald eagles from activities that are not eligible for general permits and any activity that may result in disturbance to golden eagles.

The Service specifies distances in the regulation within which these activities may cause disturbance. Activities occurring farther than the distances specified below do not require a permit because they are unlikely to cause disturbance. Regularly occurring activities that occur within these distances and pre-date an eagle pair's selection of a given nest site are assumed tolerated by the eagles, unlikely to cause disturbance, and do not require a permit.

Tribes communicated concern about the issuance of general permits for nest disturbance and nest take on lands of Tribal interest. In response, the Service has restricted eligibility, and general permits are not available for nest disturbance or nest take for nest structures located in Indian country, as defined in 18 U.S.C. 1151. The Service considers the case-by-case review of specific permits appropriate for nests located in Indian country. This restriction does not apply when the Tribal government is the applicant for the permit on their own land.

Hazing—the use of nonlethal methods to disperse eagles away from a site—does not constitute eagle disturbance unless it is adjacent to an in-use nest and disrupts eagle breeding activity. The intent of hazing is to deter eagle depredation (*e.g.,* substantial injury to wildlife or agriculture) or reduce threats to human or eagle health and safety by temporarily displacing individual eagles from a location. We currently recommend nest buffers of 660 feet for bald eagles and 1 mile for golden eagles.

The Service also considers activities that are conducted adjacent to a communal roost or foraging area do not constitute eagle disturbance and do not require a permit. ''Communal roost site'' and ''foraging area'' are defined by regulation (50 CFR 22.6). Removal of a foraging area has greater potential to cause disturbance; therefore, we further clarify here that activities that completely prevent the use of a foraging area may cause disturbance. A proponent of a project likely to fully prevent the use of a foraging area should apply for a specific permit, particularly if the activity will remove all foraging opportunities within 1 mile of an in-use nest.

The Service will require monitoring eagles under general and specific disturbance-take permits. Monitoring will typically consist of collecting information sufficient to determine whether nestlings have fledged from the nest. Specific permits for disturbance may require monitoring as long as necessary to determine any impacts to the eagles for which take is authorized, including up to 3 years after permit tenure. The Service does not require compensatory mitigation for general permits. Compensatory mitigation may be required for specific permits to ensure the preservation of eagles. For example, any disturbance take of golden eagles that is not part of the Service's previously established 2009 baseline or disturbance take of bald eagles that exceeds the LAP authorized-take threshold and is otherwise unsustainable requires implementation of compensatory mitigation. Monitoring, and if required, compensatory-mitigation outcomes must be reported annually.

For both specific and general disturbance permits, we will require that applicants provide the coordinates of the nest(s) for which they are requesting disturbance authorization. Precise location information is necessary for both the Service staff who conduct eagle-population management and law enforcement. For disturbance take, we retain a 5-year tenure for specific permits and implement a 1-year tenure for general permits. These permits are renewable in the rare circumstance that an activity is likely to cause disturbance to eagles over a long period of time. In the rare event that the Service's decision to issue a disturbance specific permit cannot be categorically excluded under NEPA, a reimbursable agreement may be used to cover costs associated with the preparation of an environmental analysis and compliance with the procedural requirements of NEPA.

For both specific and general permits, we require permit conditions that include implementation of measures to avoid and minimize, to the extent practicable, the risk that authorized activities may disturb eagles. To determine practicability, the Service will consider eagle-population status, the known efficacy of the measure, and the potential burden on the permittee. For specific permits, applicants will have the opportunity to provide input into these permit conditions. General-permit conditions will be standardized by activity type based on effective

techniques that have been consistently and successfully used in specific permits for the past 10 years or more.

The Service uses this rulemaking to clarify that the regulations for disturbance take of eagles will be used to authorize the incidental take of eagle nests. Incidental take of nests caused by activities includes actions that agitate or bother eagles to a degree that interferes with normal breeding and sheltering behavior. For example, prescribed burns may result in the disturbance of breeding eagles through smoke exposure and may disrupt breeding activity by unintentionally taking nests when a fire moves unexpectedly across break lines or into tree canopies. Authorization is provided only for incidental take of nests that occurs after application of all practicable avoidance and minimization measures. Incidental take authorization does not include take caused by lack of due diligence or negligence; for example, failure to identify nest locations prior to conducting an activity.

To date, incidental take of nests has been a rare issue and, therefore, is currently most appropriately addressed under specific permits. However, the Service will regularly review this issue with other implementation decisions. Applicants requesting incidental take of nests must demonstrate that incidental nest take cannot be practicably avoided. The Service does not anticipate authorizing the incidental take of nests for development activities. In the Service's experience, developers have sufficient knowledge of the landscape and control of their activity to make incidental nest take practicably avoidable during development.

Eagle Nest Take Permits

The Service has revised the regulations for eagle nest take (§ 22.300). This final rule creates a general permit for the take of bald eagle nests in certain circumstances. We retain specific permits for the take of any golden eagle nest as well as for the take of bald eagle nests that is not eligible for a general permit. We also clarify that relocation or obstruction of a nest constitutes nest take.

We retain the four justifications for authorizing eagle nest take, which are emergency, health and safety, removal from human-engineered structures, and other purposes. We also add protection of species on the List of Endangered and Threatened Wildlife (§ 17.11) as a purpose for eagle nest take. General permits are limited to bald eagle nest take for the purposes of emergencies, protection of health and safety, and protection of human-engineered structures. In Alaska only, bald eagle nests may also be taken for other purposes. After more than 10 years of issuing permits to remove bald eagle nests, the Service has developed standard permit conditions that can be applied to authorizing the take of bald eagle nests using general permits for these purposes.

We will continue to require specific permits for any take of golden eagle nests because these situations have unique conditions that require site-specific permitting and because of the population status of golden eagles. We will also continue to require a specific permit for take of bald eagle nests under the ''other purposes'' in the lower 48 States because the Service must ensure that those permits provide a net benefit to eagles. The net-benefit determination depends on the circumstances of the purpose requiring nest take. In Alaska, general permits are appropriate because the Service has already developed and implemented standard conditions there and Alaska has a robust bald eagle population.

In this rulemaking, the Service adds a fifth justification for authorizing the take of eagle nests when necessary for the protection of species on the List of Endangered and Threatened Wildlife (§ 17.11) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544). This activity would require a specific permit issued only to a Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern. With expanding bald eagle populations, the Service anticipates an increase in situations where bald eagle management may be a necessary part of implementing recovery plans.

The Service will not require monitoring for general permits. After more than a decade of annual monitoring reports, we expect a 1-year permit tenure to better capture the necessary information to meet the preservation standard than requiring monitoring. In addition, a 1-year permit term without required monitoring is less burdensome to the applicant. Specific permits may require monitoring—for example, a permittee may need to monitor the area near where a nest was removed for one or more seasons to determine whether the affected eagles relocate and successfully fledge young. To be conservative, we will assume that each nest take authorized by the general permit will result in a loss of breeding productivity for one breeding season. We may change this practice in the future if data warrants a change in our assumption.

The Service will not require compensatory mitigation for nest-take general permits, unless it is for other purposes in Alaska where compensatory mitigation is required to achieve the associated net benefit. General permits for nest take are limited to bald eagle nests in situations that are typically hazardous to eagles or where eagles benefit from resolving the situation requiring the permit. Compensatory mitigation is also not generally warranted for nest-take general permits because of the improving population status of bald eagles. Compensatory mitigation may be required for specific permits. In determining compensatory mitigation, the Service will consider the purpose for the nest take, whether nest take reduces risk to eagles, and the population status of the species. A specific-permit applicant may meet this requirement by obtaining the Service-approved number of eagle credits from a Service-approved conservation bank or in-lieu fee program. The applicant may also propose other types of compensatory mitigation for Service approval.

For both specific and general nest take permits, we will require that applicants provide the coordinates of the nest(s) for which they are requesting take authorization. Precise location information is necessary for both the Service staff who conduct eagle-population management and law enforcement. The permit application may also require supporting documentation for certain types of requests (for example, an arborist report in the case of hazard-tree removal).

For nest take, we retain the 5-year limit for specific permits and implement a 1-year limit for general permits. These permits are renewable. The Service considered providing for a longer general-permit tenure; however, doing so would require that the Service require further monitoring from all general permittees that was inconsistent with the purpose of general permits. We have crafted these reduced tenure and permit-per-nest requirements to better ensure general permits for nest take are compatible with the preservation of eagles.

Permit conditions will include the applicable regional-breeding-season start date. Additionally, the general permit will authorize the removal of a specific nest. General permits may authorize bald eagle nest removal from the nesting substrate at the location requested and the location of any subsequent nesting attempts by the eagle pair within one-half mile of the location requested for the duration of the permit if the subsequent nest re-

creates the emergency, safety, or functional hazard of the original nest. Take of an additional eagle nest more than one-half mile away requires an additional permit.

Changes to Definitions and Procedures

As part of this rulemaking, we have narrowed the definition of ''eagle nest'' to exclude nest structures on failed nesting substrate. Previously, we defined ''eagle nest'' to mean any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. We have added a qualification that it must be possible for eagles to reuse the nesting substrate for breeding purposes. Nesting substrate that, due to natural circumstances, is no longer and will never again be available to eagles for functional use will no longer meet the regulatory definition of an eagle nest. This definition of ''eagle nest'' does not allow for modification of alternate (unused) nest substrate to a degree that prevents future breeding activity. These activities will continue to constitute nest take.

We revise this definition to address uncommon but occasional instances in which eagle nests or nesting substrate are impacted by weather or other natural factors to such a degree that they become permanently unusable to eagles for reproductive purposes. For example, if a nest tree falls and the bald eagle nest retains its structure, the nest would no longer retain the official designation of an eagle nest as the substrate was substantively changed by the nest tree falling. A permit is not necessary for individuals and organizations to destroy and remove materials that formerly held the designation of an eagle nest but no longer meet the definition. However, individuals and organizations may not collect these materials nor possess them beyond what is necessary to dispose of the nest. Eggs, feathers, and other eagle parts are often naturally incorporated into nests with time. The Eagle Act prohibits possession, transportation, and sale of these items, either individually or in their incorporated state with former nesting materials, without Federal authorization.

We also have revised the definition of ''in-use nest'' to clarify that the eggs referred to in the definition of in-use nest must be viable. As with our revision of the definition for ''eagle nest,'' this change ensures that our definition is more relevant to what is biologically important to eagles. Nonviable eggs may persist in a nest or even become incorporated into a nest's structure. However, by their nature, these eggs will not hatch. Under previous definitions, permittees have been prevented from removing what is otherwise an alternate nest because of the presence of nonviable eggs outside of breeding season. In implementing the revised definition, the Service presumes that eggs are viable unless the applicant provides evidence to document otherwise (*e.g.,* absence of adults for several days, presence of eggs out of breeding season).

For clarity, we add a definition of ''general permit'' to 50 CFR part 22 to distinguish general permits from the definition of ''permit'' in 50 CFR 10.12. We interpret the statutory language requiring a permit to be procured from the Service for take of bald eagles for any purpose to include general permits set forth in this document as well as the more typical individual or specific permits (see 16 U.S.C. 668a).

We clarify in the regulation pertaining to illegal activities (50 CFR 22.12) that obtaining an eagle permit of any type for a continuing activity does not in and of itself resolve take that occurred before issuance of the permit. This provision is currently in § 22.80(e)(8) but applies to all of the regulations in part 22 and is therefore better located in § 22.12. We also have updated the definition of ''eagle management unit'' and include a definition of ''incidental take'' to improve transparency to the public and general-permit applicants.

Along with this final rule, the Service will also implement the three following changes to our implementation of incidental-take permits for eagles. We will apply the baseline take for golden eagles established in the 2009 EA nationwide. Currently, baseline take for golden eagles is limited to only west of the 100th meridian. In the 2016 PEIS, the Service conservatively assumed that all authorized take of golden eagles east of the 100th meridian should require compensatory mitigation regardless of whether the authorized take was occurring prior to September 11, 2009, and was considered part of the baseline. However, recent information on the population status of golden eagles in the Eastern United States demonstrates that this conservative restriction is not necessary to ensure that take of golden eagles is compatible with the preservation standard, so we are eliminating this unnecessary restriction.

We will also update the number of bald eagles debited from EMU take limits and LAP thresholds when authorizing nest disturbance, based on new information. Before this change, the Service assumed a loss of productivity equivalent to 1.33 bald eagles per year for each authorized nest disturbance in the United States, except in the Southwest, where we assumed a loss of 0.95 bald eagles per year. Based on recent Service analysis of new information, we will update the nationwide debit from 1.33 to a value of 0.26 bald eagles per year. However, because of low sample sizes in our analysis, we are not updating the debit in the Southwest, which will remain at 0.95 bald eagles per year.

Finally, we will remove the 10 percent threshold for unauthorized mortality in a local area population (LAP) that was introduced with the 2016 rulemaking. We have since concluded that georeferenced data on unauthorized eagle mortalities are sparse and biased, making meaningful evaluation and application of unauthorized take at the LAP scale difficult or impossible.

Changes to Fees

The Service charges application fees to cover the costs of administering regulations and permits. This includes paying for staff to: provide technical assistance and guide applicants through the permitting process, review application information, assess the biological impact and environmental effects of the proposed activity, and evaluate whether the applicant meets eligibility and issuance criteria. For specific permits, these actions are primarily conducted before permit issuance. For general permits, these actions will be conducted as part of an auditing process to ensure applicants are correctly interpreting eligibility criteria and complying with permit conditions and requirements. Fees are also used to pay for developing and maintaining an online permit-registration system and database.

General-permit fees include an administration fee. In response to public comments, the Service adjusted the administration fee to reflect the elimination of the proposed Service-led monitoring. Instead, the administration fee will be used to maintain and ground-truth the permit program to ensure it is compatible with the preservation of eagles, including to: (1) better understand eagle population dynamics, including the risk to eagles from authorized activities; (2) better understand mitigation outcomes, including researching and validating avoidance, minimization, and compensatory mitigation measures; (3) address and improve various components of the eagle permitting program, including gathering and analyzing demographic data, GPS tagging and tracking eagles for programmatic monitoring, and researching and validating monitoring

measures. Some portion of the administration fees may also be used, as necessary, to fund Service staff time to manage and implement the general permit administration fees. Specific-permit fees also include an administration fee. We will use the administration fee for specific permits for the same purpose as application fees—to fund staff for the administration of specific permits, including environmental review and support of the online permit system and database.

The permit fee and administration fee must be paid at the time of application. We consider permit renewals to be permit applications for fee purposes. General permits cannot be amended. However, specific permits may be amended during their tenure. There are three types of amendments. *Administrative* amendments are administrative changes, including name and address information. Consistent with § 13.11(d)(5), there is no fee charged for administrative amendments. *Substantive* amendments are those that pertain to the purpose and conditions of the permit. Consistent with § 13.11(d)(5), we will charge an amendment fee. The Service will charge an amendment fee and an administration fee for permittee-requested substantive amendments that require new analysis, such as modifications that result in re-estimating take, re-evaluating compensatory mitigation requirements, or requiring additional environmental review to comply with procedural requirements under NEPA (§ 22.200(e)).

For general permits, the Service adopts a scaled administration-fee structure to accommodate different sizes of projects. For power lines, general-permit administration fees are separated into Tier 1 for non-investor-owned and Tier 2 for investor-owned. The Service uses the U.S. Energy Information Administration's definition of investor-owned utilities as ''large electric distributors that issue stock owned by shareholders'' (*https://www.eia.gov/*). For wind energy, general-permit administration fees are separated into Tier 1 for distributed and community wind projects and Tier 2 for utility wind projects. We use the Service's Land-Based Wind Energy Guidelines definition of these terms (*https://www.fws.gov*). The Service may revise the interpretation of these terms in future rulemakings.

The Service retains the existing tiers of commercial and noncommercial for disturbance and nest-take permits. Applications are commercial, unless (1) an individual applies using section A of the application form for activities on that individual's privately owned property for individual purposes, or (2) a government or not-for-profit entity applies for take associated with public property using section B of the application form and includes documentation demonstrating its qualifying status (*e.g.,* documentation that the entity is a government agency or that the entity is a current, recognized nonprofit organization by the Internal Revenue Service (IRS) as described in section 501(c)(3)).

For specific permits, the Service estimates a wide range of potential permit costs. Costs would vary based on factors like the complexity of the application or the required environmental review. To accommodate this wide range, the Service includes a tiered fee structure in § 13.11(d) and describes criteria for each tier in § 22.200(c)(2)(vii) and below. For incidental take, the Service will charge a Tier 1 application fee when specific-permit conditions require negligible modification from the standardized general-permit conditions, including the use of a Service-approved in-lieu fee program or conservation bank for compensatory mitigation. Tier 1 permits would require Service staff to review and evaluate the application and coordinate internally prior to permit issuance. We do not anticipate requiring additional environmental compliance review under NEPA for Tier 1 specific permits beyond documenting that the action is within the scope of the existing 2016 PEIS and the 2023 EA issued with this rulemaking. For wind energy or other applications that require a fatality estimate, Service estimation of expected take must require minimal data manipulation; for example, the applicant collects site-specific data according to Service standards or adopts the Service's generalized fatality estimate (*i.e.,* using the nationwide specific permit priors).

The Service will assess a Tier 2 fee for specific permits of moderate to high complexity that cannot or do not wish to meet the requirements for Tier 1. Because Tier 2 applications are more complex, more staff hours, including higher graded staff, are required to review application information, assess biological impacts and environmental effects of the proposed activity, and determine whether the application meets eligibility and issuance criteria. These projects may include more complex technical assistance, coordination with other programs or agencies, and documenting NEPA compliance. We estimate the amount of staff time to complete these tasks for moderately complex projects will be 250 to 275 hours per permit based on processing times for similarly complex permits issued by the Service.

We retain the provision in § 13.11(d)(2) that allows an applicant to request, and the Service to support, issuance of one consolidated permit when more than one type of permit is required for an activity and those permits are issued by the same office. When the Service supports consolidation, a single specific permit may authorize multiple activities, for example power lines with nest take or wind energy with power lines. The Service will develop guidance for consolidating permits. Because of the automated nature of general permits that have avoidance, minimization, and compensatory mitigation requirements developed for each activity, a project proponent would have to obtain the relevant individual general permits. Therefore, consolidating general permits is not allowed.

The Service expects specific-permit applicants to diligently pursue obtaining a permit after applying. We will consider a permit application abandoned or withdrawn if an applicant does not respond to requests for information or engage in good-faith negotiations. Once we consider an application abandoned or withdrawn, the applicant must submit a new application, including fees, to obtain take coverage for the activity.

Once effective, under this final rule the Service will not charge an application fee to government entities, consistent with other permits issued in accordance with § 13.11(d)(3); the Service will charge an administration fee to any Federal, Tribal, State, or local government agency for permits issued under part 22 subpart E. The Service may also require government agencies to enter into a reimbursable agreement. This fee is necessary to ensure the permitting program remains consistent with the preservation of eagles.

Administrative Changes

The Service has made the following administrative changes to the organizational structure of our eagle-take-authorization regulations to improve clarity. To reduce confusion, we redesignate the current subpart C ''Specific Eagle Permit Provisions'' as ''Eagle Possession Permit Provisions.'' We create a new subpart E pertaining to ''Take of Eagles for Other Interests.'' This subpart now houses regulations that authorize permits for the taking of eagles for the protection of other interests in any particular locality.

We redesignate regulations for permits to take golden eagle nests for

resource development and recovery operations from § 22.75 to subpart E, at § 22.325. We update the section heading as ''Golden eagle nest take for resource recovery operations'' to clarify that this regulation applies to resource development or recovery operations as authorized by 16 U.S.C. 668a. The purpose of this regulation is to authorize the removal of golden eagle nests that are physically in the way of resource recovery operations, such as on the cliff wall of a mine. We do not change the regulatory requirements that any take authorized must be compatible with the preservation of eagles (newly designated § 22.325(c)) and cannot be reasonably avoided (newly designated § 22.325(c)(1)). The take of nests in proximity to resource development and recovery operations to minimize the risk of disturbance, injury, or mortality to eagles is authorized under § 22.300. We also redesignate the current regulations at § 22.90 pertaining to permits for bald eagle take exempted under the Endangered Species Act to § 22.400 in subpart E.

Sequencing of General Permits Registration Availability

To implement the general permits authorized under this rulemaking, the Service is developing an online general-permit registration system. After the effective date of this regulation, April 12, 2024, the Service will implement the general permit registration system in stages to ensure the technology is working appropriately. General permit registration for incidental take of eagles by wind energy projects and by power lines is anticipated to be available starting on May 6, 2024. General permit registration for disturbance of eagles and take of eagle nests is anticipated to be available starting on July 8, 2024. In the event these availability dates change, the Service will provide updated dates on *https://www.fws.gov/regulations/eagle* and the ePermits website *https://epermits.fws.gov.* Those interested in applying for a wind energy or power line general permit between the effective date of the rule and the availability of the registration system may apply by: (1) completing application form 3–200–71, including sections B–D and the general permit questions in section E and (2) emailing the complete, signed form to *migratorybirdpermits@fws.gov.* The Service will reply to the email with the general permit conditions. Entities must comply with and are authorized by the general permit conditions until the registration system is available. Once available, entities will have 10 business days to register for a general permit using the registration system, including paying fees. Failure to register, once available, voids the prior coverage granted through the above process.

For those interested in applying for disturbance or nest take permits, the Service will continue to use specific permits for the remainder of the 2024 nesting season. For activities starting on or after September 1, 2024, general permits registration is expected to be available. However, in the event it is not, the procedure described in the paragraph above will be used starting July 8th until the registration system is available.

Compliance With the Endangered Species Act

The general permits addressed in the regulations may not be used for an activity if implementing the requirements of the general permit may affect ESA-listed species or species proposed for listing or designated or proposed critical habitat (*e.g.,* burying a cable to avoid impacts to eagles would result in effects to an ESA-listed snake or plant). In those cases, the proponent should apply for a specific permit and, if appropriate, the Service will conduct an intra-service section 7 consultation on its issuance of the eagle incidental take permit. That said, since eagle incidental take permits would authorize only the incidental take of eagles and not the underlying activity, except as it relates to implementing the conditions of the permit, the Service's issuance of an eagle incidental take permit would not serve as a nexus for ESA section 7 purposes for the underlying activity.

Response to Public Comments

The Service received 203 unique letters, which contained 1,649 individual substantive comments, on the proposed rule. The following sections contain a summary of the substantive public comments we received on the proposed rule and our responses. Topics are listed in alphabetical order. Where appropriate, we explain why we did or did not incorporate the changes suggested by the commenters into this final rule. Due to the high number of comments, this summary presents major themes occurring throughout the comments. Not included are the many comments providing general support for provisions of the rulemaking. Likewise, we do not include summaries of any comments providing general opposition, unless they contain suggestions for improvement. We also do not respond to comments that we considered to be outside the scope of this rulemaking.

Audits

Issue. Commenters requested more information regarding the proposed audit program, including details about the auditing process, required documentation, and expectations for audited entities. Some comments expressed concerns with the estimated annual percentage of audited projects, with many indicating a desire for more projects to be audited annually.

Response. We are developing internal auditing procedures and external answers to frequently asked questions on audits. Limited desktop audits and onsite inspections will be conducted to determine if a project meets eligibility criteria and whether the permittee is complying with the regulations and permit conditions. In general, Service staff will conduct an audit following similar procedures to how staff currently review a permit application and administer permits. Audits may include reviewing application materials for completeness and general-permit eligibility. We will verify required reports were submitted and review the reports. Any required records, plans, or other documents will be requested of the permittee and reviewed. If there is a compliance concern, the applicant will be given the opportunity to submit additional information to address the concern. If, during an audit, the Service determines that the permittee is not eligible for a general permit or is out of compliance with general permit conditions, we will communicate to the permittee options for coming into compliance.

The Service has estimated the number of audits that can be conducted each year based on the expected average time to conduct an audit and the fee money available to fund staff to conduct audits. Staff will conduct as many audits as possible with the available funds. There are many uncertainties right now as to how much staff time is needed to conduct an audit. We estimate approximately 1 percent of general permits will be audited each year. If we find general permittees are providing complete information, audits may go quickly and more projects can be audited. We will regularly assess the cost-per-audit and the percentage of projects audited to adjust the fee structure accordingly.

Avoidance and Minimization Measures

Issue. Several commenters expressed concern with a lack of specificity in the regulation regarding avoidance and minimization measures.

Response. The role of regulation is to establish performance standards,

whereas the role of permit conditions is to provide specificity on how those performance standards may be met by each permittee. Overly prescriptive regulations are difficult to keep current and can limit innovation. Instead, we will provide permit conditions and other documents to communicate the Service's recommendations on how to meet regulatory requirements. Avoidance and minimization requirements for general permits are based on the most commonly applied and effective measures learned by the Service from more than a decade of permitting. Eligibility criteria and the performance standards established in the regulation conditions can be revised through rulemaking. As information and technology change, the Service may update our recommendations and expectations on how eligibility criteria and conditions may be met.

Issue. Some commenters expressed the desire to see permit conditions that incorporate the use of experimental or emerging technology to avoid and minimize incidental take by wind energy projects, including Identiflight Bird Detection System, painting one turbine blade black, or seasonal restrictions on wind turbine operation.

Response. The Service supports science and technology that increases safe eagle passage through wind energy facilities. There is no restriction on permittees implementing these technologies, which can be used to meet the performance standards of the regulation. However, the efficacy of these technologies and the details surrounding their implementation have not been sufficiently studied to warrant prescriptive requirements in these regulations at this time. The Service continues to stay abreast of scientific developments and may include these types of technologies in future rulemakings if evidence demonstrates their effectiveness. Specific permit applicants may request that the Service consider the permittee's use of emerging technologies when the Service estimates fatality.

Issue. We received requests to include perch discouragers as a standard avoidance and minimization measure for power line poles.

Response. We did not require perch discouragers as a minimization measure for power line general permits because the effectiveness is situation dependent. We encourage the use of perch deterrents where they may be effective. However, APLIC has moved away from broad implementation of perch discouragers because devices installed to prevent perching may provide a substrate to secure nest material, and, in some cases, may increase electrocution risk (APLIC 2023). Prather and Messmer (2010) tested several types of perch discouragers and found no difference in perching on poles with or without discouragers. However, we support the use of perch discouragers in situations where it is the best or only option for reducing electrocution of eagles.

Issue. Multiple commenters requested that we create ''no go zones'' or similar restrictions prohibiting the installation of wind turbines in the most important areas for eagles.

Response. The Service did not create ''no go zones'' because doing so is outside the scope of the Eagle Act. The Service's authority under the Eagle Act allows the regulation of incidental take of bald eagles and golden eagles. Our regulatory authority does not extend beyond that mandate to prohibit the installation of wind turbines or other infrastructure. The Eagle Act ensures the preservation of our two eagle species by protecting the survival and breeding productivity of individual birds but does not directly mandate protection of eagle habitat. Consequently, the Eagle Act does not give the Service authority to prohibit certain types of land use, including development. Instead, it allows us to influence certain types of land use to reduce the risk of take of bald eagles and golden eagles, including disturbance of breeding eagles, and to require avoidance, minimization, and compensatory mitigation from individuals and entities unable to avoid taking these species. These features of our regulatory process are common to both existing regulations and these new regulations.

Climate Change

Issue. The Service received comments regarding the implications of climate change for this rulemaking and the inclusion of climate change in the EA.

Response. The Service recognizes the threats that climate change poses to eagles as well as other wildlife. The Service supports all actions that address climate change, including renewable energy development. The Service believes that this rule will help facilitate the development of renewable energy projects by revising the current permitting approach for eagle incidental take. The permit framework developed for renewable projects creates clear expectations for projects to achieve compliance, in some cases with no direct interaction with the Service (*e.g.,* general permits). The Service is balancing the need for regulatory certainty, eagle preservation, and the need for renewable energy development to combat climate change. While we intend the changes to the eagle-permit regulations to encourage more projects to apply for a permit, we expect that this rulemaking will have no impact on the number of future renewable energy projects on the landscape and, thus, no impact on the trajectory of climate change.

Compensatory Mitigation

Issue. The Service received numerous comments related to compensatory mitigation requirements, including advocating for different methods to achieve these requirements, including lead abatement, carcass removal from roads, and habitat enhancement.

Response. The Service is actively working on reviewing and approving other forms of mitigation and encourages potential mitigation providers to submit their proposals. As part of this rule, we created a new regulation specific to compensatory mitigation to more clearly signal requirements to the public. Quantifying the benefits of various compensatory mitigation measures and developing standards for their application in permitting is complex. To date, the Service has authorized power pole retrofits and lead abatement as compensatory mitigation measures. The Service is actively developing other compensatory mitigation methods, such as roadside carcass removal, that will decrease eagle mortality or increase eagle productivity. The Service encourages interested mitigation providers to contact the Service with ideas on compensatory mitigation methods. The Service agrees that it is important to develop compensatory mitigation methods that offset different sources of mortality and have a wider range of mitigation providers across the country. We will continue to engage stakeholders and develop additional guidance and standards for approving mitigation providers. This will include gathering information to address mitigation measure effectiveness and uncertainty and establishing appropriate assurances for the durability of mitigation measures.

Issue. Some commenters expressed concerns with scaling compensatory mitigation at the Eagle-Management-Unit (EMU) level rather than the local-area-population (LAP) level.

Response. The final rule retains the requirement to site compensatory mitigation within the same EMU where the take is authorized. Authorized take may affect individual eagles that are both resident and migratory. Banding records have demonstrated eagle movements within EMUs beyond individual LAPs. Thus, requiring that

compensatory mitigation occur at small scales (*e.g.,* the LAP scale) may be limiting the benefits of compensatory mitigation unnecessarily and doing so at an inappropriate ecological scale. Additionally, limiting compensatory mitigation options to the LAP scale is currently not practicable until there are sufficient mitigation providers capable of supporting every LAP. When compensatory mitigation is required by the Service to address an LAP concern, the regulation prioritizes implementing compensatory mitigation in the LAP where the impacts occurred.

Issue. Several commenters expressed concerns with requiring compensatory mitigation for bald eagles and indicated this requirement is not necessary to meet the preservation standard.

Response. The general-permit compensatory mitigation requirement includes a small portion for bald eagles. This is necessary to ensure that the general-permit program is consistent with the preservation standard established by the Eagle Act and implementing regulations. General permits do not provide for the project-specific review prior to issuance; therefore, possible LAP effects must be addressed after issuance. One tool is to require a small amount of compensatory mitigation from general permittees that the Service can direct to areas where LAP thresholds are at risk of being exceeded. The rate of this extra compensatory mitigation is based on bald eagle take predictions, but the mitigation amounts provided can be used for either species of eagle. If an applicant does not want to pay this extra mitigation cost, which the Service expects to be relatively small for each project, the applicant may apply for a specific permit where project-specific review would determine mitigation requirements.

Issue. Several commenters proposed a conservation fund or conservation fee in addition to any required compensatory mitigation.

Response. The Service has numerous authorities that allow it to charge an entity permit fees and enter into reimbursable agreements. Funds collected through permit fees and reimbursable agreements are used to defer the cost of administering the permit program, including, but not limited to, salary and other staff-related costs and costs to ensure that issuance of permits is compatible with the preservation of eagles. Based on suggestions provided in public comments and as consistent with the use of collected fees, the Service will use these fees to fund analysis to: (1) better understand eagle population dynamics, including the risk to eagles from authorized activities; (2) better understand mitigation outcomes, including researching and validating avoidance, minimization, and compensatory mitigation measures; and (3) address and improve various components of the eagle permitting program, including gathering and analyzing demographic data, GPS tagging and tracking eagles for programmatic monitoring, and researching and validating monitoring measures. The Service does not have express statutory authority under the Eagle Act to require contribution into a conservation fund beyond these purposes, nor the specific authority to direct such funds if they were collected.

Changes to Fees

Issue. Multiple commenters suggested that the fees for general permits were too high and would disincentivize smaller entities from participating.

Response. In the final rule, the Service has adopted a scaled fee approach for both general permits and specific permits. For power lines, general-permit administration fees are separated into Tier 1 for non-investor-owned utilities and Tier 2 for investor-owned utilities (using U.S. Energy Information Administration definitions). For wind energy, general-permit administration fees are separated into Tier 1 distributed and community scale and Tier 2 utility scale, using the Service's Land-Based Wind Energy Guidelines definitions. For specific permits, the Service created a tiered fee structure for wind energy and power line projects consisting of three tiers: Tier 1, Tier 2, and Tier 2 with reimbursable agreement, where a Tier 1 fee is charged for standard applications and a Tier 2 fee is charged for complex applications. A reimbursable agreement will be used when processing time exceeds 275 staff hours. The Service retains the current non-commercial and commercial tiering for disturbance and nest take permits.

Coordination With States

Issue. Several commenters stressed the need for the Service to coordinate with other Federal and State agencies on the issuance of general and specific permits.

Response. The Service values coordination with Tribal, State, and Federal partners, and we intend to continue to coordinate and share information about permits issued. For general permits, we will regularly be compiling and distributing information on general permits issued. We have updated the regulation to reflect what information will be made readily available to partners and the public. For specific permits, the Service will continue to consult States, Tribes, and other Federal agencies as part of our normal permitting procedures. In addition, Department of the Interior disclosure policies (68 FR 52610, Sept. 4, 2003) under the Privacy Act also provide for routine disclosures to Federal, Tribal, State, local, or foreign agencies, including to exchange information on permits granted or denied, to ensure compliance with all applicable permitting requirements and obtain advice relevant to approving or denying a permit.

Issue. Some commenters expressed concern about the locations of eagle nests being shared with the public, while others stated that some States are prohibited from disclosing nest locations and that the Service should not require that information on permit applications.

Response. The Service requires precise location information on nest locations to properly analyze effects to eagles, including LAP effects, as well as for law enforcement purposes. The Service will take all available measures to protect eagles and their nest locations. The Service will continue to coordinate with State wildlife agencies on these matters.

Issue. We received comments that expressed concerns with the take of eagles in States where either the bald eagle, golden eagle, or both are listed as threatened or endangered at the State level. These comments requested that the Service provide details regarding coordination with the States with respect to the distribution of authorized take across individual EMUs, as well as in relation to the quantification of LAP thresholds.

Response. Federal issuance of a permit does not supersede Tribal or State protections of a species. Tribes, States, and other Federal agencies are not required to authorize incidental take of bald eagles or golden eagles, even if a permittee has obtained a Service general or specific permit. It is the responsibility of the permittee to ensure they are in compliance with all applicable laws and regulations. To support the protection of local populations in this rulemaking, the Service has retained the existing preservation standard that requires the Service to determine that permits we issue are consistent with eagle preservation at the EMU and LAP scales. Under general permits, the Service will not analyze cumulative take at the LAP scale prior to general permit issuance. However, the Service will

review general permits issued and analyze cumulative take at the LAP scale if an area of concern is identified. States are encouraged to review the Service's issued permits and submit any information to the Service that might assist with assessing impacts to LAPs. If the Service is concerned about the status of any LAP, we can either (a) direct compensatory mitigation to areas of concern, or (b) suspend the general-permit program in whole or in part.

Definitions

Issue. The Service received comments on the definition of ''in-use nest,'' particularly regarding determining egg viability and nests that are considered under construction.

Response. The purpose of this change is to address the increasing frequency of instances of bald eagle nest activity outside of the breeding season, including non-viable eggs in nests outside of breeding season and nests being maintained outside of breeding season. The Service agrees with the expressed difficulty of determining if an egg is viable in the field. Eggs should be assumed viable, unless evidence proves otherwise. Evidence like the absence of adults for several days or presence of eggs out of breeding season should be used to assess the likelihood of an egg being viable. We removed the protections for nests under construction or under maintenance for bald eagles. The previous definitions were part of a conservative approach for the recovering bald eagle that is no longer warranted. These changes are appropriate and improve consistency between the Eagle Act nest protections with the Migratory Bird Treaty Act nest protections.

EA Alternatives

Issue. The Service should reconsider Alternative 2 in the draft EA.

Response. The Service did reconsider Alternative 2 and again concludes it has a high risk of not meeting our preservation standard if implemented. Under Alternative 2, the regulations would be revised to include a general permit for land-based wind energy facilities only, with eligibility based on a project's distance from eagle nests and compensatory mitigation requirements in the form of a flat, per-project fee for mitigation. Adopting Alternative 2 is problematic because neither the Service nor project proponents know where all eagle nests on the landscape are located. This lack of data reduces our ability to reliably determine whether a specific wind project is eligible for a general permit. This situation also adds uncertainty for projects as well as to any assessment the Service might perform. Considering this, we expect Alternative 2 would come with the highest risk of inconsistency with our preservation standard compared to the other alternatives.

The Service concludes that the general-permit program described under Alternatives 3 and 4 will best accomplish the dual goals of increasing participation and increasing conservation for eagles, where more than 80 percent of existing turbines on the landscape are eligible for general permits (and the associated benefits of those general permits) and where paths to a streamlined issuance of specific permits are described.

The Service also concludes that Alternative 2's flat fee for mitigation and monitoring may disincentivize smaller projects (*e.g.,* tens of turbines) from applying for take permits compared to larger projects (*e.g.,* hundreds of turbines). The Service estimates that an average wind project qualifying for a general permit will pay $312,000 in compensatory mitigation under Alternative 2. This is nearly ten times the estimated compensatory mitigation cost of $37,200 for Alternatives 3 and 4. Although industry trends may be toward new construction of larger facilities and consolidated ownership, wind energy facilities are long lived (usually 30 years or more). Older facilities will continue to operate and must be considered when estimating participation in eagle incidental-take permitting and when considering financial impacts to permittees under Alternative 2 (Section 5.4.5.1 of the Environmental Assessment). Although risk to eagles from small facilities that are eligible for general permits may be relatively low, under Alternative 2, those businesses would be more susceptible to future enforcement actions and associated enforcement costs in the event of an eagle take if they remain unpermitted due to the relatively high cost of flat fees.

EA Economic Analysis

Issue. The Service received several comments on our estimated mitigation costs, with some commenters suggesting our estimates were too high while others suggested they were too low.

Response. Because compensatory mitigation is provided either by the permittee or a third party, costs can vary widely. We acknowledge that the costs estimated for compensatory mitigation under all alternatives in the FEA are estimates and are likely to vary, perhaps substantially, across all permitted projects based on the mitigation method selected, the in-lieu fee program or conservation bank selected, and other details. These details are difficult to account for in an economic analysis, but we considered them as accurately as possible based on current data and our estimated projections. In the FEA, the Service estimates compensatory mitigation for an average wind energy general permit to be $37,200. These estimates are based solely on estimates of compensatory-mitigation costs using power pole retrofits, which are the only cost estimates the Service currently has available.

Issue. The Service received comments specifically on our cost estimates for retrofitting power poles under the power line regulation.

Response. We updated the FEA to reflect our assumption that the proactive retrofit requirements associated with this rule are not expected to result in additional costs to power line entities. As stated in section 5.6.5 of the FEA, the Service assumes that power line entities most likely to apply for a permit are entities that have a risk of taking eagles and are already retrofitting power poles, thus already meeting this requirement.

Eligibility—Wind Energy General Permit

Issue. Many commenters expressed concerns with the general-permit eligibility for wind energy, specifically regarding the distance from bald eagle nests.

Response. The Service acknowledges the uncertainty that is created if bald eagles initiate nesting near a project with a wind energy general permit. Therefore, we revised eligibility criteria (§ 22.250(c)) to provide that a general permittee remains eligible to renew their permit, even if the Service revises eagle relative abundance thresholds or eagles construct nests within the species-specific setback distances, as long as the project does not discover the remains of four eagles of the same species within a 5-year permit tenure.

Issue. Multiple comments requested that the Service create a general permit option for existing wind energy projects (as defined in § 22.250(b)) occurring within the specific permit zone.

Response. The Service acknowledges the unique challenges of existing projects being subject to new regulations. However, after extensive review, the Service could not identify a set of general-permit eligibility criteria that a project could self-certify without adding extensive complexity or uncertainty. Therefore, the Service retained and clarified the eligibility criterion that any existing project that does not meet general permit eligibility criteria can apply for a specific permit (§ 22.200(b)(7) while requesting a letter

of authorization to obtain a general permit (§ 22.250(c)).

The Service will review all information provided in the application, including any site-specific, pre-construction or post-construction data. If we determine that the take rates at the existing project are likely to be consistent with or lower than eagle take rates expected at similar-sized wind facilities that qualify for general permits, the Service will issue a letter of authorization to register for a general permit. If an applicant receives a letter of authorization, we may refund the specific permit application fee, but to cover the cost of review, we will not refund the administration fee. The letter of authorization may require additional avoidance, minimization, or compensatory mitigation requirements as needed to ensure consistency with general permit take rates. The Service anticipates expediting the processing of these applications.

Issue. Commenters suggested that the Service should allow the use of site-specific data to determine eligibility for general permits.

Response. The Service recognizes the value in site-specific data. However, the purpose of general permits is to apply an efficient and streamlined approach for issuing permits to projects that the Service can pre-determine pose relatively low risk to eagles. It is not currently possible to evaluate site-specific data in an automated manner, which is necessary for general permits. Applicants that prefer to use site-specific data may apply for a specific permit and request review for inclusion in the general-permit program as described in a previous comment response.

Issue. Commenters suggested that existing projects should still qualify for a general permit even if some of the project's turbines are within the specific permit zone.

Response. The Service reviewed at length the possibility of automatically allowing general-permit eligibility for projects that overlap the boundaries between specific and general permit zones. This deviation from the proposed rule appears simple but comes with an increased risk that our general permit program would be inconsistent with the preservation standard established by the Eagle Act and implementing regulations. The risk is further increased because the projects that would be eligible for general permits by partially overlapping the general-permit zone would very likely create higher risk to eagles than other projects that fully encompass the general-permit zone. The Service must choose between addressing that risk by increasing the mitigation costs for all general permittees or retaining that all turbines must be in the general permit zone. Because of how substantive the increased mitigation costs were, the Service instead provides a mechanism for existing projects to request an eligibility determination case-by-case as described in a previous comment response.

Issue. Comments noted that many existing projects would not qualify for a general permit and stated that many of the current deficiencies with the specific permit program would still be present under the new regulations.

Response. The Service has developed and will implement a streamlined approach to specific permits. One approach we considered and adopted in the final rule was the creation of new tiers for reviewing specific-permit applications. The purpose of these tiers is to separate the specific-permit applications that are able to adopt standardized approaches from those which request more extensive review and negotiation. Applicants that are willing to accept standard specific-permit conditions (and do not require additional NEPA analysis) are eligible for a less expensive application fee and faster permit-review times.

Eligibility—Relative Abundance Map and Thresholds

Issue. Comments suggested that the relative abundance maps should indicate levels of risk so developers could choose to avoid the highest risk areas, or, at a minimum, understand increased mitigation costs that might be associated with higher risk areas.

Response. The map published with the final rule uses eagle relative abundance as an index for potential risk. We use relative abundance data for eagles because the presence of more eagles in a given area at different times of the year results in more interactions between turbines and eagles and therefore increased risk of collisions. Thus, relative abundance data is an effective proxy for determining the risk of eagle take in a particular location. Although there are only two levels of risk depicted in this map, it does highlight areas that the Service has deemed to have relatively high or relatively uncertain risk to eagles. It is our intent that this map will be used by developers when siting wind-related infrastructure. As additional data become available, we will continue to refine our ''risk maps.''

Issue. The Service received numerous comments regarding the use of eBird Status and Trends relative abundance products to create the relative abundance map. Some commenters expressed concern that use of eBird data would underestimate eagle abundance in areas inaccessible to birders.

Response. The Service recognized that data products from the Cornell Lab of Ornithology using eBird data is new to many. It is important to distinguish that the data products the Service is using are distinct from raw eBird data. We consider the products from the Cornell Lab of Ornithology to be currently the best available science for developing a nationwide approach to permitting. We recognize and acknowledge the uncertainties that are included with this method, such as areas where raw eBird data has limited reporting. However, the Cornell Lab of Ornithology eBird Status and Trends relative abundance products use machine learning to fill in these gaps based on the models' ability to relate the eBird observations to environmental predictors derived from global remote sensing data. For example, reliability of species distribution model predictions can be increased for unsampled locations and times by relating environmental predictors to observed occurrences or abundances. This approach allows us to predict abundance in places that may not be frequented as often (or at all) by eBird users.

Issue. Several comments suggested we use information from other datasets (*e.g.,* migration counts, telemetry studies, roost registries, USGS breeding bird survey, Audubon Christmas Bird Count, and the Midwinter Bald Eagle Survey) to supplement and improve maps either in addition to or as part of the eBird models.

Response. The Service agrees that the best information should be used to determine eagle relative abundance. To implement general permits, the Service must regulate at the national scale, which is why this regulation relies on data products from the Cornell Lab of Ornithology. The Service intends to incorporate other data into our mapping efforts, as appropriate. However, it will take time to review each dataset, including its assumptions and biases, and incorporate those data into mapping efforts in a meaningful way and at appropriate scales. We welcome additional information and data that could help with risk mapping and any investment in data integration efforts.

Issue. We received comments requesting that the Service further stratify relative abundance thresholds according to differences in geography (*e.g.,* northern and southern for bald eagles and eastern and western for golden eagles).

Response. The Service considered further stratification and the creation of separate relative abundance criteria for each eagle species preceding the public comment period. However, adding additional strata would have changed the scale at which the relative abundance is evaluated and would have added significant complexity to the general permit program for wind energy facilities. Thus, we elected not to incorporate these changes.

The Service will update the map and relative abundance thresholds periodically. In the FEA, we suggested every 5 years or different intervals if information suggests shorter or longer intervals are more appropriate. Between updates, the Service will consider any suggestions for better and more effective ways to map relative eagle abundance.

General Permits

Issue. One commenter indicated that they thought the proposed rule placed too much emphasis on general permits. Previously, all eagle take was permitted with specific permits.

Response. This rule emphasizes general permits because that is the provision that is being introduced with this rulemaking. The Service has retained the specific permit approach and provisions. In this rulemaking, the Service has created general permits as an alternative approach to obtaining eagle take authorization for projects that meet eligibility criteria. The purpose of general permits is to simplify and expedite the permitting process for activities for which the Service has well-established avoidance and minimization measures and that have relatively consistent and low risk to eagles. The regulations are based on the well-established avoidance, minimization, and compensatory mitigation measures that the Service has been implementing as permit conditions for the past 14 years. This approach allows us to confidently authorize take consistent with the preservation standard established by the Eagle Act and implementing regulations without requiring Service review prior to issuance. We will continue to refine the general permit approach and incorporate public input on eligibility criteria for all general-permit categories included in this rule to ensure that general permits effectively simplify and expedite the permit process for eligible projects while meeting the preservation standard.

Issue. Many comments recommended that the Service allow project proponents to apply for a separate permit for bald and golden eagles, as opposed to requiring coverage for both species.

Response. In reviewing comments, the Service realized we did not sufficiently explain in the proposed rule that the mitigation requirements are specific to that EMU and proportional to golden eagle abundance in the EMU. Commenters expressed concern that projects in the East, where golden eagle use of wind projects is seasonal and generally relatively low, would be paying to compensate for authorized golden eagle take in the West, where golden eagle use of wind projects can be relatively high. This is not the case. Projects in the Atlantic and Mississippi EMU have a lower golden eagle mitigation rate that is commensurate with the generally lower risk of golden eagle take in those EMUs. Similarly, projects in the Central and Pacific EMUs will be required to pay a higher compensatory mitigation rate for golden eagles, commensurate with the generally higher risk of golden eagle take there. There is a small amount of additional mitigation required in all EMUs, to provide funds if a LAP threshold is exceeded and mitigation is necessary for the program to remain consistent with our preservation standard. These details are covered in the Final Environmental Assessment associated with this rulemaking.

Between the proposed and final rule, the Service again analyzed the possibility of authorizing general permits by species and did not select that approach at this time. While seemingly a straightforward request, separating the species introduces uncertainty, which increases the risk and complexity of general permits. To meet the preservation standard, the Service estimates general permit mitigation requirements based on enrollment and has no basis for predicting how many projects will opt for coverage of one species versus both. The Service would effectively need to develop separate general permits for each species, including corresponding eligibility thresholds, eligibility maps, mitigation costs, and perhaps monitoring standards. In the interest of keeping general permits easy to apply for and implement, the Service retained the requirement that all general permits authorize take of both eagle species. The Service will continue to review this approach in future rulemaking.

To illustrate the mitigation costs that will be required under general permits and how they differ across project sizes and across EMUs, consider two hypothetical projects: one with 30 and one with 100 project turbines, all turbines having a 95.7m rotor diameter. Both projects are eligible for a general permit and are located in the Atlantic/Mississippi EMU (where general permit mitigation rates for golden eagles are the lowest). We will also consider those same two projects as being eligible for general permits in the Pacific EMU (where general permit mitigation rates for golden eagles are the highest). The 30-turbine project in the Atlantic/Mississippi EMU would be required to mitigate for 0.20 golden eagles and 0.06 additional eagles (LAP mitigation), or 0.26 total eagles, every 5 years. That same project in the Pacific EMU would be required to mitigate for the take of 0.42 golden eagles and 0.06 additional eagles (LAP mitigation), or 0.48 total eagles, every 5 years. The 100-turbine project in the Atlantic/Mississippi EMU would be required to mitigate for 0.66 golden eagles and 0.20 additional eagles (LAP mitigation), or 0.86 total eagles every 5 years. That same 100-turbine project in the Pacific EMU would be required to mitigate for 1.40 golden eagles and 0.20 additional eagles (LAP mitigation), or 1.60 total eagles every 5 years.

These two hypothetical projects illustrate the relatively low cost of obtaining golden eagle take coverage for projects that are eligible for a general permit, and especially the lower cost for smaller projects and projects in the East, where golden eagle presence is seasonal and they are generally less abundant than in many parts of the West. We are hopeful that general permit applicants who think their risk to golden eagles is low will view this relatively low mitigation cost as worth the price of incidental take authorization for golden eagles, in the event such take should occur. If applicants wish to receive a permit for only one eagle species, they may apply for a specific permit.

Issue. Several comments expressed concern with regard to potential suspension or termination of the general permit program, including a suggestion that suspension or termination should be subject to public notice and comment prior to finalization.

Response. The Service recognizes the uncertainty that a potential suspension or termination causes. Suspension or termination of general permitting is an important aspect to allow the Service to respond quickly in the event of sudden changes in eagle populations at the LAP or EMU scale; however, it is not a step the Service would take lightly and without a notice and comment process.

Regulations currently allow for the revocation of a permit if ''the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the

permitted activity would be detrimental to maintenance or recovery of the affected population'' (50 CFR 13.28(a)(5)). The Service will regularly evaluate whether the authorized take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds that issuance of general permits in a particular LAP or EMU is not compatible with the preservation of bald eagles or golden eagles, we would first consider adding additional precautions to the permitting program through rulemaking. Rulemaking requires public review and comment periods. However, the Service is preserving, as a last resort, the option of suspending general permit issuance locally or nationally after publishing a notice in the **Federal Register**. This notice may include an opportunity for the public to comment on next steps. If the Service suspends general permitting, take currently authorized under a general permit remains authorized until expiration of that permit, unless the permittee is notified otherwise.

Issue. Some commenters asked us to explain how ''low effects'' are determined for general permits.

Response. Public comment indicated that the Service's intent was not clear in the usage of the phrase ''low effects.'' We have modified the text to instead reference ''low risk.'' General permits simplify and expedite the permitting process for activities that have relatively consistent and low risk to eagles and well-established avoidance, minimization, and compensatory mitigation measures. For wind energy facilities, projects that have low risk will be determined by the relative abundance of eagles and the proximity of wind turbines to nest locations. For other general permits, the Service considers the implementation of the well-established avoidance and minimization measures to result in those projects being low risk to eagles.

Guidance

Issue. Several commenters requested more information regarding guidance documents that the Service plans to develop.

Response. The Service is working on internal procedures, external outreach, and guidance documents to help the public understand and comply with these new regulations. In developing guidance, the Service will follow standard Federal guidance practices. All regulatory requirements are included in the rule. Guidance documents provide a step-down from the rule that explain and clarify the Service's expectations on how to meet regulatory requirements.

Monitoring

Issue. While many commenters were supportive of the removal of third-party monitoring, we received comments in support of retaining this provision.

Response. The third-party monitoring requirement has proven impracticable or impossible to implement at some projects for a variety of factors, including health, safety, liability, and access issues for project sites that are leased from multiple private landowners. These factors have created a barrier to obtaining a permit. The Service reviewed the purpose of third-party monitoring and determined in most circumstances it is sufficient to rely on the requirement that the permittee must certify that the information submitted is complete and accurate to the best of their knowledge and belief, subject to criminal penalty for supplying false information. The Service concluded that the existing penalties for false reporting under eagle take permits will be enough to dissuade most permittees from intentionally providing inaccurate reports. We retain the ability to require third-party monitoring on a case-by-case basis for specific permits, particularly if we have ongoing compliance concerns.

Issue. Commenters expressed concern over the amount of money the Service was proposing to spend on monitoring.

Response. The Service recognizes the tradeoff between spending money on monitoring or on compensatory mitigation. Monitoring can be expensive, and it may not be immediately clear how more monitoring benefits eagle preservation. The benefit of compensatory mitigation is more straightforward. While extensive monitoring has occurred at numerous wind projects, it remains difficult to draw programmatic, cross-project conclusions. Monitoring in a manner that allows for programmatic conclusions is critical to ensure implementing these new regulations will be compatible with eagle preservation.

However, based on public comment, the Service reviewed its proposed approach to monitoring. We determined that we can accomplish monitoring goals under general permits with concurrent fatality monitoring, which will be required under general permits, and without additional monitoring performed by or contracted by the Service. In the final rule, we require concurrent monitoring conducted according to Service protocols by project operations and maintenance staff, which will be sufficient to meet the Service's monitoring needs, provided there is sufficient participation in wind energy general permitting. We continue to require an administration fee, a portion of which will be used to validate the concurrent monitoring approach and analyze monitoring data.

Issue. We received comments that expressed concern over the removal of the required 5-year check-ins.

Response. The purpose of 5-year review is to update take estimates and related compensatory mitigation for the subsequent 5-year period. It also provides the Service with an opportunity to amend the permit to reduce or eliminate conservation measures or other permit conditions that prove to be ineffective or unnecessary. The purpose of these reviews does not change with this rulemaking. However, the 5-year requirement has introduced unintended uncertainty which, according to public comment, has reduced participation in eagle take permitting under the 2016 regulations. It has also resulted in timing issues, where post-construction monitoring or other data is available off-cycle from the 5-year timing (*e.g.,* year 3 or 4) but cannot be used until the scheduled check-in. Instead, check-ins may now be initiated by the permittee or the Service in response to events that warrant review, for example, updating fatality estimates and associated compensatory mitigation requirements or revising permit conditions to reflect the best available science.

Issue. We received comments stating that our current surveys are not sufficient to adequately estimate eagle population numbers and that mortality data reporting is voluntary and unreliable.

Response. The Service uses the best available science in ensuring that general and specific permits are consistent with the preservation of eagles. The Service has conducted aerial surveys for both bald eagles and golden eagles relatively recently and consider these survey efforts adequate to estimate populations of both species within applicable parts of their range. The Service agrees that voluntary reporting of mortality data is unreliable. With this rulemaking, the Service improves voluntary reporting at wind projects in two ways. First, through increasing participation in permitting and prescribing the concurrent monitoring protocol all projects use, the Service expects improved quantity and quality of eagle fatality data at wind projects. Second, through the collection of an administration fee, the Service can direct funds as needed to ensure permitting is consistent with the preservation standard, including by

survey populations and by analyzing project-specific mortality data.

Issue. Commenters felt that monitoring related to disturbance take and nest take should not be required, specifically in instances where the activity does not directly take eagles, as with communication towers.

Response. Unlike permits that authorize the incidental injury or death of eagles, monitoring required under nest take and nest disturbance permits is intended to detect breeding outcomes during current and subsequent nesting attempts and, if appropriate and practical, document if eagles breed again at their original or any new nesting location. The loss of breeding productivity constitutes take, as it prevents eagles from being added to the population. Monitoring requirements allow the Service to more accurately account for authorized take against our established species-specific take limits and, over time, may allow us to qualify or quantify the effectiveness of permit conditions.

Nest Disturbance

Issue. Comments regarding nest disturbance primarily focused on the buffer distances set for general permits, including those for in-use and alternate nests, and advocated for distances based on the level of tolerance to disturbance.

Response. By specifying distances in our bald eagle nest disturbance general permit, we are not suggesting that all activities within these distances must apply for a permit. Rather, we are setting a standard that only those activities listed within the final rule (§ 22.280(b)) within these distances can receive a general permit. This standard is intended to prevent project proponents applying for unnecessary permits for activities beyond these distances that are unlikely to disturb breeding bald eagles. Further, the specific and general permits for nest disturbance are not a prerequisite to carrying out activities or starting projects. Instead, they cover any disturbance that may result as an unintentional consequence of an activity. If an individual or entity assesses that their activities are unlikely to disturb breeding eagles, they do not need the Service's consent or concurrence to proceed, though they may be held liable if their activities do ultimately cause disturbance.

The Service acknowledges the growing body of evidence demonstrating that some portions of the bald eagle breeding population demonstrate increased tolerance to human activities. Our standards under the nest disturbance general permit reflect this consideration. We use the 330- and 660-foot distances for bald eagles because we are generally unconcerned with activities beyond these ranges, and we discourage proponents from applying for permits where best available science suggests they are unnecessary. Within those distances, project proponents may assess their relative risk to eagles (*e.g.,* whether or not a similar activity is or has occurred closer to the nest) and determine whether or not to apply for a permit.

Regarding alternate nests, we agree that, by definition, activities at these nests cannot expose breeding eagles to sensory disturbance, as the eagles are not present. However, as the National Bald Eagle Management Guidelines (2007) note, alterations to the nest site and surrounding habitat may discourage eagles from breeding when encountered by eagles returning to that nest site. We will continue to update the National Bald Eagle Management Guidelines as well as develop similar guidelines for golden eagles.

Issue. We received requests for a regulatory authorization for State wildlife agencies for land-management activities that may improve eagle-nesting habitat, including prescribed fire and mowing.

Response. The Service acknowledges the usefulness of regulatory authorizations; however, we do not consider regulatory authorizations an appropriate mechanism to authorize the mortality or injury of bald eagles or golden eagles at this time. Most land-management activities, such as alteration of shorelines, alteration of vegetation, and prescribed burns, are eligible for general permits for eagle disturbance take. General permits for disturbance caused by agriculture, mining, and oil and gas operations are not available at this time. We have received permit requests for these activities infrequently, thus we have not yet developed standard avoidance and minimization measures. Operators of these and other activities may apply for specific permits. As we gain more information on the effects of these activities and identify effective avoidance and minimization measures, we may in future rulemakings add general-permit regulations for these and other activities.

Issue. Commenters asked whether a single general permit authorizes several types of disturbance or whether a separate general permit will be needed for each type of disturbance that could occur.

Response. Consistent with our current approach to permitting, a single permit for disturbance of bald eagle nests can authorize disturbance of a nest from multiple sources of disturbance of a single project or operation. For example, a general permit could authorize disturbance from land clearing, external construction, blasting, and operations and management activities associated with one project. The bald eagle nest disturbance permit is a ''one permit, one nesting territory'' system that simplifies our bald eagle population management tracking and reduces the amount of monitoring we require from permittees.

Issue. Commenters also expressed the desire for one permit for all bald eagle disturbance associated with a given activity for the 5-year permit term.

Response. Allowing coverage for an unspecified number of nests and ad hoc accounting of effects would hinder our ability to ensure take is consistent with the preservation standard established by the Eagle Act and implementing regulations. Individuals or entities that want to obtain coverage for disturbance of multiple nesting territories may apply for a specific permit.

Nest Take

Issue. Comments related to nest take centered on the creation of general permits and the lack of Service review of those permits.

Response. General permits are generally limited to three scenarios: emergency circumstances, health and human safety concerns, or nests on human-engineered structures. These situations, such as wildfire hazard and structural failure, often pose risks to both the nest and for people. In these situations, it is often imperative that the permit be issued as quickly as possible, as doing so often reduces the risk or effects to eagles. The Service also has been implementing permits for these activities since 2009 and has well-developed permit conditions with avoidance and minimization measures. The expedient processing and standardized approach make these permits a great fit for general permits.

The Service will review these permits. In reviewing bald eagle nest take permits at the program scale, given the current and expected number of permits issued and the status of the bald eagle, the Service is confident that issuance is consistent with the preservation of the bald eagle. We will continue to review nest take at the program scale to ensure that general permit issuance is consistent with the preservation of bald eagles. The Service will also audit a percentage of nest take permits, to ensure that the applicants meet eligibility criteria and comply with permit conditions. We will work to

address any compliance concerns with individual permittees.

Issue. Some commenters requested that a single general permit for nest take authorize the take of multiple nests from a single project or across a defined area.

Response. Issuing one general permit for each nest allows the Service to efficiently track take. If the Service allowed coverage for an unspecified number of nests, the associated ad-hoc accounting of effects would make it much more difficult for the Service to ensure authorized take is consist with the preservation standard. Specific permits remain available for the take of multiple nests.

Issue. One commenter stated that the proposed regulation would no longer require the Service to make a finding of net benefit to eagles for nest take authorized under ''other purposes.'' The commenter interpreted the proposed rule to state that compensatory mitigation is required only when the take exceeds the limit of the applicable EMU.

Response. Since 2009, the regulations require the finding of a net benefit to eagles for nest take authorized under ''other purposes.'' For all nest-take requests outside of Alaska, a specific permit is required for the purposes of the Service determining whether a net benefit will be achieved by the proposed action, or, if the activity does not provide the net benefit, the compensatory mitigation proposal. The net benefit to eagles is scaled to the effects of the nest removal. The Service did include a general permit for ''other purposes'' in Alaska because of the scaled effects of nest removal. In Alaska, well-established permit conditions provide sufficient avoidance, minimization, and compensatory mitigation scaled to the effects of nest removal, given the robust population status of the bald eagle and the available nesting habitat.

Issue. Some entities expressed support for the creation of general permits for golden eagle nest take.

Response. The Service did not include but will continue to work to develop general permits for golden eagle nest take. The Service has issued few golden-eagle nest take permits and therefore does not have sufficient, well-established measures to create general conditions for golden eagle nest take.

Issue. One commenter suggested that authorizing the take of eagle nests to protect threatened or endangered species should apply only to bald eagles due to the golden eagle's population status.

Response. With expanding bald eagle populations, the Service foresees situations arising where the take of an eagle nest may be necessary for the recovery of threatened or endangered species. However, the Service acknowledges the tradeoffs are more complex with golden eagles. Because this is an emerging issue, a specific permit must be obtained for this type of activity. The Service added an additional precaution in that the Federal, State, or Tribal agency responsible for the species of concern must obtain the permit. The Service will assess the tradeoffs between the eagle species taken and the endangered or threatened species. The Service will consider the evidence that eagles are limiting the recovery of a threatened or endangered species and analyze whether the eagle nest removal will improve recovery for the threatened or endangered species in question. The Service will consider if issuing this permit, including required avoidance and minimization measures and compensatory mitigation, is consistent with our preservation standard at both the LAP and EMU scale. Finally, the Service will consider if other methods are feasible that have less effect on eagles but will still abate or prevent the problem. As a final protection for golden eagles, the Service may require compensatory mitigation for the take of golden eagle nests.

Permit Conditions

Issue. Commenters asked whether the provisions in the new rule would apply to entities that currently have long-term incidental take permits and entities that applied but have yet to receive a permit.

Response. Projects that have submitted an application as of February 12, 2024, will have until August 12, 2024, to choose whether to have their application reviewed and administered under all the provisions of the 2016 regulations or all the provisions of these new regulations. Projects permitted under the 2016 regulations may continue under existing permit conditions until the permit expires. Permittees that want to modify existing permit conditions to comply with the new regulations may contact their permitting office at any time to determine whether a substantive amendment request or a new application is most appropriate. For qualifying projects that elect to have their pending applications reviewed and administered under all the provisions of these new regulations, application fees paid prior to August 12, 2024, may be used to pay for application and administration fees required under the new regulations.

Issue. Multiple commenters expressed concerns over operations and maintenance staff conducting monitoring, suggesting that they might underreport their findings or that they would find too few available carcasses to provide useful information on eagle take.

Response. There are two aspects to this concern. The Service acknowledges the concern about staff intentionally underreporting their findings. Based on input the Service received, we predict this will be a rare circumstance and one that can be discovered and addressed with the assistance of the Office of Law Enforcement. With any permit, there will be good actors and bad actors, and the Service will address bad actors accordingly.

For the second aspect, the Service disagrees that concurrent monitoring will not provide useful information. Service analysis suggests that, on a large scale (*e.g.,* aggregation of all general permits), concurrent monitoring will provide sufficient information over time to allow the Service to be confident that our resulting program-wide take estimates are consistent with the preservation of eagles.

Issue. A commenter requested clarification as to when an adaptive management plan is required.

Response. It is expected that wind energy project proponents will develop an adaptive management plan prior to or on obtaining a general permit. However, implementation of the adaptive management plan is required only if a certain number of fatalities are discovered at a wind energy facility. If three bald eagle injuries or mortalities, or three golden eagle injuries or mortalities, are discovered at a project during the 5-year general permit tenure, the permittee must provide the Service with an adaptive management plan and specify which avoidance and minimization measures the permittee will implement. If an injury or mortality of a fourth eagle of that species attributable to the project is discovered, the permittee must identify and implement the avoidance and minimization measures outlined in the adaptive management plan. Adaptive management plans may be revised during the permit tenure. A copy of adaptive management plan(s) may be requested by the Service at any time as part of an audit.

Issue. One commenter asked for clarification whether circumstances impacting eagles outside of a specific permittee's control (*e.g.,* decrease or shift in population due to disease, climatic factors, or illegal take like poisoning and poaching) could result in

new obligations being imposed on a specific permit holder.

Response. Circumstances outside the permittee's and the Service's control will continue to affect eagle populations. The permittee's responsibility is to comply with the requirements of their permit. The Service's responsibility is to ensure permits issued are consistent with the preservation of eagles, including at the EMU and LAP scales. If situations arise at the EMU and LAP scale that are detrimental to eagle populations, the Service may need to act to ensure preservation of eagles, which may include programmatic changes to permits or changes to a subset of permits. Generally, we will first attempt to address these issues modifying the requirements for or restricting new permits. However, consistent with 50 CFR 13.23(b), the Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

Power Lines

Issue. Comments regarding eagle incidental take permits for power lines were focused primarily on the required conditions and definitions in the regulation.

Response. The Service made several improvements to the power line regulation:

1. To better align with standard industry terminology, the Service revised the term ''electrocution-safe'' to ''avian-safe.''

2. The Service clarified that power line entities are required to ensure that all poles constructed in high-risk eagle areas are avian-safe, allowing the entity to determine those areas within the parameters provided by Service guidance.

3. To address concerns regarding the siting of projects and buffer distances, we revised the conditions to read as follows: ''For new construction and rebuild projects, reconstruction, or replacement projects, incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle use areas (*e.g.,* nests and winter roosts), accounting for the risk to and population status of the species, unless this requirement would unduly impact human health and safety; require overly burdensome engineering; or have significant adverse effects on biological, cultural, or historical resources.''

4. The Service modified the definition of ''collision response strategy'' to reflect that any risk-reduction strategies implemented post-collision should be commensurate with the collision risk. This may include no changes for one-off situations that are unlikely to reoccur. References to changes in engineering design have been removed and will instead be included in guidance.

5. Many companies were concerned that the proactive retrofit strategy would be infeasible to implement. Proactive retrofit strategies are important, as they serve as the compensatory mitigation requirement for power line entities. However, the Service also wants to ensure that requirements are feasible. The Service modified the requirement to a 50-year strategy for investor-owned utilities and a 75-year strategy for non-investor-owned utilities, with 5-year benchmarks. We also clarified that this requirement applies only to poles in high-risk eagle areas that are not avian-safe but may include other poles in the service area as well. The Service provides for delayed implementation to allow utilities to develop proactive retrofit strategies. The Service also provides for extenuating circumstances, such as catastrophic weather, wildfire, or other events that substantively disrupt power delivery, in implementing these strategies. Finally, we note that specific permits are available for any utility that is unable to implement the general permit requirements.

6. The Service amended the conditions associated with the reactive retrofit strategy to clarify that the evaluation of the incident must be completed within 90 days and the response implemented within 1 year of the incident.

7. The Service clarified that the minimum expectation for the eagle shooting response strategy is for utilities to notify the Office of Law Enforcement in the case of a confirmed or suspected shooting. However, we will work with industry to develop other common-sense response options.

Issue. Several comments expressed concerns regarding the costs associated with implementing the avoidance and minimization measures for power lines.

Response. The fees and costs to applicants to participate in the permitting framework have been updated and are included in the FEA. See tables 5–1 (No Action Alternative), 5–4 (Alternative 2), 5–10 (Alternative 3), and 5–14 (Alternative 4). These tables comprise all fees and costs that a permittee is expected to accrue in applying for and complying with all permits. As stated in section 5.6.5 of the FEA, the Service assumes that power line entities most likely to apply for a permit are entities that have a risk of taking eagles and are already retrofitting power poles, thus already meeting this requirement. Therefore, the Service does not anticipate an added cost to power line entities for the retrofit requirement.

Specific Permits

Issue. Several commenters expressed concerns with delays in specific permit issuance review and requested that the Service further streamline the specific permit process.

Response. The Service will be implementing several approaches to improve efficiency in the specific permit process. One approach codified in this rulemaking is the creation of new tiers for reviewing specific permit applications. These tiers separate the specific permit applications that require extensive review and negotiation from those that do not, creating a streamlined approach and corresponding reduced application fee for projects that meet the new Tier-1 criteria.

In addition to creating a tiered approach allowing faster processing for Tier-1 specific permits, the Service will institute a procedural change to further expedite review of some projects. To date, 42 eagle incidental take permits have been issued to wind energy projects across the country. While all permit decisions were analyzed in an EA or, occasionally, an EIS, our experience with issuing these permits has led us to conclude that a categorical exclusion would be appropriate for most permit decisions because relevant environmental impacts for most decisions have already been analyzed in the 2016 PEIS and extraordinary circumstances are unlikely to apply, given the general impacts we disclosed in our NEPA analyses for previously analyzed decisions. Specific permit decisions we expect to categorically exclude from further NEPA analysis must, at a minimum, include the following criteria: (1) Estimated annual eagle take, after compensatory mitigation (if required), is below EMU take limits; (2) estimated annual eagle take, combined with other authorized take in the vicinity, does not exceed five percent of the project-specific Local Area Population; (3) permit conditions do not have the potential to cause effects on cultural resources or other historic properties protected by the National Historic Preservation Act; (4) permit issuance will not be precedent setting; (5) the permit decision and permit conditions will not be based on take estimates produced from new or unpublished methods or models; and (6) no other extraordinary circumstances that prevent application of the categorical exclusion exist. If the Service determines categorical exclusion is not appropriate, the Service

will initiate an EA or EIS in accordance with NEPA. To ensure linear and efficient progress, substantive Service work on these documents will begin after the applicant and the Service have completed negotiations on the conditions of the permit.

Tribal Concerns

Issue. There were concerns expressed regarding the removal of protections from § 22.85 of the existing regulations, including the following:

- Evaluation of cultural significance of a local eagle population;
- Finding of a practicable alternative to nest removal;
- Finding of a net benefit to eagles and subsequent compensatory mitigation;
- Determination of whether suitable nesting and foraging habitat is available to accommodate eagles displaced by nest removal; and
- Finding that permits will not preclude higher priorities, including Native American Tribal religious use.

Response. The Service did not intend to remove the protections listed above. Many were moved to other sections or condensed with other regulatory language with the intent to provide clarity. However, comments indicate this rearrangement did not improve clarity. We have re-expanded the regulatory language or relocated the language to the expected locations.

Issue. Several comments from Tribes focused on the creation of general permits, particularly for nest take and nest disturbance.

Response. Regarding opposition to general permits for nest take and nest disturbance, the Service notes that these permits are only for emergencies, for health and safety issues, or on human-engineered structures. In most cases, these situations are a risk to both eagles and humans. The qualifications for specific and general permits for nest disturbance and nest take are comparable to the standards established in 2016. Additionally, the conditions for our general permits will be based on the conditions the Service commonly requires in its current specific nest take and nest disturbance permits. While we are aiming to make applying easier for project proponents by simplifying the administrative process, we are not making permits easier to secure in the sense of relaxing requirements to protect eagles.

The standards we are establishing around general permits for take and disturbance of bald eagle nests will assure continued preservation of this species for two reasons: First, because those standards are based on the knowledge and experience we have gained from issuing and monitoring hundreds of permits over nearly two decades, and second, a growing body of scientific literature has demonstrated that breeding bald eagles show a higher tolerance and resilience to disturbance and other impacts than previously thought. We do not have comparable data or experience in managing golden eagle nests and have therefore not opened the general-permit program up to removal or disturbance of golden-eagle nests in this rulemaking.

We acknowledge and appreciate Tribal concerns regarding the degree of oversight required for general permits when compared to specific permits. As part of this final rule, we have added a new eligibility restriction for nest-disturbance and nest-take activities in Indian country, as defined in 18 U.S.C. 1151, after recent consultation with Tribes. General permits will not be available for nest take or nest disturbance for nest structures located in Indian country, unless requested by the Tribe itself. Furthermore, the Service will make publicly available a list of all general permits issued, which Tribes can review. We will be implementing an audit program to ensure that those participating in our general permits are truly eligible and are complying with the permits' terms. For specific permits, the Service will continue to notify Tribes regarding activities conducted on their lands.

Issue. Many Tribes believe the new regulations remove opportunities for Tribal engagement and bypass government-to-government consultation, especially for potential impacts to Tribal lands or resources.

Response. Throughout all phases of the rulemaking process, the Service has encouraged and continues to welcome government-to-government consultation. In addition, we conducted multiple information sessions specifically for Tribes. The Service acknowledges our Federal Tribal trust responsibilities and deeply honors our sovereign nation-to-nation relationship with Tribes. To date, one Tribe requested government-to-government consultation regarding this regulation. The Service made modifications to the final rule based on this consultation. We invite bilateral government-to-government consultation at any time.

Wind Energy

Issue. Some commenters expressed concerns about the cumulative impacts of wind energy projects on the landscape on eagle populations, particularly at the LAP scale.

Response. The Service has considered at length how to implement general permits for wind projects that are consistent with the regulatory preservation standard at the LAP scale. The Service will use all available information and the best available tools to estimate where authorized take rates may be the highest relative to our estimated eagle-population densities. Further, we will require Service-approved in-lieu fee programs to allocate a small amount of compensatory mitigation from each general permittee to be available to address LAP concerns. With these extra mitigation funds, in-lieu fee programs can deploy compensatory mitigation for eagles in areas where LAP thresholds are close to being exceeded (or have been exceeded). If, after expenditure of these funds, the Service still determines that general-permit issuance is not consistent with the preservation standard, we retain the right to amend, suspend, or revoke general permits in order to safeguard local eagle populations.

Issue. We received comments regarding the take thresholds associated with wind energy general permits, including comments that such thresholds are not necessary for bald eagles, that such thresholds may cause the general permit program to fail, and requests to remove species-specific take thresholds.

Response. The Service calculated the take threshold for bald eagles and the take threshold for golden eagles to ensure general permitting is consistent with the preservation of both eagle species. The calculated threshold for each species ended up being four eagles. Ensuring take is compatible with eagle preservation primarily depends on the take rates for each eagle species, not the combined take rate of eagles in general. Therefore, there are separate take thresholds for each species, not a combined threshold for ''eagles.'' Finding four golden eagles creates a fatality estimate similar to what we would expect to see at an average-sized project in the specific-permit zone. Finding four bald eagles would produce a similar result. However, a project that discovers two dead bald eagles and two dead golden eagles during one permit term would be taking eagles at lower rates than expected under specific permits and, thus, a general permit is appropriate.

In response to comments that general permit take thresholds are not necessary for bald eagles, we reiterate that the goal of these thresholds is to ensure that the Service has appropriately accounted for the level of eagle take for projects

receiving general permits in a way that is consistent with our preservation standard and ensure that projects with relatively high risk to eagles (of either species) are paired with the most appropriate management actions that are commensurate with higher or uncertain take rates. Exceeding the discovered eagles thresholds established by these regulations is not a violation of the permit. Rather, a project that discovers more than established thresholds indicates that there are potentially unique circumstances at the project site that would benefit from Service engagement through the specific permit process. The specific permit process allows for Service review of site-specific data and collaboration with the permit applicant on development of additional data collection and avoidance and minimization approaches appropriate for the project to ensure permit issuance criteria are met and that authorized take is consistent with our preservation standard, particularly at the local scale. This is not possible under an automated general permit process.

In response to the comment that the general permit program is likely to fail, our analysis of take in the general permit zones suggests that it should be a rare wind project in the general permit zone that takes eagles at rates high enough to discover four or more bald eagles within a 5-year period. Our estimates for even large wind projects in the general permit zone are substantially lower than estimated bald eagle fatalities at a similar-sized project in the specific permit zone, on which the four-eagle threshold was based. Thus, we expect that only a small proportion of projects receiving general permits will exceed the bald eagle threshold.

Issue. The Service received multiple comments regarding the use of Evidence of Absence software (Dalthrop et al. 2017) for specific permits; many of the comments requested that the Service eliminate the use of Evidence of Absence software as a compliance measure. Instead of Evidence of Absence software, one commenter suggested the Service should instead assess compliance based on the actual number of eagles found during fatality monitoring.

Response. The Service recognizes the limitations of Evidence of Absence software. Therefore, on specific permits the Service will authorize incidental take of bald eagles, golden eagles, or both but will not specify a take limit. The Service will continue to use the best available statistical programs to evaluate and estimate mortality rates. Currently Evidence of Absence software is the best estimator available to handle zero-inflated data (*i.e.,* data that has an excess of zero counts). The Service will use estimated mortality rates to calculate compensatory mitigation requirements. The Service will also use estimated mortality rates to estimate the number of eagles authorized for internal tracking purposes. The Service will use estimated mortality rates for eagles instead of number of eagles found, as this approach is more appropriate for understanding how permit issuance effects eagle populations.

Issue. Multiple comments expressed disapproval of the Collision Risk Model (CRM), with some stating the lack of predictability with the CRM results in increased costs and timelines.

Response. The Service recognizes that, as with all models, we must continue working to improve the CRM. However, the CRM represents the best science available today. The CRM was developed using site-specific and species-specific eagle exposure and eagle collision data provided from wind energy facilities across the Nation and represents the best available data to assess risk to eagles by turbines. The Service's CRM evaluates risk across projects in a consistent and predictable way while accounting and managing for uncertainty. The Service uses site-specific data to inform the CRM and have the estimate reflect risk for a given project while accounting for variability in both eagle use and collision risk. In the 2016 eagle rule and PEIS, the Service described the adaptive management framework for authorization of eagle take. At wind facilities, the Services uses monitoring data—consistent with methods outlined in the Land-Based Wind Energy Guidelines (*www.fws.gov/media/land-based-wind-energy-guidelines*)—to inform the initial take authorization for a permit. We use monitoring data collected under the permit to update the estimates over time. Any mitigation paid by the permittee initially that exceeds updated take estimates is credited forward, reducing future mitigation burden.

The Service can evaluate alternative models as part of the adaptive management framework over time; however, to ensure consistency and adherence to management objectives, initial permit estimates are based on our peer-reviewed modeling framework. Monitoring can be designed, in coordination with the Service, to compare updates to the CRM modeling framework to results from other models. Any comparison would need to evaluate the model's ability to quantify uncertainty. Similarly, the Service's eagle permit biologists consider all site-specific data available when thinking about potential avoidance and minimization measures that may reduce risk at a given project, but rely on the CRM and consistent, representative monitoring data to represent risk across all permitted projects. Site-specific data (*e.g.,* mortality monitoring) without use of a model designed to extrapolate beyond the monitoring period does not appropriately account for variability in eagle risk.

The Service will use the CRM to calculate eagle fatalities for internal tracking and calculating mitigation requirements for specific permits. While the Service generally does not recommend that project proponents propose an alternative CRM, under the new rule Tier 2 specific permittees with a reimbursable agreement may request consideration of an alternative CRM. The Service will review these requests on a case-by-case basis and anticipates requiring, at a minimum, publication of the alternative CRM in the **Federal Register** for public review at the cost of the applicant, including quantification of the uncertainty of the model (*i.e.,* confidence in the estimate). The Service may also require third-party monitoring to validate the model.

Issue. Commenters requested clarification on take limits associated with the permits.

Response. Wind energy general permits and specific permits will not have a take limit associated with them. Wind projects with a general permit cannot discover four or more bald eagles or four or more golden eagles within a 5-year permit term and remain eligible for another general permit in the future. We will continue to estimate take at wind projects for both general and specific permits to ensure consistency with the preservation standard and, for specific permits, determine required compensatory mitigation. For specific permits, the Service will require additional compensatory mitigation if it concludes (through data received in annual reporting or otherwise) that permitted take exceeds the level of compensatory mitigation already provided. If we determine that take at a permitted facility is not consistent with our preservation standard, we will conduct an administrative check-in and likely require amendments to the permit.

Required Determinations

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

Executive Order 12866 (E.O. 12866), as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rulemaking action is significant.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Costs and benefits of the rule can be broken down into three categories; impacts to permittees, impacts to the Service, and societal impacts. Impacts to permittees include permitting costs as described in Table 1, below, as well as other unquantifiable costs such as the costs associated with reading and understanding the rule, time spent on permit application, and costs associated with training staff on the requirements of the rule. Benefits to permittees include the ability to acquire a permit and eliminate the risk of enforcement associated with incidental eagle take. Where the costs of the proposed permit exceed the benefits associated with the risk of enforcement (*e.g.,* projects with low risk of incidental eagle take or projects with perceived low risk of legal enforcement), we do not expect entities to apply for a permit. Impacts to the Service include costs associated with processing and auditing these permits; these costs are anticipated to be less than the benefits of anticipated reductions in staff time associated with processing these permits, as general permits can be issued without the need for Service interaction. Societal impacts include benefits associated with an anticipated increase in eagle populations associated with reduced incidental take and beneficial activities associated with compensatory mitigation requirements; no societal costs are assumed.

Table 1 below shows the permit count and cost under the 2016 regulations, the expected number of permits and average permit costs under this rule, and the estimated marginal costs and impacts between the 2016 regulations and this rule. Additional analysis is available in the supporting FEA.

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Table 1—Average Annual Cost and Permit Count Comparison Between 2016 Regulations and This Rule

Type of Permit	Factors	2016 Regulations		This Rule		Marginal Cost Change from 2016 Regulations to this Rule (savings in parentheses)
		Number of Annual Permits	Fees and Costs per Permit	Number of Annual Permits	Fees and Costs per Permit	
Wind Energy Project (General)	Permit Application Fee	Note: the current framework does not include wind energy general permits. The corresponding existing type of permits are wind energy specific permits, the numbers and costs of which are included below.		22 (Tier 1); 52 (Tier 2)	$1,000	$1,000
	Administration Fee				$2,500 (Tier 1) $10,000 (Tier 2)	$2,500 (Tier 1) $10,000 (Tier 2)
	Average Compensatory Mitigation Costs				$37,200	$37,200
	Average Monitoring Costs				$0	$0
	Average Cost Per Permit				$40,700 (Tier 1) $48,200 (Tier 2)	$40,700 (Tier 1) $48,200 (Tier 2)
	Average Annual Cost to Industry				$3,401,800	$3,401,800
Wind Energy Project (Specific)	Permit Application Fee	6	$36,000	6	$18,000 (SP Tier 1) $26,000 (SP Tier 2) $82,000 (SP Tier 2 with reimbursable agreement) (assumes that the average project will be a SP Tier 2 project)	($10,000)
	Administration Fee		$8,000		$10,000	$2,000
	Average Compensatory Mitigation Costs		$960,000		$1,080,000	$120,000
	Average Monitoring Costs		$1,100,000		$1,100,000	$0
	Average Cost Per Permit		$2,104,000		$2,216,000	$112,000
	Average Annual Cost to Industry		$12,624,000		$13,296,000	$672,000
Power Line Entities (General)	Permit Application Fee	Note: the current framework does not include power line entity general permits		4 (Tier 1)0.2 (Tier 2)	$1,000	$1,000
	Administration Fee				$2,500 (Tier 1) $10,000 (Tier 2)	$2,500 (Tier 1) $10,000 (Tier 2)
	Average Power Pole Retrofit Costs				$0	$0

	Average Cost Per Permit				$3,500 (Tier 1) $11, 000 (Tier 2)	$3,500 (Tier 1) $11, 000 (Tier 2)
	Average Annual Cost to Industry				$16,200	$16,200
Nest Disturbance (General)	Permit Application Fee	Note: the current framework does not include nest disturbance general permits. The corresponding existing type of permits are nest disturbance specific permits, the numbers and costs of which are included below		81	$500	$500
	Compensatory Mitigation Costs				$0	$0
	Monitoring Costs				$0	$0
	Average Cost Per Permit				$500	$500
	Average Annual Cost to Industry				$40,500	$40,500
Nest Disturbance (Specific))	Permit Application Fee	96	$2,500	14	$2,500	$0
	Compensatory Mitigation Costs		$0		$0	$0
	Monitoring Costs		$0		$0	$0
	Average Cost Per Permit		$2,500		$2,500	$0
	Average Annual Cost to Industry		$240,000		$35,000	($205,000)
Nest Take (General)	Permit Application Fee	Note: the current framework does not include nest take general permits. The corresponding existing type of permits are nest take specific permits, the numbers and costs of which are included below		34	$500	$500
	Compensatory Mitigation Costs				$0	$0
	Monitoring Costs				$0	$0
	Average Cost Per Permit				$500	$500
	Average Annual Cost to Industry				$17,000	$17,000
Nest Take (Specific)	Permit Application Fee	40	$2,500	6	$2,500	$0
	Compensatory Mitigation Costs		$0		$0	$0
	Monitoring Costs		$0		$0	$0
	Average Cost Per Permit		$2,500		$2,500	$0
	Average Annual Cost to Industry		$100,000		$15,000	($85,000)
Average Annual Permits Counts and Costs[4]		**142**	**$12,964,000**	**219**	**$16,821,500**	**$3,857,500**

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The maximum total estimated annual cost to industry for this rule is $16,821,500. The maximum total estimated cost over 5 years for all permits is $84,107,500. The average annual equivalent cost is $13,794,294 with a total net present value cost of $68,971,471 using a 7 percent discount rate. The average annual equivalent cost is $15,407,509 with a total net present value of $77,037,544 at a 3 percent discount rate. These discount rates represent a range of values that the Office of Management and Budget recommends as a Federal-program discount rate for benefit-cost analysis for most Federal programs. The above costs represent the total gross cost of the rule and do not reflect the costs associated with the existing regulations. This rule is expected to create an estimated maximum of $3,857,500 in new costs annually and $19,287,500 in new marginal costs over 5 years, as compared to the 2016 regulations. These estimates represent the maximum quantifiable costs; they do not represent other costs that may be incurred, such as the costs for entities to read and understand the rule, time spent on permit application, and costs associated with training staff on the requirements of the rule. However, these new marginal costs are more than offset by savings to both industry and the Service in terms of reduced Eagle Act enforcement costs and no requirements for preconstruction monitoring under general permits and the removed requirement for third-party monitoring under specific permits. The anticipated 74 wind-energy projects and 4 power-line entities that annually receive and comply with a permit will no longer be subject to potential enforcement under

the Eagle Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that the savings exceed the total new costs associated with this rule. The costs of this rule are also offset by the ecosystem-services benefits associated with potential decreased take leading to increased populations of eagles.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121, 201, 110 Stat. 847)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). We examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and certify that this action will not have a significant economic impact on a substantial number of small entities. This analysis first estimates the number of businesses potentially impacted and then estimates the economic impact of this rule.

To assess the effects of this rule on small entities, we focus on the proposed general and specific permit approach for incidental take by wind-energy facilities and electric-transmission companies. We also address nest disturbance and nest take permits for businesses in other sectors, such as housing and building construction, railroads, timber companies, pipeline companies, and gold ore mining.

Using the North American Industry Classification System (NAICS), the U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. While the NAICS was updated in 2023, we are using the 2017 NAICS to best compare to the most recent 2017 Statistics of U.S. Businesses (SUSB) tables that contain information on receipts. Relevant 2017 NAICS small business definitions include:

☐ fewer than 250 employees for ''Wind Electric Power Generation'' (NAICS sector 221115),

☐ fewer than 1,000 employees for ''Electric Power Distribution'' (NAICS sector 221122),

☐ fewer than 500 employees for ''Logging'' (NAICS sector 113310),

☐ less than $36.5 million of average annual receipts for ''Construction of Buildings'' (NAICS sectors 236115, 236116, 236117, 236210, and 236220),

☐ less than $36.5 million of average annual receipts for ''Highway, Street, and Bridge Construction'' (NAICS sector 237310),

☐ less than $15.0 million of average annual receipts for ''Support Activities for Rail Transportation'' (NAICS sector 488210), and

☐ fewer than 1,500 employees for ''Gold Ore Mining'' (NAICS sector 212221).

Table 2 indicates the number of businesses within each industry and the estimated percentage of small businesses impacted by this rule.

TABLE 2—DISTRIBUTION AND POTENTIAL IMPACT TO BUSINESSES [1]

NAICS code	Description	Total firms/establishments		Small businesses potentially impacted by this rule	
		Number of all businesses	Number of small businesses	Number	Percentage
221115	Wind Electric Power Generation [2]	459	135	22	16
221122	Electric Power Distribution [3]	1,233	1,169	0	0
113310	Logging [4]	7,992	7,977	up to 13	<1
236115	New Single-family Housing Construction (Except For-Sale Builders) [4].	49,215	49,143	up to 13	<1
236116	New Multifamily Housing Construction (Except For-Sale Builders) [4].	3,175	2,851	up to 13	<1
236117	New Housing For-Sale Builders [4]	15,483	15,099	up to 13	<1
236118	Residential Remodelers [4]	103,079	102,998	up to 13	<1
236210	Industrial Building Construction [4]	2,997	2,847	up to 13	1
236220	Commercial and Institutional Building Construction [4]	38,079	36,100	up to 13	<1
237310	Highway, Street, and Bridge Construction [4]	8,826	8,198	up to 13	<1
237990	Other Heavy and Civil Engineering Construction [4]	4,165	4,052	up to 13	<1
488210	Support Activities for Rail Transportation [4]	564	484	up to 13	3
212221	Gold Ore Mining [4]	147	132	up to 2	2

[1] Data is from the latest Statistics of U.S. Businesses (SUSB) tables that contain information on receipts, which is from 2017.

[2] The number of potentially impacted small businesses is based on the distribution of businesses by enterprise size from 2017 SUSB data tables, the total number of estimated annual permits, and the small business standards threshold from SBA.

[3] Permitting will be required at a large utility scale similar to existing Special Purpose Utility permits (SPUT permits) that the Service issues.

[4] We estimate that the number of nest disturbance and nest take permits will be similar to the number issued over the last 5 years: 677. The non-electric and wind power generation NAICS represent sectors that have historically requested permits. We evenly distributed the estimated total amount of disturbance and take permits across all sectors, with the exception of gold ore mining, for the 5-year period, which comes to 67 permits. Gold ore mining entities have historically applied for only 1 to 2 permits per year, or up to 10 over a 5-year period. We also assumed an evenly distributed number of permits across each year, 13, for the remainder of the sectors.

In the last 5 years (2017 through 2022), the Service has issued 26 permits to wind-energy generation facilities and 677 specific permits to other entities, which averages about 141 permits annually. For the 677 non-wind specific permits, most were issued to businesses and to government agencies, and the remaining were issued to individuals. The number of specific permits issued under this rule over the first 5 years may be higher or lower than the existing permit program under the 2016 regulations due to the creation of general permits and the remaining complexity associated with specific permits. General permits typically allow the regulated community to apply for and obtain a permit more easily, particularly when projects are designed at the outset to comply with general-permit eligibility criteria. Specific permits are available to wind-energy-project applicants that do not meet general-permit eligibility criteria. Based on these assumptions, we estimate that the number of specific permits under this rule will be similar to the number of existing permits over the last 5 years, which is close to 30 permits. Although small, noncommercial, wind-energy facilities (*e.g.,* single-turbine facilities connected to public buildings) could apply for incidental take permits, we anticipate that most of the applications for wind-energy facilities will be for utility-scale projects. The largest expected impacts to small businesses under this rule would be an increase in the number of permits issued to wind-energy generation facilities due to the changes being made in the application requirements and the availability of general permits and the inclusion of general and specific permits tailored to power-line entities. We expect that this rule will impact 16 percent of wind-energy generation small businesses, with the expected costs of such permits described in tables 3 (general permits) and 4 (specific permits), and a breakdown of general permits by enterprise size category in table 5.

Electric power distribution entities are eligible for both general and specific incidental take permits in the proposed regulation. However, based on the NAICS definitions, we assume that none of the potential electric power distribution permittees would be small businesses.

Businesses that apply for nest take and nest-disturbance permits typically include home construction, road construction, and various other construction projects. We assume that the number of nest take and nest disturbance permits will continue along this trend over the next 5 years. For this analysis, we evenly distributed those permits across industry sectors that best represent the NAICS industry sectors that applied for permits historically. We anticipate the number of permit applicants in those sectors would be relatively small, on the order of 1 to 13 per year for each sector, except gold ore mining, which historically applied for only 1 to 2 permits annually. As a result, this rule will impact less than 1 to 2.5 percent of small businesses in NAICS sectors 236115, 236116, 236117, 236118, 236210, 236220, 237310, 237990, 488210, and 212221. The cost per entity for nest take and nest disturbance permitting under this rule is minimal, totaling $100 per eagle or nest, per year. The minimal cost of these permits is not expected to result in a significant impact to small businesses in these sectors, regardless of the total percentage of small businesses impacted as a whole.

As described above, the wind-energy generation industry is the only industry for which specific and general permits could result in a significant impact on small businesses. Table 3 shows the expected difference between 5-year costs for specific permits and 5-year costs for general permits for wind-energy generation facilities. Wind-energy generation facilities will pay less for a general permit compared to the costs associated with a standard permit under the 2016 regulations. The permit application fee (including costs for auditing) is reduced from $36,000 to $1,000 for a general permit. In addition, applicants will pay an administration fee of either $2,500 (Tier 1) or $10,000 (Tier 2), as compared to the existing specific permit administration fee of $8,000. Compensatory mitigation costs for general permits for a wind-energy project will average $37,200. This is a significant decrease from the specific-permit cost under the 2016 regulations of $960,000 (using our calculation from the EA of $120,000 as the cost of an eagle credit). The average costs for monitoring for a wind-energy project will be negligible, a cost savings from the specific permit monitoring cost estimates of $1,100,000 under the 2016 regulations. The total estimated cost savings between a specific permit under the 2016 regulations and a general permit under this regulation is therefore slightly over $2,000,000 per permit (depending on whether the project is a Tier 1 or a Tier 2 project). The total number of estimated permits shows an estimated overall increase in industry costs associated with permitting under this rule, but only because the Service expects a substantial jump in participation across industry due to the improvements in the permit process and reduction in costs and time required per permit.

TABLE 3—WIND GENERAL PERMIT COSTS AND SAVINGS

[5-Year costs]

Cost category	Specific—2016 regulations (average)	General—this rule (average)	Cost savings (average)
Permit application fee	$36,000	$1,000	$35,000.
Administration Fee	8,000	2,500 (Tier 1); 10,000 (Tier 2)	5,500 (Tier 1); (2,000) (Tier 2).
Compensatory Mitigation Costs	960,000	37,200	922,800.
Monitoring Costs	1,100,000	0	1,100,000.
Total Cost	2,104,000	40,700 (Tier 1); 48,200 (Tier 2)	2,063,300 (Tier 1); 2,055,800 (Tier 2).

Table 4 displays the new cost for specific permits under this rule compared to the cost for specific permits under the 2016 regulations. Under this rule, entities will pay $1,080,000 for compensatory mitigation, an increase of $120,000 from the $960,000 cost under the 2016 regulations. These costs have increased due to updates in the estimated amount of required mitigation for projects in the specific-permit category. The Service may issue three types of wind-energy specific permits under this rule. Tier 1 permits are for the simplest types of

projects and would require a $10,000 permit-application cost. Tier 2 permits are similar to existing specific permits and require a $26,000 permit application cost. Tier 2 with reimbursable agreement permits require permittees to pay for staff time via a reimbursable agreement above and beyond the $26,000 permit application cost. For purposes of this analysis, we assume that the average specific permit will be a Tier 2 permit with the same permit-application cost as the specific-permit structure under the 2016 regulations. Entities will continue to pay their own monitoring costs estimated at $1,100,000 over the life of the permit. As a result, the total average cost increase to entities receiving a wind-energy specific permit under this rule is $112,000.

TABLE 4—WIND ENERGY SPECIFIC PERMIT COSTS AND SAVINGS

[5-Year costs]

Cost category	Specific—2016 regulations (average)	Specific—this rule (average)	Cost savings (average)
Permit Application Fee	$36,000	$26,000	$10,000
Administration Fee	8,000	10,000	(2,000)
Compensatory Mitigation Costs	960,000	1,080,000	(120,000)
Monitoring Costs	1,100,000	1,100,000	0
Total Cost	2,104,000	2,216,000	(112,000)

Businesses in the ''wind electric power generation industry'' are defined as small if they have fewer than 250 employees. The 2017 SUSB Annual Data Tables report the annual payroll amounts by industry that fall within enterprise size categories. The data for ''wind electric power generation'' does not contain a range for businesses with under 250 employees; the closest reporting range is fewer than 500 employees. Table 5 shows a range of receipts by enterprise size and establishment count as well as the projected percentage of receipts impacted by this rule both at the individual establishments level and the total for that enterprise size. The wind-energy project general-permit cost will be paid in full at the time of the permit application; therefore, the 5-year cost of $48,200 is assessed in the first year. This cost would then be assessed again at the renewal of the permit in 5 years. Due to this being a one-time cost that covers a 5-year period, this amount equates to at most one percent of total annual receipts by enterprise size (table 5). As a result, this cost will not create a substantial impact on small businesses or specific industries. We base this determination on permit costs for general permits. The number of specific permits issued is expected to follow the same trend as under the 2016 regulations, and permits are likely to be issued in areas of higher risk to eagles to large, complex facilities that are well above the industry-standard payroll amount. Therefore, we do not expect any impacts to small businesses associated with these specific permits.

TABLE 5—RANGE OF RECEIPTS IMPACTED BY THIS RULE: WIND ELECTRIC POWER GENERATION GENERAL PERMITS

[Using 2017 SUSB annual data table]

Enterprise size [1]	Establishments	Annual receipts ($1,000)	Average receipt for size (=receipt/establishments) ($1,000)	Annual cost per permit for establishment	Number of establishments impacted annually [2]	Total annual % of receipts impacted by this rule	Annual % of receipts for impacted establishments
01: Total	459	$8,001,761	$17,433	$48,200	74	0.04	0.3
02: <5 employees	45	80,905	1,798	48,200	7	0.42	2.7
03: 5–9 employees	8	14,478	1,810	48,200	1	0.33	2.7
04: 10–14 employees	7	15,873	2,268	48,200	1	0.30	2.1
05: 15–19 employees	8	39,960	4,995	48,200	1	0.12	1.0
06: <20 employees	68	151,216	2,224	48,200	11	0.35	2.2
12: 50–74 employees	9	98,897	10,989	48,200	1	0.05	0.4
19: <500 employees	135	1,469,292	10,884	48,200	22	0.07	0.4
24: 2,000–2,499 employees	12	75,879	6,323	48,200	2	0.13	0.8
25: 2,500–4,999 employees	11	91,973	8,361	48,200	2	0.10	0.6
26: 5,000+ employees	240	5,368,670	22,369	48,200	39	0.04	0.2

[1] 2017 NAICS thresholds for ''Wind Electric Power Generation'' (NAICS 221115) define small businesses as having fewer than 250 employees.

[2] The number of establishments impacted annually is based on the weighting of the number of establishments in that enterprise size compared to the total number of establishments. That weight value was multiplied by the total number of estimated annual permits (74) to derive the figures shown. Note that the total sum of <500 and the enterprise sizes greater than 500 will not total 74 due to missing enterprise size categories from the SUSB 2017 data tables.

While electric-power-distribution companies are currently eligible to apply for a specific permit, under this rule, these entities are eligible to apply for general permits. The permit application fee for these general permits is $1,000, and the administration fee is either $2,500 (for Tier 1 permittees) or $10,000 (for Tier 2 permittees). The costs for power-pole retrofits called for under the proactive retrofit strategy are estimated to be $0. Many larger utilities already have existing avian protection and retrofit strategies in place and would not incur new costs or benefits associated with the proposed retrofit strategy. For entities without an avian protection plan and a retrofit strategy in place, we expect that the retrofit requirement for a general permit will not create substantial new costs for those entities. Any costs associated with retrofitting power poles to be avian-safe (estimated from approximately $500–$2,500 per pole) would be at least partly recouped by increased reliability and a reduction in costs associated with eagle-

electrocution response. The Service assumes that the primary interest in permits in the first 5 years would be from firms with existing special-purpose-utility permits to salvage dead birds. These firms with known incidental take of eagles will benefit from a permit authorizing that take. No existing special-purpose-utility permit holder is a small business, and, therefore, there will not be a substantial impact to small businesses from this rule.

A commercial business applying for a standard nest disturbance or nest take permit under the 2016 regulations would have to pay $500 per nest per year, while a noncommercial entity would pay $100 per nest per year. Under this rule, both commercial and noncommercial permittees would pay $100 per nest per year for a general permit. Businesses in the construction industry are defined as small if they have annual revenue less than $36.5 million. Depending on the type of permit applications submitted by an individual small business, the permit fees represent less than one percent of revenue. Thus, the creation of a general permit will not have a significant economic effect on a substantial number of small businesses in the construction sectors. The changes in general permit application fees are shown in tables 6 and 7. The costs of a specific permit for both nest disturbance and nest take would be unchanged from the existing regulation.

Table 6 shows the expected difference between the 5-year costs for a nest-disturbance permit under the 2016 regulations and a general permit under this rule.

TABLE 6—NEST DISTURBANCE GENERAL PERMIT COSTS AND SAVINGS

[5-Year costs]

Cost category	Nest disturbance—2016 regulations	Nest disturbance—this rule	Cost savings
Permit application costs	$2,500	$500	$2,000

Table 7 shows the expected difference between the 5-year costs for a nest-take permit under the 2016 regulations and a general permit under this rule.

TABLE 7—NEST TAKE GENERAL PERMIT COSTS AND SAVINGS

[5-Year costs]

Cost category	Nest take—2016 regulations	Nest take—this rule	Cost savings
Permit Application Costs	$2,500	$500	$2,000

This rule is expected to create an overall savings due to reduced costs for general permits compared to specific permits under the 2016 regulations. This rule is expected to create additional savings to both industry and the Service in terms of reduced Eagle Act enforcement costs. Entities that receive and comply with a permit will no longer be subject to potential enforcement under the Eagle Act, which can result in substantial legal costs, nor will they incur costs to estimate and reduce their legal risks, which may include biological surveys and hiring staff and attorneys. While this total reduced enforcement cost is not quantifiable due to limited data, the Service expects that it exceeds the total of new costs associated with this rule.

In sum, this rule impacts a substantial number of small businesses in NAICS sector 221115, ''Wind Electric Power Generation''; however, the economic impacts to individual businesses are not significant. As described above, the number of businesses belonging to other industries impacted is not substantial and the magnitude of those economic impacts is not significant. Based on the available information analyzed above, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, a regulatory flexibility analysis is not required, and a small entity compliance guide is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments in a negative way. There would be no permit administration costs incurred by small governments because they would not be administering the issuance of Federal permits. Small governments could potentially apply for permits for nest take or nest disturbance, but fees for those permits are small and would not significantly affect small governments in a negative way. A small government agency plan is not required.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule does not contain any provisions that could constitute taking of private property. Therefore, a takings implication assessment is not required.

Federalism (E.O. 13132)

This rule will not have sufficient federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132. It will not interfere with the States' abilities to manage themselves or their funds. No significant economic impacts are expected to result from the regulations changes.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

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

This rule contains existing and new information collections. All information

collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has reviewed and approved the information collection requirements associated with eagle permits and fees and assigned the OMB Control Number 1018–0167.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0167. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) 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, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668d) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the CFR define the ''take'' of an eagle to include the following broad range of actions: To ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.'' The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations. Service permit applications associated with eagles are each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications. In accordance with Federal regulations at 50 CFR 13.12, we collect standard identifier information for all permits, including the following:

- Applicant's full name and address (street address, city, county, State, and zip code; and mailing address if different from street address); home and work telephone numbers; and a fax number and email address (if available), and
  - —If the applicant resides or is located outside the United States, an address in the United States, and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and
  - —If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or
  - —If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the business type, corporation, agency, or institution; and the name and title of the person responsible for the permit (*e.g.,* president, principal officer, or director);
- Location where the requested permitted activity is to occur;
- Reference to the part(s) and section(s) of subchapter B as listed in 50 CFR 13.11(b) under which the application is made for a permit or permits, together with any additional justification, including supporting documentation as required by the referenced part(s) and section(s);
- If the requested permitted activity involves the import or reexport of wildlife or plants from or to any foreign country, and the country of origin, or the country of export or re-export restricts the taking, possession, transportation, exportation, or sale of wildlife or plants, documentation as indicated in 50 CFR 14.52(c);
- Certification containing the following language:
  - —I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.
- Desired effective date of permit (except where issuance date is fixed by the part under which the permit is issued);
- Date;
- Signature of the applicant; and
- Other information that the Director determines relevant to the processing of the application, including, but not limited to, information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 8.

In addition to the general permitting requirements outlined in Federal regulations at 50 CFR 13.12, applications for any permit under 50 CFR part 22 must contain:

- Species of eagle and number of birds, nests, or eggs proposed to be taken, possessed, or transported;
- Specific locality in which taking is proposed, if any;
- Method of proposed take, if any;
- If not taken, the source of eagles and other circumstances surrounding the proposed acquisition or transportation;
- Name and address of the public museum, public scientific society, or public zoological park for which they are intended; and
- Complete explanation and justification of the request, nature of project or study, number of specimens now at the institution, reason these are

inadequate, and other appropriate explanations.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *Administrative Updates*—On January 7, 2022, the Service published a final rule (87 FR 876) making administrative updates to 50 CFR parts 21 and 22. We captured the associated administrative updates to the CFR references for part 22 in the updated versions of the forms in this collection being submitted to OMB for approval with this renewal/revision request.

(2) *Change in Administration Fees—State, Local, Tribal, or Federal Agencies (§ 13.11(d)(3)(i))*—This rule changes the Service's practice of not charging administration fees for eagle permits under 50 CFR part 22 to any State, local, Tribal, or Federal government agency, or to any individual or institution acting on behalf of the agency. Except as otherwise authorized or waived, if the agency fails to submit evidence of agency status with the application, we will require the submission of all processing fees prior to the acceptance of the application for processing.

(3) *Revision to Form 3–200–71*—We split approved Form 3–200–71, ''*Eagle Take Associated with but not the Purpose of an Activity (Incidental Take)*'' into two separate forms * as follows:

a. *Form 3–200–71,* ''*Eagle Incidental Take*''*—General and Specific,* and

b. *Form 3–200–91,* ''*Eagle Disturbance Take*''*—General and Specific.*

* With this submission, we are no longer proposing Form 3–200–92, Eagle Incidental Take (Power Lines)—General and Specific.''

We further describe the changes below:

a. *(Revised Title) Form 3–200–71,* ''*Eagle Incidental Take*''*—General and Specific*—The revision to Form 3–200–71 authorizes the incidental take of eagles where the take results from but is not the purpose of an activity. General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

i. Requested permit type;

ii. Infrastructure type;

iii. Description, duration, and location of the activity that is likely to cause eagle take;

iv. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;

v. Description of eagle use and activity in the area, location of eagle nests or roosts, and distance of nests and other important eagle use areas from the project;

vi. Identification of subpermittees, if applicable;

vii. Records retention requirements;

viii. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and

ix. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the compensatory mitigation requirement, requested permit tenure and effective date, and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Requested duration of the permit;

ii. Requested eagle species for authorization;

iii. Additional project-specific information, including an eagle impacts assessment and pre- or post-construction monitoring methods;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation;

vi. Existing project general permit eligibility, if applicable; and

vii. Anticipated permit application fee tier.

Permit applications associated with eagle incidental take permits may require the following:

• *Post-Construction Monitoring*—Post-construction monitoring fatality estimation must be based on 2 or more years of eagle fatality monitoring that meet the Service's minimum fatality monitoring requirements for specific eagle permits.

• *Adaptive Management Plan*—Upon the discovery of the third and fourth bald eagle or golden eagle injuries or mortalities at a project, the permittee must provide the Service with their reporting data required by the permit conditions, adaptive management plan, and a description and justification of which adaptive management approaches will be implemented.

• *Annual Report*—Permittees must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of the permit or prior to requesting renewal of the permit, whichever is first.

• *Compensatory Mitigation*—For wind energy specific permits, the permittee must implement the compensatory mitigation requirements on the face of their permit. For wind energy general permits, the permittee must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project.

In addition, permit applications associated with incidental take permits by power lines may require the following:

• *Collision Response Strategy*—A plan that describes the process the permittee will follow to identify whether a collision-caused injury or morality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

• *Proactive Retrofit Strategy*—A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified by the applicant to be high risk to eagles and may also include other poles in the service area.

• *Reactive Retrofit Strategy*—A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (*e.g.,* convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.

• *Shooting Response Strategy*—A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

b. *(NEW) Form 3–200–91,* ''*Eagle Disturbance Take*''*—General and Specific*—Applicants may apply for an eagle disturbance take permit if their activity may result in incidental

disturbance of bald eagles or golden eagles. General permits issued under this section are available only for certain activities that cause disturbance of bald eagles and are valid for a maximum of 1 year. General permits are not available for disturbance of nests located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. Specific permits are intended for disturbance of a golden eagle nest, disturbance of a bald eagle nest by an activity not specified in paragraph (b) of § 22.280, or disturbance of eagles caused by physical or functional elimination of all foraging area within a territory. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

i. Requested permit type;

ii. Description, duration, and location of the activity that is likely to cause disturbance to eagles;

iii. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;

iv. Description of eagle use and activity in the area, location of eagle nests or roosts, and distance of nests and other important eagle use areas from the project;

v. Identification of subpermittees, if applicable;

vi. Records retention requirements;

vii. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and

viii. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the requested permit tenure and effective date and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Organization status (*e.g.,* commercial or non-commercial);

ii. Requested duration of the permit;

iii. Assessment of impacts to eagles;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation for golden eagle nest disturbance, if applicable; and

vi. Description of efforts to monitor for impacts to eagles.

Permit applications associated with eagle disturbance take may require the following:

• *Monitoring*—The permittee must monitor the nest to determine whether nestlings have fledged from the nest. We updated the burden for monitoring requirements associated with disturbance take in the separate monitoring information collection requirement.

• *Annual Report*—Permittees must submit an annual report using Form 3–202–15. The annual report is due within 30 days of the expiration of the permit or prior to requesting renewal of the permit, whichever is first.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine that the take is necessary, and that the take will be compatible with the preservation of eagles.

(4) *Revision to Form 3–200–72*—We are revising Form 3–200–72, ''*Eagle Nest Take*'' as described below:

Form 3–200–72 is used to apply for authorized take of bald eagle nests or golden eagle nests, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure for breeding under definitions in 50 CFR 22.300(b). General permits are available for bald eagle nest take for emergency, nest take for health and safety, or nest take for a human-engineered structure, or, if located in Alaska, other purposes. General permits may authorize bald eagle nest removal from the nesting substrate at the location requested and the location of any subsequent nesting attempts by the eagle pair within one-half mile of the location requested for the duration of the permit. Take of an additional eagle nest(s) more than one-half mile away requires additional permit(s). General permits are valid until the start of the next breeding season, not to exceed 1 year. General permits are not available for take of nests located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. Specific permits are required for take of a golden eagle nest for any purpose, take for species protection, and, except for Alaska, nest take for other purposes. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information:

a. Requested permit type;

b. Description and location of the activity that will result in eagle nest take;

c. Selected purpose of nest take;

d. Justification of why there is no practicable alternative to the activity that would protect the interest to be served;

e. Description of the nest(s), including species, location, and historic and current nest status;

f. Description of nest removal, destruction, or relocation, including information related to re-nesting and donation of eagle nests and parts.

g. Identification of subpermittees, if applicable;

h. Records retention requirements;

i. Certification of activity's compliance with all Federal, Tribal, State, and local laws and regulations applicable to eagles; and

j. Permit disqualification factors, including information for any convictions, guilty pleas or nolo contendere, forfeited collateral, or pending charges for violations of laws cited in the permit application.

General permit applications must also include the requested permit tenure and effective date and certification of general permit requirements. Additional information collected from specific permit applicants includes:

i. Organization status (*e.g.,* commercial or non-commercial);

ii. Requested duration of the permit;

iii. Assessment of impacts to eagles;

iv. Description of implemented and proposed avoidance and minimization measures;

v. Description of implemented and proposed compensatory mitigation for golden eagle nest take, if applicable;

vi. Description of efforts to monitor for impacts to eagles; and

vii. Description of method for removing nestlings or eggs and proposed disposition, if applicable.

Permit applications associated with eagle nest take may require the following:

• *Monitoring*—Permittees must remove chicks or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service. If nestlings or eggs are relocated with a nest or to a foster nest, the permittee must monitor the nest to ensure adults are tending to nestlings or eggs. We updated the burden for monitoring requirements associated with eagle nest take in the separate monitoring information collection requirement.

• *Annual Report*—Permittees must submit an annual report using Form 3–202–16. The annual report is due within 30 days of the expiration of the permit

or prior to requesting renewal of the permit, whichever is first.

• *Species Protection*—If a Federal, State, or Tribal agency applies for a nest take permit for species protection, they must provide documentation that describes relevant management efforts to protect the species of concern; identifies and describes how the nesting eagles are a limiting factor to recovery of the species using the best available scientific information and data; and explains how take of eagle nests is likely to have a positive effect on recovery for the species of concern.

The Service will use the information collected via the form to track whether the take level is exceeded or is likely to be exceeded, to determine whether the take is necessary, and whether the take will be compatible with the preservation of eagles.

(5) Permit Reviews—The Service removed the regulatory requirement for specific permits to mandate an administrative check-in with the Service at least every 5 years during the permit tenure. The Service introduced these mandatory 5-year permit reviews as part of the 2016 Eagle Rule to ensure that the Service had an opportunity to ask for and review all existing data related to a long-term activity's impacts on eagles. The purpose of 5-year review is to update take estimates and related compensatory mitigation for the subsequent 5-year period. It also provides the Service with an opportunity to amend the permit to reduce or eliminate conservation measures or other permit conditions that prove to be ineffective or unnecessary. The purpose of these reviews does not change with this rulemaking. However, the 5-year requirement has introduced unintended uncertainty which, according to public comment, has reduced participation in eagle take permitting under the 2016 regulations. It has also resulted in timing issues, where post-construction monitoring or other data is available off-cycle from the 5-year timing (*e.g.,* year 3 or 4) but cannot be used until the scheduled check-in. Instead, check-ins may now be initiated by the permittee or the Service in response to events that warrant review, for example, updating fatality estimates and associated compensatory mitigation requirements or revising permit conditions to reflect the best available science.

(6) *Reporting Requirements*—Submission of reports is generally on an annual basis, although some are dependent on specific transactions. Additional monitoring and report requirements exist for permits issued under 50 CFR part 22. Permittees must submit an annual report for every year the permit is valid and for up to 3 years after the activity is completed.

a. *(New Reporting Requirement) Report Take of Eagles (3rd and 4th Eagles) (50 CFR 22.250(d)(2) and (d)(3))*—Permittees must notify the Service in writing within 2 weeks of discovering the take of a third or fourth bald eagle or a third or fourth golden eagle. The notification must include the reporting data required in their permit conditions, their adaptive management plan, and a description and justification of which adaptive management approaches they will be implementing. Upon notification of the take of the fourth bald eagle or fourth golden eagle, the project will remain authorized to incidentally take eagles through the term of the existing general permit but will not be eligible for future general permits.

(7) *(NEW) Audits*—The Service will conduct audits of general permits to ensure permittees are appropriately interpreting and applying eligibility criteria and complying with permit conditions. Audits may include reviewing application materials for completeness and general permit eligibility. Any required records, plans, or other documents will be requested of the permittee and reviewed. If there is a compliance concern, the applicant will be given the opportunity to submit additional information to address the concern. If, during an audit, the Service determines that the permittee is not eligible for a general permit or is out of compliance with general permit conditions, we will communicate to the permittee options for coming into compliance.

(8) *(NEW—Existing In Use Without OMB Approval) Labeling Requirement*—Regulations at 50 CFR 22.4 require all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs to be labeled. The shipments must be labeled with the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the name of each species.

(9) *(NEW—Existing In Use Without OMB Approval) Requests for Reconsideration Associated with Eagle Permits (Suspension and Revocation)*—Persons notified of the Service's intention to suspend or revoke their permit may request reconsideration by complying with the following:

• Within 45 calendar days of the date of notification, submit their request for reconsideration to the issuing officer in writing, signed by the person requesting reconsideration or by the legal representative of that person.

• The request for reconsideration must state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

• The request for reconsideration must contain a certification in substantially the same form as that provided by 50 CFR 13.12(a)(5). If a request for reconsideration does not contain that certification, but is otherwise timely and appropriate, the Service will hold the request and give the person submitting the request written notice of the need to submit the certification within 15 calendar days. Failure to submit certification will result in the Service rejecting the request as insufficient in form and content.

(10) *(NEW—Existing In Use Without OMB Approval) Compensatory Mitigation (§ 22.220)*—Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation, except in circumstances where the action is considered in the best interest of an eagle. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by mitigating an amount equal to or greater than the authorized or expected take. Compensatory mitigation must either reduce another ongoing form of mortality or increase the eagle population of the affected species. Compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation: take) ratio. A permit may require compensatory mitigation when the Service determines, according to the best available information, that the take authorized by the permitted activity is not consistent with maintaining the persistence of the local area population of an eagle species.

The Service must approve types of compensatory mitigation and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers. General permittees meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in 50 CFR 22.220(c)(2). Third-party mitigation providers, such as in-lieu fee programs

and conservation banks, obtain Service approval by meeting the requirements to be a mitigation provider as described in 50 CFR 22.220(c)(2).

To obtain approval as a mitigation provider, potential providers must submit a mitigation plan to the Service that demonstrates how the standards in 50 CFR 22.220(b) will be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the locations where projects will be implemented, the EMU and local area population affected, the number of credits provided, and an explanation of the rationale for the number of eagle credits provided. The Service must approve the mitigation plan prior to implementation.

(11) *(NEW—Existing In Use Without OMB Approval) Single Application for Multiple Activities* (50 CFR 13.11(d)(1))—If regulations require more than one type of permit for an activity and permits are issued by the same office, the issuing office may issue one consolidated permit. Applicants may submit a single application in these cases, provided the single application contains all the information required by the separate applications for each permitted activity. In instances where the Service consolidates more than one permitted activity into one permit, the issuing office will charge the highest single fee for the activity permitted. Administration fees are not waived for single applications covering multiple activities.

We have renewed the existing reporting and recordkeeping requirements identified below:

(1) *Form 3–200–14, ''Eagle Exhibition''*—This form is used to apply for a permit to possess and use eagles and eagle specimens for educational purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: type of eagle(s) or eagle specimens; status of other required authorizations (State, Tribal, local); description of the programs that will be offered and how the eagles will be displayed; experience of handlers; and information about enclosures, diet, and enrichment for the eagles. The Service uses the information collected via the form to determine whether the eagles are legally acquired and will be used for bona fide conservation education, and in the case of live eagles, will be housed and handled under safe and healthy conditions.

(2) *Form 3–200–15a, ''Eagle Parts for Native American Religious Purposes''*—This application form is used by enrolled members of federally recognized Tribes to obtain authorization to acquire and possess eagle feathers and parts from the Service's National Eagle Repository (NER). The permittee also uses the form to make additional requests for eagle parts and feathers from the NER. The form collects the following information: name of the Tribe; Tribal enrollment number of the individual applicant; a signed Certification of Enrollment; inmate-specific information in cases where applicants are incarcerated (inmate number, institution, contact information for the institute's chaplain); and the specific eagle parts and/or feathers desired by the applicant. The Service uses the information collected via the form to verify that the applicant is an enrolled member of a federally recognized Tribe, and what parts and/or feathers the applicant is requesting.

(3) *Form 3–200–16, ''Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety—Annual Report''*—Applicants use this form to obtain authorization to take (trap, collect, haze) eagles that depredate on wildlife or livestock, as well as eagles situated where they pose a threat to human or their own safety. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations (State, Tribal, local); the species and estimated number of eagles causing the problem; what the damage or risk consists of; location; method of take; alternatives taken that were not effective; and a description of the proposed long-term remedy. The Service uses the information collected via the form to determine whether the take is necessary to protect the relevant interests; other alternatives have been considered; and the method of take is humane and compatible with the preservation of eagles.

(4) *Form 3–200–18, ''Take of Golden Eagle Nests During Resource Development or Recovery''*—This application is used by commercial entities engaged in resource development or recovery operations, such as mining or drilling, to obtain authorization to remove or destroy golden eagle nests. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: location of the property; the status of other required authorizations; the type of development or recovery operation; the number of nests to be taken; the activity that involves the take of the nest; the disposition of the nests once removed (or destroyed); the duration for which the authorization is requested; and a description of the mitigation measures that will be implemented. The Service uses the information collected via the form to determine whether the take is necessary and will be compatible with the preservation of eagles.

(5) *Form 3–200–77, ''Native American Eagle Take for Religious Purposes''*—Federally recognized Native American Tribes use this form to apply for authorization to take eagles from the wild for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: status of other required authorizations; location of proposed take; statement of consent by the land owner or land manager if not on Tribal land; species, number, and age class of eagles; whether the eagles will be collected alive and held in captivity; intended disposition of parts and feathers; and the reason why eagles obtained by other means do not meet the Tribe's religious needs. The Service uses the information obtained via the form to determine whether the take is necessary to meet the Tribe's religious needs, they received consent of the landowner, the take is compatible with the preservation of eagles, and any eagles kept alive will be held under humane conditions.

(6) *Form 3–200–78, ''Native American Tribal Eagle Aviary''*—Federally recognized Native American Tribes use this form to apply for authorization to keep live eagles for Tribal religious purposes. In addition to the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: descriptions, photographs and/or diagrams of the enclosures where the eagles will be housed, and number of eagles that will be kept in each; status of other required authorizations; names and eagle-handling experience of caretakers; veterinarian who will provide medical care; and description of the diet and enrichment the Tribe will provide the eagles. The Service uses the information collected via the form to ensure the Tribe has the appropriate facilities and experience to keep live eagles safely and humanely.

(7) *Form 3–200–82, ''Bald Eagle or Golden Eagle Transport into the United States for Scientific or Exhibition Purposes''*—This application is used by researchers and museums to obtain authorization to temporarily bring eagle specimens into, or take those specimens out of, the United States. In addition to

the standardized information required by 50 CFR 13.12, permit application requirements include submission of the following information: documentation that the specimen was legally obtained; documentation that the applicant meets the definition of a ''public'' institution as required under statute; status of other required authorizations (State, Tribal, local); description of the specimen(s); country of origin; name of and contact information for the foreign institution; scientific or exhibition purposes for the transport of specimens; locations where the item will be exhibited (if applicable); dates and ports of departure/arrival; and names of persons acting as agents for the applicant. The Service uses the information collected via the form to ensure the specimens were legally acquired and will be transported through U.S. ports that can legally authorize the transport, the transport will be temporary, as required by statute, and the specimens will be used for purposes authorized by statute.

(8) *Form 3–1552 ''Native American Tribal Eagle Retention''*—A Federal Eagle Remains Tribal Use permit authorizes a federally recognized Tribe to acquire, possess, and distribute to Tribal members whole eagle remains found by a Tribal member or employee on the Tribe's Tribal land for Indian religious use. The applicant must be a federally recognized Tribal entity under the Federally Recognized Tribal List Act of 1994, 25 U.S.C. 479a–1, 108 Stat. 4791 (1994). In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: name of the Tribe; name and contact information for the Tribal leader and primary contact person; whether the Tribe has already discovered an eagle to hold under the permit; and if different than what's listed for the primary contact, the address of the physical location where records will be kept. The Service uses the information collected via the form to identify which Tribe is applying for the permit and to inform the Service as to whether the Tribe is applying before or subsequent to finding the first eagle they want to retain, allowing the Service to choose the appropriate course of action.

(9) *Form 3–1591, ''Tribal Eagle Retention—Acquisition Form''*—This form provides the Service information needed to track the chain of custody of eagle remains and ensure the Tribe takes possession of them as authorized under the permit. The first part of the form (completed by a Service Office of Law Enforcement (OLE) Officer) collects: species; sex; age class of eagle; date and location discovered; date the information was reported to track eagle mortalities; date the remains were transferred to the Tribe; name and contact information for the Tribe; and OLE officer name and contact information. The second part of the form (competed by the Tribe) collects: permit number; date the Tribe took possession of the eagle; and Principal Tribal Officer's name, title, and contact information.

(10) *Form 3–2480, ''Eagle Recovery Tag''*—The form is used to track dead eagles as they move through the process of laboratory examination to determine cause of death and are sent to the NER for distribution to Native Americans for use in religious ceremonies. In addition to the standardized information required by 50 CFR 13.12, the form also collects the following information: U.S. Geological Survey band data; unique ID number assigned; mortality date; species, age, and sex of the eagle; date recovered; name of person(s) who found and recovered the eagle; and names and contact information of persons who received the eagle throughout the chain of custody. The Service uses the information collected to maintain chain of custody for law enforcement and scientific purposes.

(11) *Form 3–202–11, ''Take of Depredating Eagles & Eagles that Pose a Risk to Human or Eagle Health or Safety—Annual Report''*—Permittees use this form to report the outcome of their action involving take of depredating eagles or eagles that pose a risk to human or eagle health or safety. The form collects the following information: species, location, date of take, number of eagles, method of take, and final disposition. The Service uses the information reported via the form to ascertain whether the planned take was implemented, track how much authorized take occurred in the eagle management unit and local population area, and verify the disposition of any eagles taken under the permit.

(12) *Form 3–202–13, ''Eagle Exhibition—Annual Report''*—Permittees use this form to report activities conducted under an Eagle Exhibition Permit for both Live and Dead Eagles. The form collects the following information: list of eagles and eagle specimens held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; total number of programs each eagle was used in, or if statically displayed (*e.g.,* in a museum setting), the number of days the facility was open to the public. The Service uses the information reported through this form to verify that eagles held under the permit are used for conservation education.

(13) *Form 3–202–14, ''Native American Tribal Eagle Aviary—Annual Report''*—Permittees use this form to report activities conducted under a Native American Eagle Aviary Permit. The form collects the following information: a list of eagles held under the permit during the reporting year, and, for each, the date acquired or disposed of; from whom acquired or to whom transferred; or other disposition. The Service uses the information collected via the form to track the live eagles held by federally recognized Tribes for spiritual and cultural practices.

(14) *Monitoring Requirements*—Most permits that authorize take of eagles or eagle nests require monitoring. We do not require monitoring for intentional take, including when Native American Tribes take an eagle as part of a religious ceremony or when falconers trap golden eagles that are depredating on livestock. A fundamental purpose of monitoring under eagle take permits is to track levels of take for population management. For disturbance permits, monitoring also provides information about whether the permitted activity actually disturbed eagles, allowing the Service to better understand when these types of permits may not be needed.

In addition to tracking take at population management scales, the Service uses data from monitoring lethal take permits to adjust authorized take levels, compensatory mitigation requirements, and avoidance and minimization measures as spelled out under the terms of the permit. With regard to wind industry permits, these data also enable the Service to improve future fatality estimates through enhanced understanding of exposure and collision.

(15) *Required Notifications*—Most permits that authorize take or possession of eagles require a timely notification to the Service by email or phone when an eagle possessed under a possession permit or taken under a permit to take eagles dies or is found dead. These fatalities are later recorded in reports submitted to the Service as described above. The timely notifications allow the Service to better track take and possession levels, and to ensure eagle remains are sent to either a forensics lab or the NER. Incidental take permittees are also required to notify the Service via email or phone if a threatened or endangered species is found in the vicinity of the activity for which take is permitted. There is no notification requirement for that beyond reporting each occurrence where take is discovered to have occurred. The

Service tracks whether the take level is exceeded or is likely to be exceeded.

(16) *Recordkeeping Requirements*—As required by 50 CFR 13.46, permittees must keep records of the activity as it relates to eagles and any data gathered through surveys and monitoring, including records associated with the required internal incident reporting system for bald eagle and golden eagle remains found and the disposition of the remains. This information retained by permittees is described above under reporting requirements.

(17) *Amendments*—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. Those changes may include an increase or decrease in the authorized take or possession of eagles, proposed adjustment of permit conditions, or changes to the activity involving eagles. The permit will specify circumstances under which the Service will require modifications to avoidance, minimization, or compensatory mitigation measures or monitoring protocols, which may include, but are not limited to take levels, location of take, and/or changes in eagle use of the activity area.

At a minimum, the permit must specify actions to be taken if take approaches or reaches the amount authorized and anticipated within a given timeframe. The permittee applies for amendments to the permit by submitting a description of the modified activity and the changed conditions affecting eagles. Substantive amendments incur a processing fee. A permittee is not required to pay a processing fee for minor changes, such as the legal individual or business name or mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of minor changes.

(18) *Transfers*—In general, permits issued under 50 CFR part 22 are not transferable. However, when authorized, permits issued under § 22.80 may be transferred by the transferee providing written assurances of sufficient funding of the avoidance and minimization measures and commitment to carry out the terms and conditions of the permit.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Eagle Permits and Fees, 50 CFR parts 10, 13, and 22.

OMB Control Number: 1018–0167.

Form Numbers: FWS Forms 3–200–14, 3–200–15a, 3–200–16, 3–200–18, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–200–82, 3–202–11, 3–202–13, 3–202–14, 3–202–15, 3–202–16, 3–1552, 3–1591, 3–2480, 3–202–91 (New).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, businesses, and State/local/Tribal governments. We expect the majority of applicants seeking permits will be in the energy production and electrical distribution business.

Total Estimated Number of Annual Respondents: 8,406.

Total Estimated Number of Annual Responses: 8,406.

Estimated Completion Time per Response: Varies from 15 minutes to 200 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 32,882.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Non-hour Burden Cost: $1,737,460 (primarily associated with application processing and administrative fees).

On September 30, 2022, we published in the **Federal Register** (87 FR 59598) a proposed rule (RIN 1018–BE70) that announced our intention to request OMB approval of the revisions to this collection explained above and the simultaneous renewal of OMB Control No. 1018–0167. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on November 29, 2022. Summaries of comments addressing the information collections contained in this rule, as well as the agency response to those comments, can be found in the *Response to Public Comments* section of this rule, as well as in the information collection request submitted to OMB on the *RegInfo.gov* website (*https://www.reginfo.gov/public/*).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0167 in the subject line of your comments.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We evaluated the environmental impacts of the changes to the regulations and completed an environmental assessment and finding of no significant impact. The FONSI is the final step in the NEPA process for this eagle rule revision process. The FONSI and final environmental assessment are available in Docket No. FWS–HQ–MB–2020–0023 (available at *https://www.regulations.gov*).

Endangered and Threatened Species

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–43), requires Federal agencies to ''ensure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). Intra-Service consultations and conferences consider the effects of the Service's actions on listed species, species proposed for listing, and candidate species. Our final action of issuing our regulations regarding take of non-ESA-listed eagles does not authorize, fund, or carry out any activity that may affect—directly or indirectly—any ESA-listed species or their critical habitat. *See, e.g., Sierra Club* v. *Bureau of Land Mgmt.,* 786 F.3d 1219 (9th Cir. 2015). Indeed,

the Eagle Act does not empower us to authorize, fund, or carry out project activities by third parties. The Eagle Act empowers us to authorize take of bald and golden eagles. Thus, we have determined these revisions have no effect on any listed species, species proposed for listing, or candidate species or their critical habitat. As a result, section 7 consultation is not required on this rulemaking action. As appropriate, we will conduct project-specific, intra-Service section 7 consultations in the future if our proposed act of issuing a permit for take of eagles may affect ESA-listed species or critical habitat.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Although we do not consider this rulemaking as having Tribal implications according to E.O. 13175 because it is not likely to have ''substantial direct effects'' on any particular Tribe, we conducted Tribal outreach and invited government-to-government consultation as if it does.

The Service provided written notification to Tribes about the ANPR and the proposed rule and offered government-to-government consultation. The Service conducted Tribal informational webinars on October 14 and 21, 2021, during the ANPR public comment period as well as prior to publication of the proposed rule. Seven Tribal representatives provided written comments. The Service conducted two additional Tribal informational webinars on October 19 and November 2, 2022, during the proposed rule public comment period as well as bilateral information sessions when requested by Tribes. Tribal consulation was requested by one Tribe, which was conducted in September 2023. No other Tribes requested consultation with the Service. The Service conducted a final Tribal informational webinar on December 12, 2023, regarding the changes the Service made in developing the final rule. Eleven Tribal representatives provided written comments. As described earlier in this preamble, we have revised the proposed regulations in response to these comments.

The Service acknowledges our Federal Tribal trust responsibilities and deeply honors our sovereign nation-to-nation relationship with Tribes. Throughout all phases of the rulemaking process, the Service has encouraged and welcomed Tribal engagement, including government-to-government consultation. To date, we have conducted one government-to-government consultation. We invite further bilateral government-to-government consultation at any time.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule is a significant regulatory action under E.O. 12866; however, it will not significantly affect energy supplies, distribution, or use. The permitting process streamlines permitting for wind energy and power distribution; therefore, the rule is intended to ease any administrative burden on energy development and will not impact it negatively. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend parts 13 and 22 of subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Revise § 13.5 to read as follows:

§ 13.5 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in part 13 and assigned OMB Control Numbers 1018–0022, 1018–0070, 1018–0092, 1018–0093, or 1018–0167 (unless otherwise indicated). Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimates or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

■ 3. Amend § 13.11 by:

■ a. Revising paragraphs (d)(2) and (d)(3)(i); and

■ b. In the table in paragraph (d)(4):

■ i. Removing the 15 entries under ''Bald and Golden Eagle Protection Act'' and adding 17 new entries in their place; and

■ ii. Revising the footnote 1.

The revisions and additions read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing take caused by the activity in accordance with § 13.1. You may submit a single application in these cases, provided that the single application contains all the information required by the separate applications for each activity. Where more than one activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity for which take is permitted. Administration fees are not waived.

(3) * * *

(i) We will not charge a permit application fee to any Federal, Tribal, State, or local government agency or to any individual or institution acting on behalf of that agency, except administration fees for permits issued under subpart E of part 22 of this subchapter will not be waived. If you fail to submit evidence of agency status with your application, we will require the submission of all processing fees prior to the acceptance of the

application for processing, unless otherwise authorized or waived.

* * * * *

(4) * * *

Type of permit	CFR citation	Permit application fee [1]	Administration fee [2]	Amendment fee
* *	*	*	* *	*
Bald and Golden Eagle Protection Act				
Eagle Scientific Collecting	50 CFR part 22	100.		
Eagle Exhibition	50 CFR part 22	75.		
Eagle—Native American Religious Purposes	50 CFR part 22	No fee.		
Eagle Depredation Permit	50 CFR part 22	100.		
Golden Eagle Nest Take	50 CFR part 22	100		50.
Eagle Transport—Scientific or Exhibition	50 CFR part 22	75.		
Eagle Transport—Native American Religious Purposes.	50 CFR part 22	No fee.		
General Eagle Permit—Disturbance Take	50 CFR part 22	100.		
Specific Eagle Permit—Disturbance Take	50 CFR part 22	Commercial—2,500; Non-commercial—500.		Commercial—500; Non-commercial—150.
General Eagle Permit—Nest Take	50 CFR part 22	100.		
Specific Eagle Permit—Nest Take (Single nest).	50 CFR part 22	Commercial—2,500; Non-commercial—500.		Commercial—500; Non-commercial—150.
Specific Eagle Permit Eagle—Nest Take (Multiple nests).	50 CFR part 22	5,000		500.
General Eagle Permit—Incidental Take (Power lines).	50 CFR part 22	1,000	Non-Investor Owned—2,500; Investor Owned—10,000.	
General Eagle Permit—Incidental Take (Wind energy).	50 CFR part 22	1,000	Distributed and Community Scale—2,500; Utility Scale—10,000.	
Specific Eagle Permit—Incidental Take	50 CFR part 22	Tier 1—18,000; Tier 2—26,000.	10,000	500.
Eagle Take—Exempted under ESA	50 CFR part 22		No fee.	
Transfer of a Subpart E Eagle Permit	50 CFR part 22	1,000.		
* *	*	*	* *	*

[1] A reimbursable agreement may be required for specific eagle permits to cover the costs above estimated staff-hours.
[2] An administration fee will be assessed at the time of application, in addition to the application fee.

* * * * *

■ 4. Amend § 13.12 by:

■ a. Revising paragraph (a)(1)(ii); and

■ b. In table 1 to paragraph (b), removing the 8 entries under ''Eagle Permits'' and adding in their place 10 new entries.

The revisions and additions read as follows:

§ 13.12 General information requirements on applications for permits.

(a) * * *

(1) * * *

(ii) If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

Type of permit	Section
* *	*
Eagle permits:	
Scientific or exhibition	22.50.
Indian religious use	22.60.
Falconry purposes	22.70.
Depredation and protection of health and safety	22.100.
Permits for incidental take of eagles	22.200 or 22.210.
Permits for incidental take of eagles by power lines	22.200 or 22.210.
Permits for disturbance take of eagles	22.200 or 22.210.
Permits for nest take of eagle	22.200 or 22.210.
Permits for golden eagle nest take for resource recovery operations	22.325.
Permits for bald eagle take exempted under the Endangered Species Act	22.400.

§ 13.24 [Amended]

■ 5. Amend § 13.24 in paragraph (c) introductory text by removing ''§ 22.80 of this subchapter B'' and adding in its place ''part 22, subpart E, of this subchapter''.

§ 13.25 [Amended]

■ 6. Amend § 13.25 in paragraphs (b) introductory text and (f) by removing ''§ 22.80 of this subchapter B'' and adding in its place ''part 22, subpart E, of this subchapter''.

PART 22—EAGLE PERMITS

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

Authority: 16 U.S.C. 668–668d; 703–712; 1531–1544.

■ 8. Amend § 22.6 by:
■ a. Revising the definitions of ''Eagle management unit (EMU)'' and ''Eagle nest'';
■ b. Adding in alphabetic order a definition for ''General permit'';
■ c. Revising the definition of ''In-use nest''; and
■ d. Adding in alphabetic order a definition of ''Incidental take''.

The revisions and additions read as follows:

§ 22.6 Definitions.

* * * * *

Eagle management unit (EMU) means a geographically bounded region within which permitted take is regulated to meet the management goal of maintaining stable or increasing breeding populations of bald eagles or golden eagles.

(1) The Atlantic EMU is Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

(2) The Mississippi EMU is Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

(3) The Central EMU is Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas; portions of Colorado, New Mexico, and Wyoming east of the Continental Divide; and portions of Montana east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

(4) The Pacific EMU is Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington; portions of Colorado, New Mexico, and Wyoming west of the Continental Divide; and in Montana Hill, Chouteau, Cascade, Meagher, and Park Counties and all counties west of those counties.

(5) An EMU may be further divided between north and south along the 40th Parallel.

Eagle nest means any assemblage of materials built, maintained, or used by bald eagles or golden eagles for the purpose of reproduction. An eagle nest remains an eagle nest until it becomes so diminished, or the nest substrate upon which it is built fails, that the nest is no longer usable and is not likely to become usable to eagles, as determined by a Federal, Tribal, or State eagle biologist.

* * * * *

General permit means a permit that has nationwide or regional standard conditions for a category, or categories, of activities that are substantially similar in nature.

* * * * *

In-use nest means a bald eagle or golden eagle nest that contains one or more viable eggs or dependent young, or, for golden eagles only, has had adult eagles on the nest within the past 10 days during the breeding season.

Incidental take means take that is foreseeable and results from, but is not the purpose of, an activity.

* * * * *

■ 9. Amend § 22.12 by adding paragraph (c) to read as follows:

§ 22.12 Illegal activities.

* * * * *

(c) Application for a permit does not release you from liability for any take that occurs prior to issuance of, or outside the terms of, a permit.

■ 10. Revise the heading of subpart C to read as follows:

Subpart C—Eagle Possession Permit Provisions

§ 22.80 [Removed and Reserved]

■ 11. Remove and reserve § 22.80.

§ 22.85 [Removed and Reserved]

■ 12. Remove and reserve § 22.85.

■ 13. Add subpart E to read as follows:

Subpart E—Take of Eagles for Other Interests

Sec.

22.200 Specific permits.
22.210 General permits.
22.215 Conditions of permits.
22.220 Compensatory mitigation.
22.250 Permits for incidental take of eagles by wind energy projects.
22.260 Permits for incidental take of eagles by power lines.
22.280 Permits for disturbance take of eagles.
22.300 Permits for take of eagle nests.

§ 22.200 Specific permits.

(a) *Purpose.* Specific permits authorize the take of bald eagles or golden eagles for other interests by activities that are described in the regulations in this subpart. Proponents of projects may apply for a specific permit if they do not meet eligibility criteria for general permits described in—or are conducting an activity not identified in—§ 22.250, § 22.260, § 22.280, or § 22.300. Specific permits may be recommended by the Service or requested by entities that are eligible for but do not want to obtain a general permit.

(b) *Eligibility.* To qualify for a specific permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300. You must also meet any eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required permit conditions.

(2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.

(3) Applicants may not break down a project into small parts to minimize the activity.

(4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must first submit a separate application for each project and request the Service determine if it is appropriate to consolidate permits.

(5) Specific permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.

(6) Upon receipt of your application for a specific permit, the Service may direct you to apply for a general permit or determine that a permit is not required. The Service will provide a letter of authorization to keep in your records.

(7) For existing wind energy projects only, projects that are not eligible for a general permit for incidental take of eagles (§ 22.250) may request a Letter of Authorization from the Service to apply for a general permit. The Service will review and determine if eagle risk at the project is consistent with the risk expected for general permits. To request review, you must submit a specific permit application and request a determination for general permit eligibility. Your administration fee will not be refunded to cover the cost of conducting this review. The application fee may be refunded (50 CFR 13.11(d)(1)).

(c) *How to apply for a specific permit.* (1) Submit a completed application form as specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a), as applicable, or Form 3–200–71 if the activity does not correspond with a particular permit type. Submit forms to the Regional

Director of the region where you will conduct your activity. If your activity spans multiple regions, submit your application to the region of your U.S. mailing address, and the Service will assign the appropriate administering region. You can find the current contact information for Regional Directors in § 2.2 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take to be authorized, including the location, seasonality, and duration of the activity.

(A) If applying under § 22.250 for wind energy projects, that description must include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.

(C) If applying under § 22.280 or § 22.300, include the location of known nest(s) and nest status (*e.g.,* in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) An eagle impacts assessment, including eagle activity and eagle use in the project area and a description of methods used to conduct this assessment. If the Service has officially issued or endorsed survey, modeling, take-estimation, or other standards for the activity that will take eagles, you must follow them and include in your application all the information thereby obtained, unless the Service waives this requirement for your application.

(iv) Implemented and proposed steps to avoid and minimize to the maximum degree practicable, compensate for, and monitor impacts on eagles.

(v) Alternative actions considered and the reasons why those alternatives are not practicable.

(vi) Any supplemental information necessary for the Service to make an adequate determination on the application (see § 13.21 of this subchapter).

(vii) Payment of the required application and administration fees (see § 13.11(d)(4) of this subchapter) for the appropriate fee tier, and, if required, proposed compensatory mitigation plan or eagle credits to be obtained from a Service-approved conservation bank or in-lieu fee program. All compensatory mitigation must comply with the provisions of § 22.220. For incidental take permits issued under §§ 22.250 and 22.260:

(A) The Tier 1 application fee is assessed when standardized permit conditions require negligible modifications, additional environmental compliance review is not required, and, if required, fatality estimates require minimal data manipulation.

(B) The Tier 2 application fee is assessed for all other specific permit incidental take applications that require 275 staff-hours or fewer for review, including compliance with the procedural requirements of NEPA. The Service may require applicants to enter into a reimbursable agreement to cover the costs above 275 staff-hours.

(d) *Issuance criteria.* Upon receiving a complete application, the Regional Director will decide whether to issue a permit based on the general criteria of § 13.21 of this subchapter and whether the application meets the following requirements:

(1) The applicant is eligible for a specific permit.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality;

(ii) Results from, but is not the purpose of, the activity; and

(iii) Cannot practicably be avoided.

(3) The amount of take the Service authorizes under the permit is compatible with the preservation of the bald eagle and the golden eagle, including consideration of the effects of other permitted take and other factors affecting bald eagle and golden eagle populations.

(4) The applicant has proposed avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the activity's impacts on eagles. These measures must meet or exceed the requirements of the general permit regulation (§ 22.210), except where not practicable.

(5) If compensatory mitigation is required, the applicant has proposed either to implement compensatory mitigation measures that comply with the standards in § 22.220 or secure required eagle credits from a Service-approved conservation bank or in-lieu fee program. Compensatory mitigation must meet or exceed the requirements of the general permit regulation (§ 22.210), except when the Service's evaluation of site-specific data indicates a lower mitigation rate is appropriate.

(6) The applicant has proposed monitoring plans that are sufficient to determine the effects on eagle(s) of the proposed activity.

(7) The proposed reporting is sufficient for the Service to determine the effects on eagle(s).

(8) Any additional factors that may be relevant to our decision whether to issue the permit, including, but not limited to, the cultural significance of a local eagle population and whether issuance of a permit would preclude the Service from authorizing take necessary to protect an interest of higher priority. The Service will prioritize safety emergencies, Native American Tribal religious use, and public health and safety.

(e) *Modifications to your permit.* If the permittee requests substantive amendments (see § 13.11(d)(5) of this subchapter) during the permit tenure, the Service will charge an amendment fee. The Service will charge an amendment fee and an administration fee for permittee-requested substantive amendments that require new analysis, such as modifications that result in re-estimating take, re-evaluating compensatory mitigation requirements, or requiring additional environmental review to comply with procedural requirements under NEPA.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. Specific permits may be valid for a maximum of 30 years. Permit tenure may be less, as restricted by the provisions for specific activities set forth in § 22.250, § 22.260, § 22.280, or § 22.300 or as appropriate to the duration and nature of the proposed activity, including mitigation requirements.

§ 22.210 General permits.

(a) *Purpose.* General permits authorize the take of bald eagles or golden eagles for other interests that meet the eligibility requirements for general permits set forth in § 22.250, § 22.260, § 22.280, or § 22.300.

(b) *Eligibility.* To qualify for a general permit, you must be conducting an activity identified in § 22.250, § 22.260, § 22.280, or § 22.300 and meet any additional eligibility requirements identified in the relevant section.

(1) Permits are issued to the individual or entity conducting the activity, such as the owner or manager of the entity conducting the activity. The applicant is responsible for compliance with the permit and must have the authority to implement the required permit conditions.

(2) Contractors or consultants may assist in completing applications or conducting work as a subpermittee but may not be a permit holder.

(3) Applicants may not break a project into parts to meet general permit

eligibility criteria when the entire project would not be eligible.

(4) Applicants may not combine projects if the activities are not readily identifiable as being part of the same project. If you want to obtain a consolidated permit for multiple activities, you must apply for a specific permit.

(5) General permits are issued to a single permit holder. If multiple entities operate a joint project and want to obtain joint authorization, the application must designate one entity as the permit holder and that entity must accept the legal liability for the other entities. The other entities must grant sufficient authority to the permit holder to carry out any activities required under the permit.

(6) The Service may notify you in writing that you must apply for a specific permit if the Service finds that the project does not comply with the requirements for a general permit.

(c) *How to apply.* (1) Register with the Service by submitting the appropriate application form specified in § 22.250(a), § 22.260(a), § 22.280(a), or § 22.300(a) to Headquarters. You can find the current contact information for Migratory Birds in § 2.1 of subchapter A of this chapter.

(2) Your application must include:

(i) A description of the activity that will cause the take of bald eagles or golden eagles, including the location, and seasonality.

(A) If applying under § 22.250 for wind energy projects, include the number of turbines, rotor diameter, hub height, location coordinates of each turbine, and the datum of these coordinates.

(B) If applying under § 22.260 for power lines, include the State and county(ies) of coverage and total miles of transmission and distribution lines. To the extent known, include the number of miles or number of poles in eagle-risk areas that are not avian-safe.

(C) If applying under § 22.280 or § 22.300, include the location of known nests and nest status (*i.e.,* in-use or alternate).

(ii) Justification of why there is no practicable alternative to take that would protect the interest to be served.

(iii) Description of eagle activity and eagle use in the project area.

(iv) Certification that the activity involving the take of eagles authorized by the general permit complies with all other applicable Federal, State, Tribal, and local laws. This includes certifying that the activity for which take is to be authorized by the general permit either does not affect a property that is listed, or is eligible for listing, in the National Register of Historic Places as maintained by the Secretary of the Interior; or that the applicant has obtained, and is in compliance with, a written agreement with the relevant State Historic Preservation Officer or Tribal Historic Preservation Officer that outlines all measures the applicant will undertake to mitigate or prevent adverse effects to the historic property.

(v) Payment of required application and administration fees (see § 13.11(d)(4) of this subchapter).

(vi) A certification that the applicant agrees to acquire eagle credits, if required, from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of the permit.

(d) *Issuance criteria.* Upon an applicant registering by submitting an application under paragraph (c) of this section, the Service will automatically issue a general permit to authorize the take requested in the application. In registering, you must certify that you meet the general criteria of § 13.21 of this subchapter and the following issuance criteria:

(1) You are conducting an activity that qualifies for a general permit.

(2) The take:

(i) Is necessary to protect a legitimate interest in a particular locality;

(ii) Results from, but is not the purpose of, the activity; and

(iii) Cannot practicably be avoided.

(3) The activity is consistent with the requirements applicable to that activity as specified in § 22.250, § 22.260, § 22.280, or § 22.300.

(4) You will implement the general permit conditions applicable to your activity, including required avoidance, minimization, monitoring, and reporting requirements.

(5) You will obtain any required eagle credits from a Service-approved conservation bank or in-lieu fee program within 90 days of the effective date of your permit.

(e) *Program continuation.* The Service will regularly evaluate whether the take of bald eagles and golden eagles under general permits remains compatible with the preservation of eagles. If the Service finds, through analysis of the best available information, that the general permit program is not compatible with the preservation of bald eagles or golden eagles, the Service may suspend issuing general permits in all or in part after publishing notification in the **Federal Register**. The Service may reinstate issuance of general permits after publishing another notification in the **Federal Register** or by promulgating additional rulemaking. If the Service suspends general permitting, take currently authorized under a general permit remains authorized until expiration of that general permit, unless you are notified otherwise.

(f) *Tenure.* The tenure of each permit will be designated on the face of the permit. General permits have a maximum tenure of 5 years. Permit tenure may be less, as restricted by the applicable provisions in § 22.250, § 22.260, § 22.280, or § 22.300.

§ 22.215 Conditions of permits.

(a) Anyone conducting activities under a specific permit (§ 22.200) or general permit (§ 22.210) is subject to the conditions set forth in this section. You must also comply with the relevant conditions set forth in subpart D of part 13 of this subchapter and the conditions of your general or specific permit.

(1) Your permit will specify the type of take authorized (*e.g.,* incidental take, disturbance, nest take) and may specify the amount, location, or other restrictions on the take authorized. You are not authorized for any take not specified on the face of your permit.

(2) Your permit will require implementation of avoidance, minimization, monitoring, and adaptive management measures consistent with the relevant regulations in this subpart E. This may include requirements to:

(i) Modify the seasonality, frequency, timing, duration, or other aspects of your activity.

(ii) Implement measures to avoid and minimize the take or effects of take on eagles.

(iii) Monitor to determine the effects of the activity on eagles according to Service-approved protocols.

(iv) Implement an adaptive management plan.

(3) Your permits will specify requirements for reporting and disposing of any discovered eagle remains or injured eagles. Requirements may include:

(i) Training onsite personnel and requiring personnel to scan for discovered eagle remains or injured eagles;

(ii) Collecting information on discovered eagle remains or injured eagles, including species, condition, discovery date, location, and other information relevant to eagle identification and determining the cause of death or injury;

(iii) Reporting discovered eagle remains or injured eagles, including immediate notification and annual reporting; and

(iv) Disposition of any discovered eagle remains or injured eagles in accordance with Service instructions, which may include shipping eagles to

the National Eagle Repository or other designated facility.

(4) You must comply with all Service reporting requirements. You must annually report incidental take and disturbance take using Form 3–202–15. You must report nest take using Form 3–202–16. You must submit accurate reports within the required timeline.

(5) You must comply with all compensatory mitigation requirements in accordance with § 22.220, including any additional requirements contained in § 22.250, § 22.260, § 22.280, or § 22.300.

(6) You must keep records of all activities conducted under this permit, including those of subpermittees carried out under the authority of this permit (see § 13.46 of this subchapter). You must provide records to the Service upon request.

(7) By accepting this permit, you are authorizing the Service to:

(i) Publish the following information in a public list of permittees: permittee name, permit type, county and State of activity, and effective date range.

(ii) Inspect the location and records relating to the activity at the location where those records are kept. Any inspections will occur during regular business hours (see § 13.21(e) of this subchapter).

(iii) Provide access to Service staff or contractors as part of participation in the Service's program-wide monitoring. The Service will provide reasonable notice for requests to access sites and negotiate with the permittee about practicable and appropriate access conditions to protect human health and safety and comply with any physical, logistical, or legal constraints.

(8) You are responsible for ensuring that the activity for which take is authorized complies with all applicable Federal, Tribal, State, and local laws, regulations, and permits. You must comply with all label instructions for handling controlled substances and chemicals, including pesticides.

(9) Permits are issued to the entity or individual conducting the action.

(i) The Principal Officer is the chief operating officer responsible for the permit application and any permitted activities. The Principal Officer is responsible for compliance with all conditions of authorization, including the conditions listed here and any permit conditions. The Principal Officer must have the authority to implement all conditions and is legally liable for any subpermittee conducting activities under the permit.

(ii) The authority of this authorization may be exercised by subpermittees. A subpermittee is any person who is employed by the authorized entity to conduct the activities specified or any person designated as a subpermittee in writing by the Principal Officer. Subpermittee-designation letters must identify who can conduct what activities and list any restrictions on the dates, locations, or types of activities the subpermittee may conduct.

(iii) The Principal Officer is responsible for any subpermittee who is conducting authorized activities. Subpermittees must have the conditions of authorization and, if applicable, a copy of the permit readily available. Subpermittees who are not employees must also have a subpermittee-designation letter.

(b) The Service may amend, suspend, or revoke a permit issued under this subpart if new information indicates that revised permit conditions are necessary, or that suspension or revocation is necessary, to safeguard local or regional eagle populations. This provision is in addition to the general criteria for amendment, suspension, and revocation of Federal permits set forth in §§ 13.23, 13.27, and 13.28 of this subchapter.

(c) Notwithstanding the provisions of § 13.26 of this subchapter, you remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

§ 22.220 Compensatory mitigation.

(a) Your permit conditions may include a requirement to compensate for the take of eagles.

(1) Any permit authorizing take that would exceed the applicable EMU take limit will require compensatory mitigation, except in circumstances where the action is considered in the best interest of an eagle. Compensatory mitigation for this purpose must ensure the preservation of the affected eagle species by mitigating an amount equal to or greater than the authorized or expected take. Compensatory mitigation must either reduce another ongoing form of mortality or increase the eagle population of the affected species. Compensatory mitigation for golden eagles must be performed at a 1.2:1 (mitigation: take) ratio.

(2) A permit may require compensatory mitigation when the Service determines, according to the best available information, that the take authorized by the permitted activity is not consistent with maintaining the persistence of the local area population of an eagle species.

(b) All required compensatory mitigation actions must:

(1) Be contingent upon application of avoidance and minimization measures to reduce the take to the maximum degree practicable relative to the magnitude of the project's impacts on eagles.

(2) Be sited within:

(i) The same EMU where the permitted take will occur; or

(ii) Another EMU if the Service has reliable data showing that the population affected by the take includes individuals that are reasonably likely to use that EMU during part of their seasonal migration.

(3) If required by the Service, be sited within a specified local area population.

(4) Use the best available science in formulating, crediting, and monitoring the long-term effectiveness of mitigation measures.

(5) Be additional to and improve upon the baseline conditions for the affected eagle species in a manner that is demonstrably new and would not have occurred without the compensatory mitigation.

(6) Be durable and, at a minimum, maintain its intended purpose for as long as required by the mitigation conditions in the permit.

(7) Include mechanisms to account for and address uncertainty and risk of failure of a compensatory mitigation measure.

(8) Include financial assurances that the required compensatory mitigation measures will be implemented in full.

(c) Compensatory mitigation must be approved by the Service and may include conservation banks, in-lieu fee programs, or permittee-responsible mitigation as mitigation providers.

(1) General permittees meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider. Specific permittees can meet this requirement by obtaining required credits from a Service-approved, third-party mitigation provider or meeting the requirements to be a permittee-responsible mitigation provider as described in paragraph (c)(2) of this section. Third-party mitigation providers (*e.g.,* in-lieu fee programs and conservation banks) obtain Service approval by meeting the requirements to be a mitigation provider as described in paragraph (c)(2) of this section.

(2) To obtain approval as a mitigation provider, potential providers must submit a mitigation plan to the Service that demonstrates how the standards set forth in paragraph (b) of this section will be met. At a minimum, this must include a description of the mitigation, the benefit to eagles, the locations where

projects will be implemented, the EMU and local area population affected, the number of credits provided, and an explanation of the rationale for the number of eagle credits provided. The Service must approve the mitigation plan prior to implementation.

§ 22.250 Permits for incidental take of eagles by wind energy projects.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with the operation of wind energy projects. Apply using Form 3–200–71.

(b) *Definition.* The following term used in this section has the meaning set forth in this paragraph (b):

Existing project. Infrastructure that was operational prior to May 13, 2024, as well as infrastructure that was sufficiently far along in the planning process on that date that complying with new requirements would be impracticable, including if an irreversible or irretrievable commitment of resources has been made (*e.g.,* site preparation was already underway or infrastructure was partially constructed).

(c) *Eligibility for a general permit.* To qualify for a general permit, you must meet the requirements of § 22.210, be located in the contiguous 48 States, not have discovered four or more eagles of one species in the previous 5 years per paragraph (d)(3) of this section, and:

(1) Be a project applying for a general permit for the first time, and all turbines associated with the project are:

(i) At least 2 miles from a golden eagle nest and at least 660 feet from a bald eagle nest; and

(ii) Located in areas characterized by seasonal relative abundance values that are less than the relative abundance values for the date range for each species in tables 1 and 2:

TABLE 1 TO PARAGRAPH (c)(1)(ii)—RELATIVE ABUNDANCE VALUE THRESHOLDS FOR BALD EAGLES THROUGHOUT THE YEAR

Date range	Bald Eagle relative abundance
1. February 15–May 23	0.821
2. May 24–July 19	0.686
3. July 20–December 20	0.705
4. December 21–February 14	1.357

TABLE 2 TO PARAGRAPH (c)(1)(ii)—RELATIVE ABUNDANCE VALUE THRESHOLDS FOR GOLDEN EAGLES THROUGHOUT THE YEAR

Date range	Golden Eagle relative abundance
1. February 8–June 6	0.081
2. June 7–August 30	0.065
3. August 31–December 6	0.091
4. December 7–February 7	0.091

(2) Be a project currently authorized under a general permit that:

(i) Has discovered fewer than four eagles (either eagle remains or injured eagles) of any one species during the previous general permit tenure;

(ii) Had no lapse in general-permit coverage; and

(iii) Ensures that any turbines not authorized on the previous general permit meet the issuance criteria in paragraph (c)(1) of this section.

(3) Be an existing project that has received a letter of authorization from the Service (see § 22.200(b)(7)).

(d) *Discovered eagle provisions for general permits.* You must implement procedures to discover eagle remains and injured eagles in accordance with § 22.215(a)(3) and as required by your permit conditions. In following those protocols:

(1) You must include in your annual report the discovery of any eagle remains or injured eagles.

(2) If you discover eagle remains or injured eagles of three eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of a third eagle and implement adaptive management measures. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit.

(3) If you discover eagle remains or injured eagles of four eagles of any one species during the tenure of a general permit, you must notify the Service in writing within 2 weeks of discovering the take of the fourth eagle. When notifying the Service, you must include the reporting data required by your permit conditions, your adaptive management plan, and a description and justification of the adaptive management approaches you will implement for the remaining duration of your general permit term. The project will remain authorized to incidentally take eagles through the term of the existing general permit but will not be eligible for future general permits. You may instead apply for a specific permit for incidental take at that project. You may request reconsideration of general-permit eligibility by following the review procedures set forth at § 13.29 of this subchapter, including providing the information required in § 13.29(b)(3).

(4) If the Service conducts monitoring at a wind project, eagle remains or injured eagles discovered by the Service, or Service contractor, are not attributed to the project for the purposes of this paragraph (d), unless the Service determines the eagles were also discovered, or were likely to have been discovered, by required monitoring efforts at the project.

(e) *Eligibility for a wind energy specific permit.* To qualify for a specific permit, you must meet the requirements of § 22.200. In determining whether to issue a permit, the Service will review the application materials provided,

including the eagle impacts assessment. The Service will determine, using the best available data, the expected take of eagles by the proposed activity.

(f) *Wind energy permit conditions.* The following conditions apply to all general and specific permits. Specific permits may include additional project-specific permit conditions.

(1) Develop and implement an adaptive management plan. An adaptive management plan applies the best available science and monitoring to refine project operations and practices. Plans identify criteria for implementation of the mitigation hierarchy, including avoidance, minimization, and compensation to remain consistent with permit conditions and the preservation of eagles.

(2) Remove and avoid creating anthropogenic features that increase the risk of eagle take by attracting eagles to the project site or encouraging foraging, roosting, or nesting behaviors.

(3) Minimize collision and electrocution risks, including collisions with turbines, vehicles, towers, and power lines.

(4) Comply with all relevant regulations and permit conditions in part 21 of this subchapter.

(5) Submit required reports to the Service by the applicable deadline.

(6) Pay the required application and administration fees (see § 13.11(d)(4) of this subchapter).

(7) Implement required compensatory mitigation. You must keep records to document compliance with this requirement and provide them to the Service with your annual report.

(i) For wind energy specific permits, you must submit a plan to the Service in accordance with § 22.200(c) and implement the compensatory-mitigation requirements included on the face of your permit.

(ii) For wind energy general permits, you must obtain eagle credits from a Service-approved conservation bank or in-lieu fee program based on the hazardous volume of the project (in cubic kilometers). The hazardous volume of a project is calculated as the number of turbines multiplied by $0.200\pi(d/2)^2$ where d is the diameter of the blades in kilometers. You must obtain eagle credits at the following rates: Atlantic/Mississippi EMUs: 6.02 eagles/km^3, Central EMU: 7.46 eagles/km^3, and Pacific EMU: 11.12 eagles/km^3.

(g) *Tenure of permits.* General permits are valid for 5 years from the date of registration. Specific permits may be valid for up to 30 years.

§ 22.260 Permits for incidental take of eagles by power lines.

(a) *Purpose.* The regulations in this section authorize the incidental killing or injury of bald eagles and golden eagles associated with power line activities. Apply using Form 3–200–71.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Avian-safe. A power-pole configuration designed to minimize avian electrocution risk by providing sufficient separation between phases and between phases and grounds to accommodate the wrist-to-wrist or head-to-foot distance of the bird. For eagles, this is 150 centimeters of horizontal separation and 100 centimeters of vertical separation. If sufficient separation cannot be provided, exposed parts that conduct electricity must be covered to reduce electrocution risk. If covers are used, they must be maintained in good condition. For conversions from an above-ground line to a buried line, the buried portion is considered ''avian-safe.'' For purposes of the regulations in this section, ''avian-safe'' means safe for eagles.

Collision response strategy. A plan that describes the process the permittee will follow to identify whether a collision-caused injury or mortality has occurred, to evaluate factors that contributed to the collision, and to implement risk-reduction measures commensurate with the collision risk.

Proactive retrofit strategy. A plan to convert existing infrastructure to avian-safe infrastructure within a set timeline. The strategy must identify a baseline of poles to be proactively retrofit. The existing-infrastructure baseline must include all poles that are not avian-safe for eagles located in areas identified as high risk to eagles and may also include other poles in the service area.

Reactive retrofit strategy. A plan to respond to incidents where eagles are electrocuted or killed. The reactive retrofit strategy must include information on how eagle electrocutions are detected and identified. Determining which poles to retrofit must be based on the risk to eagles and not on other factors (*e.g.,* convenience or cost). The pole that caused the electrocution must be retrofitted unless the pole is already avian-safe. A total of 13 poles or a half-mile segment must be retrofitted, whichever is less, prioritizing the highest risk poles closest to the electrocution event.

Shooting response strategy. A plan that describes the process the permittee will follow when eagles are found killed or injured near power-line infrastructure to identify if shooting is suspected, to communicate with law enforcement, and to identify and implement appropriate shooting reduction measures.

(c) *Eligibility for a general permit for incidental take.* To qualify for a general permit, you must meet the requirements of § 22.210.

(d) *General permit conditions for power lines.* Project permittees must:

(1) Develop a reactive retrofit strategy and implement that strategy following each discovery of an electrocuted eagle. The investigation, documentation, and retrofit design selection must be completed within 90 days of the incident. The retrofit must be implemented within 1 year of the incident and remain effective for 30 years.

(2) Implement a proactive retrofit strategy to convert all existing-infrastructure-baseline poles to avian-safe. Retrofits must remain effective for 30 years.

(i) Investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 50 years. Ten percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.

(ii) Non-investor-owned utilities must retrofit all existing-infrastructure-baseline poles within 75 years. Seven percent of baseline poles must be converted to avian-safe during each permit tenure unless extenuating circumstances apply.

(3) Implement an eagle collision response strategy. Within 90 days of a collision, you must complete an investigation where the collision occurred by documenting the factors contributing to the collision and identifying appropriate risk-reduction measures. You must implement selected risk-reduction measures at the location of the collision within 1 year of the incident.

(4) Implement an eagle shooting response strategy. The strategy must include a protocol for immediately contacting the Office of Law Enforcement (in no case more than 72 hours from discovery) when finding eagle remains or an injured eagle near power line infrastructure in circumstances that suggest the eagle may have been shot. If multiple shooting events occur in the service area during the permit tenure, the strategy should describe and provide for the implementation of reasonable shooting-reduction measures.

(5) Train personnel to scan for eagle remains when onsite and implement internal reporting and recordkeeping procedures for discovered eagles.

(6) Ensure that all new construction and rebuild or replacement of poles in areas of high risk for eagles is avian-safe unless this requirement would unduly impact human health and safety, require overly burdensome engineering, or have significant adverse effects on biological, cultural, or historical resources.

(7) For new construction and rebuild, reconstruction, or replacement projects, incorporate information on eagles into siting and design considerations. Minimize eagle risk by siting away from eagle-use areas (*e.g.,* nests and winter roosts), accounting for the risk to and population status of the species, unless this requirement would unduly impact human health and safety; require overly burdensome engineering; or have significant adverse effects on biological, cultural, or historical resources.

(8) Comply with all relevant regulations and permit conditions of part 21 of this subchapter.

(9) Submit required reports to the Service using Form 3–202–15.

(10) Pay the required application and administration fee as set forth in § 13.11(d)(4) of this subchapter.

(e) *Specific permit for incidental take*—(1) *Eligibility.* Any entity conducting power line activities that meet the requirements of § 22.200 may apply for a specific permit.

(2) *Conditions.* You must comply with the conditions required in § 22.200. Your permit conditions will include the relevant general-permit conditions from paragraph (d) of this section. Compensatory mitigation may be required when appropriate, including if general permit conditions cannot be met.

(f) *Tenure of permits.* Power line general permits are valid for 5 years. Specific permits may be valid for up to 30 years.

§ 22.280 Permits for disturbance take of eagles.

(a) *Purpose.* The regulations in this section authorize the take of bald eagles or golden eagles by disturbance, as defined in § 22.6. Apply using Form 3–200–91. Permits to authorize disturbance associated with hazing eagles or eagle nest take are not authorized under this section. A permit is not required when an activity that may ordinarily disturb eagles is ongoing at the time an eagle pair initiates nesting because the nesting eagles are presumed to tolerate the activity.

(b) *Eligibility for a general permit for disturbance.* To qualify for a general permit, you must meet the requirements of § 22.210, and your activities must comply with the provisions set forth in paragraphs (b)(1) through (9) of this section. If permanent loss of a territory may occur, a specific permit is recommended because general permits for disturbance do not authorize the permanent loss of a territory. General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant. The following activities are eligible for a general permit:

(1) Building construction and maintenance within 660 feet of a bald eagle nest.

(2) Linear infrastructure construction and maintenance (*e.g.,* roads, rail, trails, power lines, and other utilities) within 660 feet of a bald eagle nest.

(3) Alteration of shorelines and water bodies (*e.g.,* shorelines, wetlands, docks, moorings, marinas, and water impoundment) within 660 feet of a bald eagle nest.

(4) Alteration of vegetation (*e.g.,* mowing, timber operations, and forestry practices) within 660 feet of a bald eagle nest.

(5) Motorized recreation (*e.g.,* snowmobiles, motorized watercraft, etc.) within 330 feet of an in-use bald eagle nest.

(6) Nonmotorized recreation (*e.g.,* hiking, camping, fishing, hunting, canoeing, etc.) within 330 feet of an in-use bald eagle nest.

(7) Aircraft operation (*e.g.,* helicopters and fixed-wing aircraft) within 1,000 feet of an in-use bald eagle nest.

(8) Prescribed burn operations within 660 feet of a bald eagle nest.

(9) Loud, intermittent noises (*e.g.,* blasting) within one-half-mile of an in-use bald eagle nest.

(c) *Eligibility for a specific permit for disturbance.* To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are for disturbance of a golden eagle nest, disturbance of a bald eagle nest by an activity not specified in paragraph (b) of this section, or disturbance of eagles caused by physical or functional elimination of all foraging area within a territory.

(d) *Disturbance permit conditions.* (1) To the maximum degree practicable, implement measures to avoid and minimize nest disturbance, including disturbance due to noise from human activities, visibility of human activities, proximity of activities to the nest, habitat alteration, and any indirect stressors.

(2) Avoid activities that may negatively affect the nesting substrate, including the survival of the nest tree.

(3) Monitor in-use nests sufficiently to determine whether nestlings have fledged from the nest. Include this information in your annual report.

(e) *Reporting.* You must submit an annual report using Form 3–202–15. The annual report is due on the date specified on your permit or prior to requesting renewal of your permit, whichever is first.

(f) *Tenure of permits.* General permits for disturbance issued under the regulations in this section are valid for a maximum of 1 year. The tenure of specific permits for disturbance is set forth on the face of the permit and may not exceed 5 years.

§ 22.300 Permits for take of eagle nests.

(a) *Purpose.* This section authorizes the take of a bald eagle nest or a golden eagle nest, including relocation, removal, and otherwise temporarily or permanently preventing eagles from using the nest structure for breeding, when there is no practicable alternative that would protect the interest to be served. Apply using Form 3–200–72.

(b) *Definitions.* The following terms used in this section have the meanings set forth in this paragraph (b):

Nest take for emergency. Take of an in-use or alternate eagle nest when necessary to alleviate an existing safety emergency for humans or eagles or to prevent a rapidly developing situation that is likely to result in a safety emergency for humans or eagles.

Nest take for health and safety. Take of an eagle nest when the removal is necessary to ensure public health and safety. Nest take for health and safety is limited to in-use nests prior to egg laying or alternate nests.

Nest take for human-engineered structure. Take of an eagle nest built on a human-engineered structure that creates, or is likely to create, a functional hazard that renders the structure inoperable for its intended use. Take is limited to in-use nests prior to egg-laying or alternate nests.

Nest take for species protection. Take of an eagle nest when nest removal is necessary to protect a species federally protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544) and included on the List of Endangered and Threatened Wildlife (at § 17.11 of this subchapter). Take is limited to in-use nests prior to egg laying or alternate nests.

Other purposes. Take of an alternate eagle nest, provided the take is necessary to protect an interest in a particular locality and the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.

(c) *Eligibility for a general permit for nest take.* To qualify for a general permit, you must meet the requirements of § 22.210.

(1) General permits are available for bald eagle nest take for emergency, nest take for health and safety, or nest take for a human-engineered structure, or, if located in Alaska, other purposes.

(2) General permits are not available for take of golden eagle nests. General permits are not available for bald eagle nests if removal may result in the complete loss of a territory.

(3) General permits are not available if the nest is located in Indian country (18 U.S.C. 1151), unless the Tribe is the applicant.

(d) *Eligibility for a specific permit for nest take.* To qualify for a specific permit, you must meet the requirements of § 22.200. Specific permits are required for take of a golden eagle nest for any purpose, nest take for species protection, and, except in Alaska, nest take for other purposes.

(e) *Permits for species protection.* If you are applying for a nest-take permit for species protection, you must:

(1) Be a Federal, State, or Tribal agency responsible for implementing actions for the protection of the species of concern.

(2) Include documentation that:

(i) Describes relevant management efforts to protect the species of concern.

(ii) Identifies and describes how the nesting eagles are a limiting factor to recovery of the species using the best available scientific information and data.

(iii) Explains how take of eagle nests is likely to have a positive effect on recovery for the species of concern.

(f) *Permit conditions for nest take.* Permit conditions may include requirements to:

(1) Adjust the timing of your activity to minimize the effects of nest take on eagles.

(2) Place an obstruction in the nest or nest substrate.

(3) Minimize or deter renesting attempts that would cause the same emergency, safety, or functional hazard.

(4) Relocate the nest or provide suitable nesting substrate within the same territory.

(5) Remove chicks or eggs from an in-use nest for immediate transport to a foster nest, rehabilitation facility, or as otherwise directed by the Service.

(6) If nestlings or eggs are relocated with a nest or to a foster nest, monitor the nest to ensure adults are tending to nestlings or eggs.

(7) Monitor the area near the nest removal for one or more seasons to determine the effect on eagles.

(8) Submit an annual report using Form 3–202–16.

(g) *Tenure of permits.* General permits issued under this section are valid until the start of the next breeding season, not to exceed 1 year. The tenure of specific permits is set forth on the face of the permit and may not exceed 5 years.

§ 22.75 [Redesignated as § 22.235]

■ 14. Redesignate § 22.75 as § 22.325 and transfer to subpart E.

■ 15. Amend newly designated § 22.325 by:

■ a. Revising the section heading; and

■ b. In the introductory text, removing the three sentences that follow the first sentence.

The revision reads as follows:

§ 22.325 Permits for golden eagle nest take for resource recovery operations.

* * * * *

§ 22.90 [Redesignated as § 22.400]

■ 16. Redesignate § 22.90 as § 22.400 and transfer to subpart E.

§ 22.400 [Amended]

■ 17. Amend newly designated § 22.400 in paragraphs (a) and (b) by removing the words ''the effective date of 50 CFR 22.80'' and adding in their place the words ''November 10, 2009''.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–02182 Filed 2–8–24; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

Vol. 89 Monday,

No. 29 February 12, 2024

Part III

Federal Communications Commission

47 CFR Part 64

Data Breach Reporting Requirements; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 22–21; FCC 23–111, FR ID 198806]

Data Breach Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies the Commission's data breach notification rules to better ensure that providers of telecommunications, interconnected Voice over Internet Protocol (VoIP), and telecommunications relay services (TRS) are held accountable in their obligations to safeguard sensitive customer information, and to provide customers with the tools needed to protect themselves in the event that their data is compromised.

DATES: This rule is effective March 13, 2024, except for the amendments codified at 47 CFR 64.2011 and 64.5111, instructions 3 and 4, respectively, which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective dates for the amendments to 47 CFR 64.2011 and 64.5111.

FOR FURTHER INFORMATION CONTACT: Mason Shefa, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2494, *mason.shefa@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WC Docket No. 22–21; FCC 23–111, adopted on December 13, 2023 and released on December 21, 2023. The document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-111A1.pdf.* 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).

Final Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new or modified 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.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Report and Order

1. In this Order, the Commission adopts several proposals from the *Data Breach Notice,* 88 FR 3953 (Jan. 23, 2023), to modernize its data breach requirements. The Commission's breach notification rule provides an important protection against improper use or disclosure of customer data, helping to ensure that carriers are held accountable and providing customers with the tools to protect themselves in the event that their data is compromised. However, in the 16 years since the Commission adopted its data breach reporting rule—designed to protect customers against the threat of ''pretexting''—data breaches have only grown in frequency and severity. As discussed below, the Commission finds that these changes will better protect consumers from improper use or disclosure of their customer information and harmonize its rules with new approaches to protecting the public already deployed by the Commission's partners in Federal and State government. To the extent that this Report and Order does not expressly address a topic that was subject to comment in the *Data Breach Notice,* that issue remains pending.

2. The Commission first expands the scope of its breach notification rules to cover not just CPNI, but all PII. The Commission next adopts its proposal to expand its definition of ''breach'' for telecommunications carriers to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or further disclosed. The Commission also adopts its proposal to require carriers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, but no later than seven business days, after reasonable determination of a breach. The Commission next eliminates the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. The Commission also eliminates the mandatory waiting period for carriers to notify customers, and instead requires carriers to notify customers of breaches of covered data without unreasonable delay after notification to Federal agencies, and in no case more than 30 days following reasonable determination of a breach, unless a delay is requested by law enforcement. Finally, to ensure that TRS consumers enjoy the same level of protection under its rules as consumers of telecommunications services, the Commission adopts equivalent requirements for TRS providers.

A. Defining ''Breach''

1. Scope of Protected Consumer Information

3. In the *Data Breach Notice,* the Commission recognized that carriers possess proprietary information of customers other than CPNI, which customers have an interest in protecting from public exposure; the notice sought comment on requiring carriers to report breaches of such information. The Commission concludes that carriers should be obligated to comply with its breach notification rule whenever such information is the subject of a breach, whether or not the information is CPNI.

4. The pervasiveness of data breaches and the frequency of breach notifications have evolved and increased since the Commission first adopted its breach notification rule in 2007. As discussed in the *Data Breach Notice,* the Commission's requirement is one of several sector-specific Federal breach notification laws in the United States. All State data breach notification requirements explicitly include categories of sensitive personal information within their scope, as do sector-specific Federal laws. The Commission believes that the unauthorized exposure of sensitive personal information that the carrier has received from the customer (*i.e.,* information ''of the customer''), or about the customer (*i.e.,* information ''relating to'' the customer), in connection with the customer relationship (*e.g.,* initiation, provision, or maintenance, of service), such as social security numbers or financial records, is reasonably likely to pose risk of customer harm. Accordingly, any unauthorized disclosure of such information warrants

notification to the customer, the Commission, and other law enforcement. Consumers expect that they will be notified of substantial breaches that endanger their privacy, and businesses that handle sensitive personal information should expect to be obligated to report such breaches.

5. The Commission requires notification of breaches that involve PII, which is a well-understood concept and thus a readily administrable way of requiring breach notifications in the case of proprietary information. The Commission rejects claims that it did not provide sufficient notice to define the scope of protected consumer information in this manner. In the *Data Breach Notice* the Commission sought comment on ''requir[ing] telecommunications carriers to report breaches of proprietary information other than CPNI under Section 222(a),'' in which case commenters were asked to address ''how broadly or narrowly [the Commission should] define that category of information.'' This provided notice that the Commission could define the scope of protected information to encompass all or any subset of the universe of proprietary information encompassed by section 222(a). And as the Commission explains below, the scope of customer information encompassed by section 222(a) is best interpreted to include PII, and the Commission defines the scope of its breach notification rules to include PII subject to the additional limitations that the Commission adopts below. The Commission therefore concludes that there was sufficient notice for the approach the Commission adopt. The definition of PII is aptly described in OMB Circular A-130, ''Managing Information as a Strategic Resource,'' as ''information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.'' CPNI is a subset of PII. As discussed below, this approach of holding carriers responsible for reporting breaches of PII is supported independently and alternatively by construing the phrase ''proprietary information of . . . customers'' in section 222(a) as covering all information defined as PII, and by recognizing that section 201(b)'s just-and-reasonable-practices obligation requires protection of PII.

6. For the purposes of its breach notification rules, the Commission further defines the scope of covered PII as (1) first name or first initial, and last name, in combination with any government-issued identification numbers or information issued on a government document used to verify the identity of a specific individual (including, but not limited to, Social Security Number, driver's license number or State identification number, Taxpayer Identification Number, passport number, military identification number, Tribal identification card, or any other Federal or State government-issued identification card), or other unique identification number used for authentication purposes (including, but not limited to, a financial institution account number, student identification number, or medical identification number); (2) user name or email address, in combination with a password or security question and answer, or any other authentication method or information necessary to permit access to an account (including, but not limited to, Personal Identification Numbers, private keys that are unique to an individual and are used to authenticate or sign an electronic record; unique electronic identifiers or routing codes, in combination with any required security code, access code, or password that would permit access to an individual's financial account; or shared secrets or security tokens that are known to be used for data-based authentication); or (3) unique biometric, genetic, or medical data (including, but not limited to, fingerprints, faceprint, a retinal or iris scan, hand geometry, voiceprint analysis, or other unique biometric data generated from a measurement or analysis of human body characteristics to authenticate or ascertain an individual's identity; genetic data such as deoxyribonucleic acid data; and medical records, or other information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional). Moreover, dissociated data that, if linked, would constitute PII is to be considered PII if the means to link the dissociated data were accessed in connection with access to the dissociated data, and any one of the discrete data elements listed above or any combination of the discrete data elements listed above is PII if the data element or combination of data elements would enable a person to commit identity theft or fraud against the individual to whom the data element or elements pertain.

7. This approach brings the Commission's definition of covered data in line with the approaches taken at the State level, and responds to concerns raised in the record by certain parties regarding harmonization with existing breach notification regimes. In order to further harmonize its approach with analogous State law, the Commission also adopts an exception from its definition of PII for publicly available information that is lawfully made available to the general public from Federal, State, or local government records or widely distributed media. Notwithstanding these limitations, the Commission will monitor the data security landscape and will not hesitate to revisit and revise the list of data elements in a future rulemaking as necessary to ensure that carriers adequately protect sensitive customer data.

8. Without an FCC rule requiring breach notifications for the above categories of PII, there would be no requirement in Federal law that telecommunications carriers report non-CPNI breaches to their customers. CTIA's objection that doing so would ''[c]reat[e] a system of dual jurisdiction between the FCC and the FTC'' is unpersuasive. CTIA asserts that ''[c]ustomers do not expect different privacy protections for the same data depending on which entity holds the data or the kind of product or service that is being marketed'' but concedes the FTC's lack of authority in the common carrier context. By the statutory design of the Communications Act and the FTC Act, Congress assigned differing areas of responsibility to the FCC and FTC, and CTIA identifies no grounds for the Commission to ignore its responsibilities with respect to common carriers. By ensuring that the same data breach notification requirements also apply to interconnected VoIP and TRS providers, the Commission advances the interest of ensuring that consumers can have the same expectations regarding services that they view as similar. The approach the Commission adopts therefore not only reflects the practical expectations of consumers but also honors the intention of Congress. For example, as discussed in more detail below, Congress ratified the Commission's 2007 decision to extend section 222-based privacy protections for telecommunications service customers to the customers of interconnected VoIP providers. And ensuring equivalent protections for TRS subscribers advances Congress' directive to endeavor to ensure functionally equivalent service. Despite NCTA's suggestion that ''there is no other 'proprietary information' between a provider and its customer that is not CPNI but is covered by Section 222,'' the Commission has investigated several instances of breaches involving

sensitive personal information about customers held by telecommunications carriers that was not or may not have been CPNI. The Commission has also in the past concluded that names, addresses, and telephone numbers are not CPNI, even when a customer has elected not to have them disclosed publicly, and that such information therefore would not be subject to the CPNI-specific restrictions on use in section 222(c). The Commission finds that such information can be sensitive and warrants protection, including a requirement that the Commission, law enforcement, and customers be notified about breaches. Indeed, because consumers expect to be notified of substantial breaches that endanger their privacy, it better protects customers that breach notifications not turn on whether a particular breached element is or is not CPNI.

2. Inadvertent Access, Use, or Disclosure of Covered Data

9. Consistent with the *Data Breach Notice's* proposal, the Commission expands the Commission's definition of ''breach'' to include inadvertent access, use, or disclosure of covered data. Specifically, the Commission defines ''breach'' as any instance in which a person, without authorization or exceeding authorization, has gained access to, used, or disclosed covered data. While the practice of pretexting that spurred the Commission to act in 2007 necessarily involves an intent to gain access to customer information, the record before the Commission here amply demonstrates that the inadvertent exposure of customer information can result in the loss and misuse of sensitive information by scammers and phishers, and trigger a need to inform the affected individuals so that they can take appropriate steps to protect themselves and their information. The Commission agrees with the wide range of commenters that recognize that any exposure of customer data can risk harming consumers, regardless of whether the exposure was intentional. As the Accessibility Advocacy and Research Organizations (AARO) argue, ''[t]he Commission must adapt to an ever changing technological environment, which implicates all kinds of privacy concerns, and adopt measures that can effectively counter increasingly complex and evolving breaches.'' In order to address these risks, carriers not only must reasonably protect covered information as required by the Act and the Commission's rules, but also must inform affected individuals so that they can take appropriate steps to protect themselves and their information where breaches occur. In addition, notification of both intentional and unintentional breaches to the Commission and other Federal law enforcement will aid investigations and help prevent new breaches or further harm to consumers. The Commission expects that its broadening of ''breach'' to include inadvertent exposure will encourage telecommunications carriers to adopt stronger data security practices, and will help Federal agencies identify and address systemic network vulnerabilities.

10. The record supports the Commission's observation in the *Data Breach Notice* that breaches have become more prevalent and more severe in recent years. In 2021, the Identity Theft Resource Center ''estimated a record-breaking 1,862 data breaches,'' and a survey from IBM has exposed ''a recent decline in response capabilities'' due to ''informal or ad hoc'' data security plans. This rising tide of data breaches has affected the telecommunications sector as well. As the Electronic Privacy Information Center (EPIC) points out, the proprietary information of subscribers of each of the three largest carriers ''has been breached at least once within the last five years.'' Indeed, in February 2020, the Commission proposed more than $200 million in fines against AT&T, Sprint, T-Mobile, and Verizon, for apparently failing to adequately protect consumer location data. In each case, the Commission found that the carriers' apparently lacked adequate oversight over third-party location aggregators' use of their phone subscribers' location data, leading to the disclosure of their respective customers' location information, without consent, to third parties who were not authorized to receive it.

11. Given these worrying trends, the Commission agrees with EPIC that its expansion of ''breach'' to include inadvertent exposures is a necessary first step to galvanize carriers to strengthen their data security policies and oversight of customer data. In particular, broadening the breach definition will better enable the marketplace to respond to the relative strengths of particular carriers' practices and enhance the Commission's ability to identify where additional regulatory oversight might be needed. Removing the intent limitation in the Commission's breach reporting rule will reduce ambiguity regarding whether reporting a breach is necessary, and therefore decrease the risk of underreporting. Finally, the Commission's expansion of ''breach'' to include inadvertent access, use, or disclosure of customer information brings the Commission's rules in line with the overwhelming majority of State and Federal breach notification laws and regulations that lack such an intent limitation, ensuring that consumers nationwide—along with the Commission and other relevant Federal authorities—likewise receive critical breach notifications in a timely manner.

12. Notwithstanding these benefits, the Commission acknowledges concerns expressed by carriers that its expansion of the ''breach'' definition to include inadvertent disclosures, on its own, could lead to ''notice fatigue'' for consumers, deplete Commission and law enforcement resources, or increase the burden of reporting obligations. The Commission is unpersuaded by the arguments of Lincoln Network, which goes even further and contends that data breach reporting requirements would implicate the major questions doctrine. Lincoln Networks focuses solely on the alleged economic impact of the requirement to the exclusion of other considerations, and even then provides no meaningful sense of the likely magnitude of such effects—citing total estimated economic costs of breaches and asserting in a conclusory manner that ''it is reasonable to conclude that at least some of the cost per breach is assignable to notification,'' without quantifying the cost associated with such notifications, let alone any portion attributable specifically to FCC breach notification rules. The Commission thus is unpersuaded that the major questions doctrine is implicated here. In any case, the Commission explains below why these rules fall comfortably within the Commission's statutory authority. In response to these concerns, as discussed below, the Commission exempt from its expanded definition of ''breach'' a good-faith acquisition of customer data by an employee or agent of a carrier where such information is not used improperly or further disclosed. The Commission also adopts a ''harm-based notification trigger,'' such that notification of a breach to consumers is not required in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed. As discussed below, the Commission also finds that its adoption of a minimum threshold for the number of customers affected to trigger its requirement to notify the Commission and other Federal law

enforcement regarding breaches where there is no reasonable likelihood of harm will further reduce carriers' reporting burdens, and make more efficient use of agencies' resources. Although carriers' obligation to protect covered information under section 222 of the Act and the Commission's implementing rules is not limited just to scenarios where there is actual evidence of consumer harms, these common-sense limitations on the Commission's disclosure requirements are well-supported by the record and are consistent with most State and Federal data breach notification regimes. Taken together, the Commission finds that these carve-outs will mitigate any legitimate concerns expressed by commenters in the record regarding the potential for consumer notice fatigue and undue burdens on Federal agencies and carriers by triggering the requirements in situations where the Commission finds disclosures most strongly justified.

13. In the *Data Breach Notice,* the Commission also sought comment on whether it should ''expand the definition of a breach to include situations where a telecommunications carrier or a third party discovers conduct that could have reasonably led to exposure of customer CPNI, even if it has not yet determined if such exposure occurred.'' Commenters generally oppose such an expansion, arguing that it could result in over-notification to customers and to government entities, impeding carriers' and the government's investigation of actual breaches, and needlessly frightening consumers. While the Commission believes that notification of situations in which customer data are put at risk has value, no commenter in the record provides evidence in support of such an approach. The Commission nevertheless expects that in such situations, carriers will work reasonably and efficiently to confirm whether or not actual exposure has occurred. While the Commission declines at this time to amend the definition of breach to include situations where a carrier or third party has not yet determined if an exposure of covered data has occurred, the Commission also notes that it does not prohibit carriers from providing notice in such situations to their customers if, for example, they determine that doing so is appropriate under the circumstances. While the Commission has not expanded the definition of data breach to include situations where customer data is put at risk but not exposed, it notes that the threshold for reporting a breach is separate from the obligation to ''protect the confidentiality of proprietary information'' and to ''take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.'' 47 U.S.C. 222(a); 47 CFR 64.2010(a). Not only may a breach that does not meet the reporting threshold still reflect a violation of section 222 of the Act or an unreasonable practice in violation of 64.2010(a) of the rules, but a carrier can violate section 222 of the Act or section 64.2010(a) of the rules even in the absence of any breach. The Commission also will continue to monitor how such situations impact customers, and reserve the ability to expand the breach definition to cover such situations in the future, should the Commission find such an expansion is warranted.

3. Good-Faith Exception

14. The Commission excludes from the definition of ''breach'' a good-faith acquisition of covered data by an employee or agent of a carrier where such information is not used improperly or further disclosed. In the *Data Breach Notice,* the Commission used the term ''exemption'' instead of ''exception'' when asking commenters whether the Commission should exclude from the definition of ''breach'' a good-faith acquisition of covered data. For the purpose of clarity, the Commission instead uses the word ''exception'' here to describe this exclusion. While the Commission makes this exception to its definition of ''breach,'' it nevertheless expects carriers to ''take reasonable measures'' in such scenarios to protect such customer information from improper use or further disclosure, which may, for example, involve requiring that such an employee or agent destroy the data upon realizing that the data was disclosed without, or in excess of, authorization. As noted above and in the *Data Breach Notice,* the vast majority of State statutes include a similar exception from the definition of ''breach,'' and commenters overwhelmingly agree that such an exception is appropriate. As Blooston Rural Carriers argues, a good-faith exception will prevent carriers from ''unnecessarily confus[ing] and alarm[ing] consumers'' in such low-risk situations. The Commission also agrees with National Rural Electric Cooperative Association (NRECA) that, without this exception, ''more serious data breaches [will potentially] become lost in the 'noise' of multiple notifications.'' The Commission therefore finds that its good-faith exception will help avoid excessive notifications to consumers, and reduce reporting burdens on carriers. CTIA and NCTA's arguments about the Commission's allegedly overly broad definition of harm to trigger customer notifications of breaches of covered data, and their expressed concerns about excessive reporting to Federal agencies, do not account for the fact that this good-faith exception removes an entire category of breaches from the scope of reporting covered by the Commission's rules as a threshold matter. As a result, the Commission is unpersuaded by these parties' cursory claims about possible notice fatigue, consumer confusion or frustration, and interference with data breach investigations.

15. The Commission disagrees with EPIC that its adoption of a good-faith exception would ''weaken privacy and data security protections for consumers.'' In support of these claims, EPIC cites instances in which employees, ''either through bribery or inadequate training, were illegally disclosing consumer information to pretexters claiming to have authorization to access subscriber information.'' The Commission does not find that these situations justify taking a different approach; indeed, the exception the Commission adopts would not apply in the scenarios outlined by EPIC. First, the good-faith exception relieves carriers from reporting obligations only where customer information is not used improperly or further disclosed, and in EPIC's example, the information was, intentionally or not, further disclosed to a pretexter. Second, in circumstances where an employee improperly discloses consumer information due to bribery, the employee disclosing the information is, by definition, not acting in ''good faith,'' and therefore such an incident would still be considered a breach under the Commission's rules.

B. Notifying the Commission and Other Federal Law Enforcement of Data Breaches

1. Requiring Notification to the Commission

16. As proposed in the *Data Breach Notice,* the Commission requires telecommunications carriers to notify the Commission of a breach in addition to notification to the Secret Service and FBI. The Commission continues to require carriers to notify the Secret Service and the FBI because doing so enables law enforcement to investigate the breach, ''which could result in legal action against the perpetrators, thus ensuring that they do not continue to breach CPNI.'' Moreover, law enforcement investigations into how breaches occurred would enable law

enforcement to advise the carrier and the Commission to take steps to prevent future breaches of that kind. The Commission will maintain a link to the reporting facility at *http://www.fcc.gov/eb/cpni* or a successor URL designated by the Wireline Competition Bureau (Bureau). As the Commission found when it adopted the current data breach rules, notifying law enforcement of a breach is consistent with the goal of protecting customers' personal data because it enables such agencies to investigate the breach, ''which could result in legal action against the perpetrators,'' thus ensuring that they do not continue to breach sensitive customer information. The Commission also anticipated that law enforcement investigations into how breaches occurred would enable law enforcement to advise providers and the Commission to take steps to anticipate and prevent future breaches of a similar nature. Addition of the Commission as a recipient of Federal-agency breach notifications is consistent with other Federal sector-specific laws, which require prompt notification to the relevant subject-matter agency. As large-scale security breaches resulting from lax or inadequate data security practices and employee training have become more common since the *2007 CPNI Order,* notifying the Commission of breaches will provide Commission staff with important information about data security vulnerabilities and threat patterns that Commission staff can help address and remediate. Commission notification will also shed light on carriers' ongoing compliance with the Commission's rules. Consistent with its proposal and the record in response to the *Data Breach Notice,* the Commission requires carriers to notify the Commission of a reportable breach contemporaneously with the Secret Service and FBI. As stated in the *Data Breach Notice,* requiring carriers to notify the Commission, Secret Service, and FBI at the same time will minimize burdens on carriers, eliminate confusion regarding obligations, and streamline the reporting process, allowing carriers to free up resources that can be used to address the breach and prevent further harm. Commenters support a single, contemporaneous notification to the Commission, Secret Service, and FBI.

17. The majority of commenters support including the Commission in data breach notifications. WISPA opposes contemporaneous notification to the Commission ''[i]f the Commission were to require separate notice.'' Because the Commission is not requiring separate notification to the Commission, but are merely adding the Commission as a recipient of breach notifications submitted through the preexisting central reporting facility, the Commission expects that this should allay WISPA's concern. Many of these commenters agree, however, that this new notification requirement should not create new obligations which are duplicative or inconsistent with the preexisting requirement to notify law enforcement agencies, and should instead entail one notification sent to all three. The Commission agrees with these suggestions, as the Commission sees no need for carriers to file separate or differing notifications to the Commission. As discussed below, the Commission delegates authority to the Bureau to coordinate with the Secret Service to adapt the existing central reporting facility for reporting breaches to the Commission and other Federal law enforcement agencies. Additionally, as discussed below, the Commission does not impose differing content requirements for notifications to the different agencies.

18. The Commission disagrees with commenters that oppose requiring breach notification to the Commission. For example, ITI and WISPA argue that the existing requirement to notify the Secret Service and the FBI is sufficient, and that notification to the Commission is unnecessary. WISPA also argues that notification to the Commission would hinder law enforcement investigation efforts, and attempts to distinguish the other Federal regulations that require notification to sector-specific agencies as less burdensome than the Commission notification adopted here. The Commission is unpersuaded by these arguments. First, as mentioned above, the requirement to notify the Commission of covered data breaches is necessary to ensure that Commission staff are informed of new types of security vulnerabilities that arise in today's fast-changing data security environment. Additionally, the Commission disagrees with WISPA that adding the Commission as a recipient of Federal-agency notifications would hinder law enforcement investigation efforts, given the lack of impact the addition will have on the timing, content, or format of notification to the other law enforcement agencies. Indeed, the Secret Service is supportive of the Commission receiving such notifications. Furthermore, the Commission's action here avoids adding any additional burden on filers by merely adding the Commission to the list of recipients of the same breach notifications Commission rules already require carriers to submit, and, as discussed in further detail below, further streamlines the filing process by adapting the existing reporting facility for submission. This should also address WISPA's concern that a contemporaneous, but separate, notice to the Commission would impact initial efforts to assess a breach. For these reasons, the Commission does not expect carriers of any size to experience increased regulatory burdens as a result of the Commission notification requirement. Moreover, to the extent that carriers are faced with any minimal burdens, such burdens are well justified by the value of these reports to Federal law enforcement agencies and the Commission.

2. Threshold Trigger for Federal-Agency Notification

19. The Commission requires carriers to inform Federal agencies, via the central reporting facility, of all breaches, regardless of the number of customers affected or whether there is a reasonable risk of harm to customers. For breaches that affect 500 or more customers, or for which a carrier cannot determine how many customers are affected, the Commission requires carriers to file individual, per-breach notifications as soon as practicable, but no later than seven business days, after reasonable determination of a breach. As described below, these notifications must include detailed information regarding the nature of the breach and its impact on affected customers. This same type of notification, and the seven business day timeframe for submission, will also be required in instances where the carrier has conclusively determined that a breach affects fewer than 500 customers unless the carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. As discussed below, for breaches affecting fewer than 500 customers and which do not meet the harm-based trigger, the Commission instead requires carriers to submit an annual summary of such incidents. For breaches in which a carrier can reasonably determine that a breach affecting fewer than 500 customers is not reasonably likely to harm those customers, the Commission requires the carrier to file an annual summary of such breaches via the central reporting facility, instead of a notification. To ensure that carriers may be held accountable regarding their determinations of a breach's likelihood of harm and number of affected customers, the Commission requires carriers to keep records of the bases of those determinations for two years. The

Commission also notes that carriers may voluntarily file notification of such a breach in addition to, but not in place of, this annual summary filing. In circumstances where a carrier initially determines that contemporaneous breach notification to Federal agencies is not required under these provisions, but later discovers information that would require such notice, the Commission clarifies that a carrier must report the breach to Federal agencies as soon as practicable, but no later than seven business days of their discovery of this new information. For example, if a carrier initially determines that Federal agency notification within seven business days is not required because a breach affects fewer than 500 customers and harm to customers is not reasonably likely to occur, but later discovers new information suggesting that more than 500 customers were affected, or that harm to customers has occurred, or is likely to occur, as a result of the breach, then the carrier must notify Federal agencies as soon as practicable, but no later than within seven business days of this discovery.

20. Given the Commission's expansion of the definition of ''breach'' in today's Order to include inadvertent exposure of CPNI and other types of data, allowing carriers to file information regarding smaller, less risky breaches in a summary format on an annual basis will tailor administrative burdens on carriers to reflect those scenarios where reporting is most critical. The Commission is unpersuaded by NCTA's contention that its rule for data breach reporting to Federal agencies is ''likely to tax resources and limit the regulator's ability to identify the most problematic practices and act to protect consumers'' and result in harm due to lack of harmonization. The Commission is likewise unpersuaded by CTIA's similar contention that ''the FCC is not currently equipped to 'become a repository for threat detection and monitoring' '' and that the ''flood of information threatens to distract FCC and Law Enforcement staff from real and potentially harmful security threats.'' These parties offer only generalized assertions in that regard without any evidence or analysis demonstrating concrete harms that are likely to result in practice. At the same time, NCTA and CTIA appear to neglect the potential the Commission anticipates for Federal agencies to gain useful insight into trends or particular activities that can lead to consumer harm even if, in a given instance, the reported breach happened not to involve consumer harm (whether under the standard set by Commission rules or in NCTA's and/or CTIA's own subjective judgment). The Commission's setting of a notification threshold is consistent with many State statutes that similarly do not have an intentionality requirement and require notice to State law enforcement authorities. The Commission's adoption of a 500-affected-customer threshold is also consistent with an analogous breach of health records notification required by the Federal Trade Commission (FTC).

21. The vast majority of commenters are supportive of the need for a threshold trigger generally, but are divergent regarding what the numerical threshold should be. NCTA supports a threshold of 500 affected customers for Federal-agency notifications, noting that such a threshold would ''minimize paperwork burdens on providers that wish to focus their resources on protecting customers,'' and cites a variety of State laws that use that threshold. CTIA and Verizon, however, argue that the Commission should set the threshold to be higher than 1,000 to reflect the larger customer bases of larger carriers. CTIA and Verizon do not provide additional reasoning as to why the size of the carrier's customer base is relevant in determining the threshold for Federal-agency notification. If the rationale for adopting a higher threshold for larger carriers is to reduce reporting burdens, the Commission notes that larger carriers likely have more resources than smaller carriers to respond to breach incidents. Verizon, for example, admits that it has ''a team of more than 1,000 professionals dedicated to implementing corporate-wide security controls and constantly monitoring networks to identify and respond to threats.'' Additionally, the Commission and other Federal law enforcement agencies would likely have an investigative interest in breaches affecting 500 or more customers, regardless of the percentage of the overall customer base those customers represent.

22. The Commission finds that the reporting threshold it adopts will both enable the Commission to receive more granular information regarding larger breaches to aid its investigations while also being able to study trends in breach activity through reporting of smaller breaches in annual submissions. Given that a number of States have found such a balance with a 500-affected-customer threshold, the Commission's adoption of this threshold also carries the additional benefit of ''increas[ing] harmonization with [S]tate breach notification statutes.'' The Commission therefore also rejects rural carriers' suggestion that it adopt a 5,000-affected-customer threshold.

23. Finally, as supported by the record, the Commission applies this threshold trigger only to notifications to Federal agencies, and not to customer notifications. Breaches affecting even just a few customers can pose just as much risk to those customers as could breaches with wider impact. For this reason, as discussed above, the Commission continues to require carriers to notify Federal agencies within seven business days of breaches that implicate a reasonable risk of customer harm, regardless of the number of customers affected. Doing so will permit Federal agencies to investigate smaller breaches where there is a risk of customer harm, and also allow law enforcement agencies to request customer notification delays where such notice would ''impede or compromise an ongoing or potential criminal investigation or national security,'' as specified in the Commission's rules.

3. Notification Timeframe

24. The Commission retains its existing requirement that carriers notify Federal agencies of a reportable breach as soon as practicable, but no later than seven business days, after reasonable determination of the breach. As commenters point out, in the text of the *Data Breach Notice,* the Commission occasionally used the phrase ''after discovery of a breach,'' rather than ''after reasonable determination of a breach'' when discussing the appropriate timeframe for Federal-agency notification. However, as the Proposed Rules Appendix makes clear, ''after discovery'' was intended as shorthand, rather than a proposal to substantively change the existing ''after reasonable determination of a breach'' standard. While the *Data Breach Notice* proposed eliminating the seven business day deadline, based on the record in response, the Commission finds that the existing timeframe provides greater certainty for carriers and customers affected by breaches. The Commission agrees with ACA Connects that retaining the seven business day deadline properly balances the need to give carriers ''reasonable time to prioritize remediation efforts before submitting notifications'' with the need to ensure customers receive timely notifications regarding breaches affecting their data. The Commission also agrees with NTCA that there is insufficient evidence that the current timeline ''is inadequate to accomplish the Commission's goals.'' Particularly given its historical

experience with a seven day deadline, the Commission is unpersuaded by conclusory assertions that meeting that deadline might not always be feasible. Additionally, the Commission agrees with NTCA that eliminating the seven business day deadline and only ''requiring breaches to be reported 'as soon as practicable' can be interpreted differently by different carriers or even by law enforcement and the Commission, thereby placing carriers at risk of inadvertently violating the Commission's rules if they construe 'as soon as practicable' differently than the Commission.''

25. The Commission disagrees with the arguments of other commenters that removing the seven business day deadline is necessary to afford carriers of different sizes and means the flexibility to respond to an evolving breach situation and minimize consumer harm, while also providing accurate and detailed notifications to Federal agencies. Given agencies' ability to calibrate their resources based on the volume of notifications, and the Commission's practical experience dealing with investigations at a stage where information might only be preliminary or incomplete, the Commission rejects arguments that burdens on the Commission and other law enforcement agencies justify eliminating the seven day reporting deadline. Carriers have long been subject to the existing seven business day deadline, which was adopted in 2007, and, as EPIC notes, some State jurisdictions require notification to the State attorney general within 3 days. As the Commission points out above, ACA Connects and NTCA—both associations of small-to-medium-sized carriers with presumably fewer resources than larger carriers such as Verizon—support retaining the seven business day time limit. Even assuming, *arguendo,* that the seven business day deadline is a more burdensome or inflexible timeframe for small carriers with ''limited personnel and/or resources,'' the Commission still finds that the countervailing interest in ensuring customers are notified quickly of breaches affecting them outweighs this tailored burden. For this reason, as discussed below, the Commission also removes the seven business day mandatory waiting period between Federal-agency notification and customer notification. The Commission lastly clarifies that ''reasonabl[y] determin[ing]'' a breach has occurred does not mean reaching a conclusion regarding every fact surrounding a data security incident that may constitute a breach. Rather, a carrier will be treated as having ''reasonabl[y] determin[ed]'' that a breach has occurred when the carrier has information indicating that it is more likely than not that there was a breach.

26. While the Commission sets this outer bound for Federal-agency notifications, it expects that larger carriers with significant resources and staffing will routinely be providing notification of breaches to the Commission well within the seven business day deadline, and that other carriers should strive to do so as well. Indeed, the ''as soon as practicable'' standard may require such notifications be made in *fewer* days than the seven business day deadline, and a failure to swiftly report breaches may, depending on the circumstances, be untimely and unreasonable, even if within the seven business day deadline. For example, if a carrier has made all the determinations necessary to conclude that a breach should be reported to law enforcement after only a few days, it would be inconsistent with the ''as soon as practicable'' standard for the carrier to wait until the seventh business day—merely because that is the outer limit—before providing the required notice. The Enforcement Bureau will continue to investigate carriers that have neglected to provide timely notification to Federal agencies after a breach incident pursuant to its delegated authority.

27. *Annual Reporting of Certain Small Breaches.* The Commission requires carriers to submit, via the existing central reporting facility and no later than February 1, a consolidated summary of breaches that occurred over the course of the previous calendar year which affected fewer than 500 customers, and where the carrier could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. The Commission delegates authority to the Bureau to coordinate with the Secret Service regarding any modification to the portal that may be necessary to permit the filing of this annual summary. The Commission also delegates authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau, and based on the record of this proceeding—or any additional notice and comment that might be warranted—to determine the content and format requirements of this filing and direct the Bureau to release a public notice announcing these requirements. The Commission instructs the Bureau to minimize the burdens on carriers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Bureau should develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and consider streamlined ways for filers to report this summary information. The first annual report will be due the first February 1 after the Office of Management and Budget (OMB) approves the annual reporting requirement under the Paperwork Reduction Act. The first report should cover all breaches between the effective date of the annual reporting requirement and the remainder of the calendar year.

28. The Commission disagrees with CTIA's argument that ''there is no regulatory goal served by mandating record keeping'' for incidents affecting fewer customers than the notification threshold. NCTA argues that the annual reporting requirement would ''not provide the Commission with meaningful information to serve its goals of identifying data breach patterns,'' but does not provide more detail as to why such information would not be helpful. Breaches that are limited in scope may still reveal patterns or provide evidence of security vulnerabilities at an early stage. As noted in the *Data Breach Notice* and the *2007 CPNI Order,* notification of all breaches, regardless of the number of customers affected or a carrier's determination of harm, ''could allow the Commission and Federal law enforcement to be 'better positioned than individual carriers to develop expertise about the methods and motives' '' associated with breaches. The Commission therefore finds that this annual summary of smaller breaches will continue to enable the Commission and its Federal law enforcement partners to investigate, remediate, and deter smaller breaches.

29. The Commission also disagrees with NTCA and Southern Linc who argue that ''requiring carriers to maintain records of any breaches that fall below the notification threshold 'will place an unnecessary burden on carriers. . . .' '' On the contrary, the Commission finds that any burdens associated with the annual reporting requirement are likely to be well justified by the countervailing benefits discussed above. Nor do commenters objecting to the burden of the Commission's rules as unwarranted provide a quantification of their anticipated burdens that would overcome the benefits anticipated from those rules. Moreover, this single annual report containing a summary of such

breaches will likely end up replacing numerous smaller breach notifications individually submitted via the central reporting facility throughout the year. Additionally, Commission rules already require carriers to ''maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI.'' The first part of this requirement encompasses all disclosures of CPNI to third parties resulting from a data breach, and thus is broader than the small-breach reporting requirement the Commission adopts today, at least with regard to CPNI.

4. Notification Contents

30. The Commission maintains its existing requirements regarding the contents of data breach notifications to Federal law enforcement agencies, with a minor modification as noted below, and applies these same requirements to notifications to the Commission. The Commission agrees with comments submitted by WISPA arguing that ''the information currently submitted through the FBI/Secret Service reporting facility is largely sufficient and that generally the same information should be reported'' under its updated rules. The Commission also takes this opportunity to codify these categories of information in its rules to improve the ease of identifying the information that will be needed by regulated entities. Specifically, the Commission requires carriers to report, at a minimum, information relevant to the breach, including: carrier address and contact information; a description of the breach incident; the method of compromise; the date range of the incident; the approximate number of customers affected; an estimate of financial loss to the carrier and customers, if any; and the types of data breached. The Commission believes that these disclosures are sufficient to give the Commission and other Federal law enforcement agencies the information needed to determine appropriate next steps, such as, for example, conducting an investigation, determining and advising on how such a breach may be prevented in the future, and informing future rulemakings to protect consumers and businesses from harm. Carriers must update their initial breach notification report if: (1) the carrier learns that, in some material respect, the breach notification report initially submitted was incomplete or incorrect; or (2) additional information is acquired by or becomes known to the carrier after the submission of its initial breach notification report.

31. A number of carriers request changes to, or elimination of, certain fields contained in the notification. In its comments, CCA states that, while it ''does not take a position on the specific contents that should be included in all notifications to law enforcement, to the Commission, or to customers[,] . . . . [t]he detailed information currently reported to law enforcement for purposes of investigation and potential criminal charges is significantly broader than what is necessary and appropriate for the Commission's use. Indeed, over-reporting of such information outside the law enforcement context can introduce additional data-security risks and privacy concerns''. *See* CCA Comments at 7. The Commission notes that CCA does not provide further detail on ''what is necessary and appropriate'' in support of its argument or to aid its consideration. As discussed below, the Commission is unpersuaded by these arguments, and declines to alter the fields of information collected through the notification portal.

32. *Customer Billing Addresses.* ACA Connects, CTIA, and WTA request elimination of the requirement to include the billing addresses of affected customers in notifications. ACA Connects states that this reporting requirement has unclear investigative value, and its elimination would ''minimize the personal information reported to the Commission and law enforcement agencies.'' While the Commission acknowledges that Federal agencies have been directed to minimize the collection, use, storage, and disclosure of personal information to only that which is relevant and necessary to accomplish an authorized purpose, carriers are not in a position to know, in the absence of input from law enforcement agencies in this proceeding, which fields hold investigative value. Furthermore, because the portal was designed by law enforcement agencies themselves, the Commission must assume that their inclusion of this field reflects a determination that such information holds some investigative value. Finally, the Commission notes that the field is not currently marked as a required field. For this reason, the field does not present a reporting burden to carriers, but instead gives carriers an opportunity to provide Federal agencies more detail, should they wish to do so or find such detail relevant. WTA argues that ''billing names and addresses . . . are not classified as CPNI,'' and thus should be omitted from the form. The Commission's expansion of covered data to include information beyond CPNI renders this argument moot.

33. *Estimate of Financial Loss.* WTA argues that ''estimated financial loss'' is ''impossible to determine or predict with any degree of accuracy during the brief and chaotic period immediately following discovery of a data breach.'' The Commission declines to modify or remove this field. While it understands that estimating financial loss is a complex and context-specific calculation, the Commission emphasizes the critical importance of this data point in helping Federal agencies allocate their resources. Additionally, while carriers should strive to provide in their notifications as accurate a value as possible, the Commission notes that even a ballpark estimate or a range of quantities can help agencies determine an incident's priority for the purposes of opening or conducting investigations, and understand the magnitude of future risk posed by certain vulnerabilities.

34. *Other Fields.* CTIA identifies two fields which it argues are no longer necessary given the Commission's change to the reporting threshold for Federal-agency notifications, as discussed below. Specifically, CTIA requests that the Commission remove the fields regarding whether the breach ''resulted from a change of [a customer's] billing address'' or was based on ''a personal issue between two individuals.'' The Commission declines to do so. First, these fields are not marked as ''required'' on the form, and thus create no burden on reporting carriers that do not wish to complete them, while providing an opportunity for carriers to submit that information where applicable if they find it helpful or appropriate to do so. Second, under the Commission's revised rules, a breach stemming from a personal issue between two individuals or a change of a single customer's billing address may still trigger notification to Federal agencies. The reporting threshold only impacts the need to notify Federal agencies of breaches affecting fewer than 500 customers that do not implicate harm. As stated below, even small breaches may cause harm for the few customers affected by them. CTIA also requests elimination of the field that asks whether ''the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers'' before ''7 full business days have passed.'' CTIA argues that ''[r]emoving this field is consistent [with] the NPRM's proposal to eliminate the seven-business-day waiting period.'' The Commission agrees with this suggestion as its abrogation of the seven

business day waiting period rule will cause such a field to be unnecessary.

35. *Harmonizing Reporting Contents with CIRCIA.* In the *Data Breach Notice,* the Commission sought comment on whether it should require telecommunications carriers to report, at a minimum, the information required under the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) as part of their notifications to Federal agencies. While a few commenters support the alignment or harmonization of these data breach notifications with the requirements under CIRCIA, the Commission declines to take action in this regard at this early stage. CIRCIA directs the Cybersecurity and Infrastructure Security Agency (CISA) to publish a notice of proposed rulemaking implementing its notification provisions by March 15, 2024. The CISA must issue final rules no later than 18 months after the publication of the notice of proposed rulemaking. At the time of this Order, the CISA has not yet released the notice of proposed rulemaking. Therefore, the Commission finds it is too early to determine the precise contours of the final reporting requirements, and in the interest of preventing duplicative or inconsistent fields, and consistent with the approach advocated by ACA Connects, Blooston Rural Carriers, and CCA, the Commission will refrain from making additional changes based on CIRCIA and continue to monitor whether such changes may be required in the future.

36. The Commission does not find CTIA's comparison of its reporting trigger to that of the Critical Infrastructure Act of 2022 (CIRCIA) compelling. CIRCIA is concerned with the category of ''incidents.'' CIRCIA does not define ''breaches.'' But under Federal guidance to agencies, a breach is a specific type of incident—an incident that involves the loss of control, compromise, unauthorized disclosure, unauthorized acquisition (etc.) of PII. And it would not be inconsistent for only some incidents to be reportable under CIRCIA but for all breaches to be reportable under the Commission's rules. For example, for Federal agencies, for an incident to qualify as a ''major incident'' it must be likely to result in demonstrable harm to the national security interests, foreign relations, or the economy of the United States, or to the public confidence, civil liberties, or public health and safety of the American people. But for a ''breach'' to qualify as a major incident, it can either satisfy that qualitative threshold, *or* it can involve the PII of 100,000 or more people. Thus, the individual privacy concerns implicated by a breach justify a broader reporting trigger.

37. The Commission also disagrees with CTIA's characterization of CIRCIA's incident reporting framework. CTIA argues that CIRCIA's reporting framework ''only applies—in a risk-based way—to 'covered cyber incidents,' which must be 'substantial' and do not include all incidents.' '' This argument misconstrues the statute. Section 2242(c)(2)(A) of CIRCIA sets a *minimum* on the types of ''substantial cyber incidents that constitute covered cyber incidents'' and implicitly allows the CISA to expand the definition beyond that in the course of its rulemaking. For example, one of those required minimums is to report ''cyber incident[s] that lead[ ] to substantial loss of confidentiality, integrity, or availability of such information system or network, or a serious impact on the safety and resiliency of operational systems and processes.'' While a rulemaking implementing CIRCIA is still pending, the CISA may define ''loss of confidentiality'' to include data breaches. The Commission further notes that the two statutory exceptions to ''substantial cyber incidents that constitute covered cyber incidents'' are narrow, and likely would not prevent the CISA from adopting implementing regulations that broaden the scope of covered cyber incidents that trigger the statute's reporting obligations.

5. Other Issues

38. *Harm-based Trigger for Federal-Agency Notifications.* In the *Data Breach Notice,* the Commission sought comment on whether to forego requiring notification of a breach to customers or Federal agencies in those instances where a telecommunications carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. While the Commission adopts such a harm-based notification trigger for breach notifications to customers generally, as discussed below, it declines to do so for Federal-agency notifications of breaches that meet or exceed the 500-affected-customer threshold described above. For breaches that do not meet its reporting threshold of at least 500 affected customers, the Commission do not require notification to Federal agencies via the central reporting facility in those instances where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. The Commission does not believe that the rationale for adopting a harm-based notification trigger for customer notifications applies in the Federal-agency context. Specifically, unlike customers, Federal agencies do not have the same vulnerability to notice fatigue, confusion, stress, or financial hardship that would cause the burdens they experience from additional reporting to outweigh the benefits. CTIA argues that by not extending the harm-based trigger to Federal-agency notifications, the Commission risks that notifications will ''inundate the Commission's breach reporting facility with information'' and the ''flood of information threatens to distract FCC and Law Enforcement staff from real and potentially harmful security threats.'' As an initial matter, the Commission notes that, as private entities, CTIA and its members lack any particular insight into, or expertise regarding, the administrative burdens affecting Federal agencies with respect to these rules. Contrary to CTIA's unsupported assertions, the agencies affected by these breach notification rules do not anticipate significant costs associated with the breach reporting requirements the Commission adopts today. While the Commission agrees that receiving notifications or reports of breaches that carriers have reasonably concluded do not trigger customer notification under the harm-based trigger will require the use of *some* resources by the Commission and law enforcement agencies, the Commission finds the value of enabling Federal agencies to identify patterns and insecurities and monitor all breaches of covered data outweigh the marginal costs of receiving notifications or reports for breaches that fall in this category. Additionally, as mentioned above, a report regarding a breach that does not result in harm to customers could nevertheless aid Federal agencies in identifying patterns and potential vulnerabilities and develop expertise across the industry. Commenters argue that the Commission should adopt a harm-based notification trigger for all Federal-agency notifications to avoid draining carrier resources. While commenters are correct that a general harm-based trigger would likely serve to reduce carriers' reporting burdens, so too would a reporting threshold. The Commission finds that its adoption of a reporting threshold is better tailored to reducing carriers' burdens in the Federal-agency-notification context while maintaining appropriate benefits of reporting. Commenters also argue that a harm-based notification trigger is necessary to reduce burdens on government resources. Even assuming, *arguendo,* that such burdens exist, they would likely be outweighed by the countervailing public interest in Federal

agencies receiving information concerning all breaches for investigative or trend analysis purposes. The Commission's threshold trigger ensures that Federal agencies receive breach information with the appropriate level of detail at the appropriate time given a breach's harmful impact or magnitude. the Commission's targeted application of a harm-based trigger to breaches affecting fewer than 500 customers ensures that Federal agencies are notified before customers and thereby have an opportunity to request a delay if necessary. This trigger also permits Federal agencies to investigate small breaches that are harmful sooner after the breach incident than in a carrier's annual report, as described above.

39. *Method of Notification.* In the *Data Breach Notice,* the Commission proposed to create and maintain a centralized portal for reporting breaches to the Commission and other Federal law enforcement agencies. After reviewing the record, the Commission instead requires carriers to use the existing data breach reporting facility for notifications to the Secret Service and FBI and delegate authority to the Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported and to implement the targeted modifications to the content of breach notifications that the Commission adopts today. The Commission's decision to require the same content and timing for notification to the Commission as for notification to the Secret Service and FBI supports the use of a single portal for notifying all three agencies. Consistent with the Secret Service's request, the Commission also delegates authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau and the Office of Managing Director, to collaborate with the Secret Service to explore the possibility of the Commission assuming control and responsibility for the reporting facility in the future, and to transition control of the facility to the Commission should the Bureau and Secret Service agree that such a transition is desirable.

40. Commenters widely supported the use of a single portal for all Federal-agency notifications. ACA Connects argues that using the preexisting portal for Commission notification will save government resources that would otherwise be spent developing a redundant portal. NCTA also advocates for the use of the preexisting portal, noting that the portal ''works well for service providers.'' The Commission agrees with commenters' analysis and thus requires carriers to submit their breach notifications to the Commission and other Federal law enforcement agencies through the existing portal. The Commission disagrees with John Staurulakis' suggestion that the Commission should instead require carriers to maintain a summary of inadvertent breaches for inclusion in their annual CPNI certification. The Commission finds that this approach would significantly delay notification of such breaches to Federal agencies, preventing law enforcement from acting quickly to investigate inadvertent breaches that may have widespread, harmful impact on customers.

C. Customer Notification

1. Harm-Based Notification Trigger

41. The Commission adopts a harm-based trigger for notification of breaches to customers so that they may focus their time, effort, and financial resources on the most important and potentially harmful incidents. The Commission agrees with commenters that adopting a harm-based trigger serves the public interest by protecting customers from over-notification and notice fatigue, specifically in instances where the carrier has reasonably determined that no harm is likely to occur. As the Commission recognized in the *Data Breach Notice,* it is not only distressing, but time consuming and expensive, to deal with a data breach, costing customers time, effort, and financial difficulty to change their passwords, purchase fraud alerts or credit monitoring, and freeze their credit in instances where the breach is not reasonably likely to result in any harm. Therefore the Commission finds that adopting a harm-based notification trigger, along with the expanded definition of breach, will ensure that customers are made aware of potentially harmful instances of breach, whether intentional or not, while preventing unnecessary financial and emotional difficulty in no-harm situations. The Commission agrees with those commenters that argue that the risk of notice fatigue to customers is important in light of its decision to expand the definition of breach. The Commission's adoption of the harm-based notification trigger will ensure that customer notification is focused on the incidents which are likely to cause harm, whether the incident was the result of intentional or inadvertent conduct. A harm-based trigger for notification to customers also allows carriers, particularly small and rural providers, to focus their resources on data security and mitigating any harms caused by breaches rather than generating notifications where harm was unlikely. The Commission's decision to adopt a harm-based notification trigger is also consistent with the majority of State laws, which generally do not require covered entities to notify customers of breaches when a determination is made that the breach is unlikely to result in harm.

42. While the record overwhelmingly supports the adoption of a harm-based notification trigger, some commenters worry that such a framework could result in legal ambiguity or lead to underreporting of breaches. The Commission takes several actions to mitigate these concerns. First, the Commission clarifies that where a carrier is unable to make a reasonable determination of whether or not harm to customers is likely, the obligation to notify customers remains. In making this determination, the Commission does not require carriers to consult Federal law enforcement or the Commission, as suggested by some commenters. Rather, carriers must determine using the factors outlined below whether harm to customers is likely to occur. If a provider concludes that harm to customers was unlikely and therefore customer notification was not required, but the Commission finds that conclusion to be unreasonable, the Commission will notify the provider. Stated differently, the Commission establishes a rebuttable presumption of harm and require carriers to notify customers of a breach in situations where the carrier is unable to reasonably determine that harm is reasonably unlikely to occur. ACA Connects argues that the Commission should decline to establish a rebuttable presumption of consumer harm because having to make filings in the interest of overcoming such a presumption would be burdensome for small providers. However, the Commission does not require any such filing. Rather, carriers must determine, based on the specific facts of a breach, whether consumer harm is reasonably unlikely to occur. The Commission provides further guidance to carriers on what constitutes harm to consumers below. The Commission rejects NCTA's proposal to limit the rebuttable presumption of harm to ''instances where the breach involves a risk of tangible, financial harm, identity theft or theft of service.'' NCTA's list is underinclusive in that it omits other harms that are significant. Nor does the record enable the Commission to readily draw a line that

separates the risks of some harms from others. The Commission clarifies that carriers do not need to disprove the potential for each type of harm in every instance to overcome the presumption, but must rather come to a reasonable fact-specific conclusion that, when considering all of the factors as a whole, harm is unlikely to occur. Second, as discussed above, the Commission declines to adopt a harm-based trigger for notification to Federal law enforcement agencies and the Commission for breaches affecting 500 or more customers. As such, carriers are required to provide notification for *all* incidents which meet the expanded definition of data breach and this affected-customer threshold to Federal law enforcement agencies and to the Commission. ACA Connects comments that the harm-based trigger should apply not only to customer breach notifications, but to Federal-agency notifications as well. The Commission disagrees. As ACA Connects notes, Federal agencies are not prone to notice fatigue in the same way that consumers are. Additionally, as discussed above, notifying Federal agencies of all breaches allows the Commission and law enforcement agencies to identify patterns and potential vulnerabilities and develop expertise across the industry, thereby enabling them to respond in appropriate and targeted ways. Moreover, under the rules the Commission adopts today, breaches falling below this threshold must be compiled and reported to Federal agencies annually. The Commission believes that this will serve as a backstop to any potential underreporting to customers, as the Federal agencies will have an opportunity to act even in instances where the provider may have concluded that harm to the consumer was unlikely.

43. *Evaluating Harm to Customers.* To the extent that a provider has evidence of actual harm to customers, notification is required and the harm-based analysis is conclusive. In instances where there is no definitive evidence of actual harm, as suggested in the *Data Breach Notice,* the Commission identifies a set of factors that telecommunications carriers should consider when evaluating whether harm to customers is reasonably likely. WISPA and ACA Connects support the Commission adopting a set of factors to help guide providers in determining whether harm to consumers is reasonably likely. The Commission believes that establishing a set of guidelines and recommendations strikes the right balance between preventing ambiguity, versus adopting a rigid definition which is too inflexible. The Commission believes that identifying these factors will promote consistency and further remedy concerns about ambiguity.

44. The Commission finds that ''harm'' to customers could include, but is not limited to: financial harm, physical harm, identity theft, theft of services, potential for blackmail, the disclosure of private facts, the disclosure of contact information for victims of abuse, and other similar types of dangers. Some parties raise administrability concerns about including harms such as ''disclosure of private facts'' on the theory that they are too speculative for providers. Beyond this bare assertion, these parties do not meaningfully explain what administrability problems would arise in practice. Additionally, they fail to account for the fact that providers only need make a *reasonable* determination of whether or not harm to customers is likely. Thus, even assuming *arguendo* that particular harms are challenging to evaluate in particular circumstances, a provider is not held to a standard of perfection, and any inherent challenges can be accounted for when evaluating the reasonableness of a given determination. The Commission's broad approach to the privacy harms that merit customer notice has ample legal support. First, OMB has noted that ''types of harms'' that individuals affected by a breach can experience have evolved: ''Identity theft can result in embarrassment, inconvenience, reputational harm, emotional harm, financial loss, unfairness, and, in rare cases, risks to public safety.'' While OMB was specifically describing harms arising from an identity theft, the fact that those harms go beyond financial supports the Commission's conclusion that other types of harm should be considered when assessing the risk of harm from a breach. Second, the Commission's approach finds support from case law—*e.g.,* decisions holding that reputational harm can confer Article III standing. And third, the Commission's approach better reflects consumer expectations than a more cabined-approach to harm: Privacy harms that merit individual notice should be linked to those harms that individuals' experience, not those that carriers can most easily identify.

45. The Commission finds that this broader conception of harm is consistent with previous Commission precedent, and disagrees with commenters arguing that ''harm'' should only include the risk of identity theft or financial harm. The limited types of harm suggested by these commenters is underinclusive in that it omits other harms that are significant, particularly in the aggregate. The Commission find thats adopting such a narrow definition of harm is not only inconsistent with the Commission's longstanding approach, but also could lead to underreporting of breaches, and disregards other important and potentially costly consequences of a breach to customers. The Commission believes that a tiered approach would be unnecessarily complicated for carriers to assess the various ''levels'' of harm. Nevertheless, many of the factors that Blooston Rural Carriers suggests as relevant to their proposed analysis (*i.e.,* financial harm, encryption, risk of identity theft) are consistent with the approach that the Commission adopts. While a broader definition of harm may be more difficult for carriers to apply in certain cases, the Commission believes that carriers will be fully capable of understanding when to comply with its disclosure requirements in light of the Commission's decision to adopt a rebuttable presumption of harm.

46. When assessing the likelihood of harm to customers, carriers should consider the following factors. Consistent with the *Data Breach Notice,* the Commission finds that no single factor on its own is sufficient to make a determination regarding harm to customers.

• *The sensitivity of the information (including in totality) which was breached.* For example, the disclosure of a phone number is less likely to create harm than if the number of calls to that phone number, the duration of those calls, the name of the caller, the content of the conversations, and/or other layers of information is also disclosed. This contextual approach to gauging the sensitivity of customer information is consistent with the definition of PII the Commission adopts above with respect to its breach notification rules, which considers whether information is disclosed in combination with other information which inherently increases the risk associated with the disclosure. Additionally, harm is more likely if financial information or sensitive personal information was included in the breach. Commenters agree that a breach implicating financial information is likely harmful. Some data elements are always considered sensitive, such as bank account numbers and Social Security Numbers. Other data elements (*e.g.,* Date of Birth) become sensitive when paired with another data element (*e.g.,* name, address, or phone number). And still other data elements may be sensitive in context (*e.g.,* data identifying a subscriber in a TRS

program, because confirmed participation may be sufficient to reveal an individual's hearing- or speech-related disability). Consistent with the approach the Commission takes in this order, carriers must consider each element and all of the elements taken together, in context, to determine whether sensitive information was revealed in a breach. The data's potential for reuse should also be considered. For example, if a password is compromised, it is possible that the information could be reused to attack other accounts. Finally, if information is not able to be changed, it is more sensitive than information that is changeable. For example, a customer could change their password for an account, but the customer is unable to change their social security number, for instance. NCTA proposes an alternative approach under which the rebuttable presumption of harm only would apply ''where specific types of data are compromised.'' But the Commission's framework already factors in the sensitivity of the data as part of the overall analysis of harm. And as indicated by its guidance for evaluating harm, the Commission finds multiple considerations should be evaluated collectively to accurately gauge the likelihood of consumer harm. Thus, the Commission finds that its approach already accounts for potential differences in the risk of harm associated with specific types of data, but does so more effectively than NCTA's proposal by calling for a consideration of the broader relevant context, as well.

- *The nature and duration of the breach.* For example, if the information was widely accessible online over a long period of time, harm is more likely than if the information was only briefly accessible to a limited number of individuals. Information on a portable USB flash drive which does not require any special skill or knowledge to access is more likely to cause harm than information on a secured back-up device which is password protected. Covered data that was exposed for an extended period of time is more likely to have been accessed or used to the detriment of customers than data that was only briefly exposed.
- *Mitigations.* How quickly the carrier discovered the breach, and whether it took actions to mitigate any potential harm to the customers, is also a factor.
- *Intentionality.* In the case of an individual or entity intentionally obtaining access to covered data, such as by using the practice of pretexting, unauthorized intrusion into a physical or virtual space, theft of a device, or other similar activities, harm is more likely to occur. Conversely, an accidental breach, such as that resulting from a misdirected email, accidentally losing a device with covered data stored on it, or other similar activities, is less likely to result in harm.

47. *Encryption Safe Harbor.* As requested by a number of parties, the Commission adopts a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed. For the purposes of this safe harbor, the Commission defines encrypted data as covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security. The Commission agrees with commenters that the risk of harm to customers is significantly reduced when the data was encrypted, provided that the carrier has evidence that the encryption key has not been compromised. While EPIC recommends that the Commission not exempt breaches solely involving encrypted data from its breach notification rules, EPIC does nonetheless acknowledge that ''a typical breach of encrypted data may present a lower risk of harm to consumers'', though ''encrypted data can nevertheless be compromised if a third party obtains access to the requisite encryption keys or is able to identify and exploit an additional security vulnerability.'' The Commission agrees. For those reasons, encrypted data is only exempted from the customer breach notification requirement where the carrier has definitive evidence that the encryption key was not compromised. Additionally, whether data was encrypted or not is irrelevant to the Federal-government breach notification requirement. As such, carriers are still required to report *all* breaches of covered data, whether that data was encrypted or not, to the Commission and law enforcement agencies. As the Commission has previously explained, data regarding breaches, even breaches with little or no risk of consumer harm, can be helpful to assist Federal agencies to determine data security vulnerabilities and threat patterns. Stated differently, encryption does not exempt an incident from the Commission's definition of breach, but rather only limits the instances where notification to a customer may be necessary. The Commission also agrees with commenters that its decision to implement a notification exception for encrypted data will incentivize and encourage the use of encryption to the benefit of the public, and further the goal of harmonization with State and other laws. Several States have established an exception for encrypted data from their breach notification requirements so long as the key has not been compromised or also breached. Additionally, in recent amendments to the Gramm-Leach-Bliley Act's Safeguards Rule, the FTC exempted encrypted data from its notification requirement. To the extent that a threat actor appears to have circumvented encryption, however, the carrier should conduct a harm-based analysis as if the data was never encrypted.

2. Customer Notification Timeframe

48. Consistent with the Commission's proposal in the *Data Breach Notice,* the Commission requires telecommunications carriers to notify customers of covered data breaches without unreasonable delay after notification to Federal agencies. The Commission finds that the current framework, which imposes a mandatory seven business day waiting period, is out-of-step with current approaches regarding the urgency of notifying victims about breaches of their personal information, and that the public interest is better served by eliminating the waiting period and thereby increasing the speed at which customers can receive the important information contained in a notice. At the same time, the Commission recognizes the importance of law enforcement's ability to investigate a breach, and understands that in certain situations, notification of a breach may interfere with a criminal investigation or national security. Therefore, consistent with the Secret Service's request, the Commission will allow law enforcement to request an initial delay of up to 30 days in those specific circumstances where one is warranted. WISPA commented that the seven business day waiting period can be ''crucial for law enforcement to effectively investigate the breach.'' The Commission agrees that law enforcement requires an opportunity to investigate a breach, but does not find that a seven business day waiting period, applied to all breaches, is necessary. Under the framework that the Commission adopts today, law enforcement may request a delay when one would be useful, but in the many circumstances where a delay is not necessary, this rule will allow carriers to more promptly notify customers,

thereby empowering them to take action to mitigate any harms.

49. The Commission finds that the ''without unreasonable delay'' standard encourages carriers to promptly notify customers of covered data breaches while offering the flexibility to be responsive to the specifics of a situation. This approach is consistent with many existing data breach notification laws that require expedited notice but refrain from requiring a specific timeframe. As suggested by commenters, the ''without unreasonable delay'' standard could take into account factors such as the provider's size, as a small carrier may have limited resources and could require additional time to investigate a CPNI data breach than a larger carrier.

50. In order to ensure that carriers notify customers quickly even in complex situations, the Commission requires customer notification no later than 30 days after reasonable determination of a breach. While in many circumstances, the ''without unreasonable delay'' standard means that the customer will be notified in less than seven business days, the Commission notes that in some circumstances, this standard may lead to a longer waiting time than the previous seven days. For that reason, the Commission adopts the 30-day back-stop in order to prevent unnecessarily long delays, even in such instances as the one described by USTelecom, where the carrier is engaged in investigations of the incident. The 30-day maximum amount of time is consistent with many existing State laws. In the *Data Breach Notice,* the Commission also considered adopting an ''outside limit'' of 45 or 60 days after discovery of a breach. However, the Commission finds that 30 days offers providers enough flexibility while recognizing the urgency of notifying customers as quickly as possible and without unnecessary delays. Some commenters request that the Commission adopt a safe-harbor for customer notification after determination or discovery of a breach. The Commission declines to adopt such a safe harbor because the Commission encourages providers to notify customers as quickly as possible in each individual instance. However, the Commission does establish a requirement that carriers notify customers no later than 30 days after reasonable determination of a breach to provide a clear outer bound to the ''without unreasonable delay'' standard.

3. Other Issues

51. *Content of Customer Breach Notification.* Consistent with its current rules, the Commission declines to adopt specific minimum categories of information required in a customer breach notification. The Commission makes clear, however, that a notification must include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. While all 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have laws requiring private or governmental entities to notify individuals of breaches involving their personal information, not all of those entities impose minimum content requirements for those notices. The Commission agrees with NTCA that adding requirements with the potential to differ from other customer notice requirements imposed by States or otherwise may create unnecessary burdens on carriers, particularly small ones, as well as confusion among customers. The Commission also finds persuasive arguments by commenters that specifying the required content of customer notifications beyond the basic standard described above would prevent carriers from having enough flexibility to craft notifications that are more responsive to, and appropriate for, the specific facts of a breach, the customers, and the carrier involved. The Commission finds this argument particularly persuasive as it relates to small and rural carriers. Finally, imposing minimum requirements may delay a carrier's ability to timely notify customers, as it may take time to gather all of the necessary details and information even where it would be in the customer's best interest to receive notification more quickly albeit with less detail.

52. Instead, the Commission adopts as recommendations the following categories of information in security breach notices to customers: (1) the estimated date of the breach; (2) a description of the customer information that was used, disclosed, or accessed; (3) information on how customers, including customers with disabilities, can contact the carrier to inquire about the breach; (4) information about how to contact the Commission, FTC, and any State regulatory agencies relevant to the customer and the service; (5) if the breach creates a risk of identity theft, information about national credit reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring, credit reporting, or credit freezes the carrier is offering to affected customers; and (6) what other steps customers should take to mitigate their risk based on the specific categories of information exposed in the breach. Beyond the basic standard set by its rules, the Commission agrees with commenters that adopting *guidance* (rather than *requirements*) fosters the goal of ensuring that the customer has access to pertinent information about a breach while affording carriers flexibility to tailor the contents of a customer notification to the specific circumstances at hand. The Commission also agrees with some commenters that carriers may not know, with certainty, the precise date of a breach. For that reason, the Commission has modified this requirement from its original proposal by suggesting the estimated date of the breach. Breaches which involve data such as a social security number, birth certificate, taxpayer identification number, bank account number, driver's license number, and other similar types of personally identifiable information unique to each person create the highest level of risk of identity theft. While breaches involving the types of data listed here should be considered to create a risk of identity theft for customers, this is not an exclusive list and should not be considered as such. There may be other types of data not listed here that, either alone or in conjunction with other data, may potentially create a risk of identity theft for customers.

53. The Commission believes that adopting recommendations will further the goals of consistently and sufficiently notifying customers of data breaches while maintaining some flexibility for carriers to tailor each notification to the specific facts and details of the breach. While some commenters such as EPIC suggest that the Commission should adopt minimum content requirements, the Commission believes that adopting recommendations furthers the same objective of ''inform[ing] the consumer of the risks they face but also equip[ping] the consumer with options for immediate steps to reduce the downstream harms that may result'' while also maintaining the flexibility that commenters overwhelmingly noted was important for effectively and quickly notifying customers.

54. *Method of Customer Breach Notification.* The Commission declines to specify at this time the method of customer breach notification, and instead allows the carriers to assess for themselves how to best notify their customers of a data breach incident. Generally, carriers have pre-established methods of communicating with their customers about other important matters related to their service, such as outages

and scheduled repairs. These methods may differ among carriers based on their size, their unique relationship with their customers, the types of customers impacted, and other factors. Therefore, the Commission finds that maintaining flexibility in the method of customer breach notification both reduces the burden on the carriers and prevents customer confusion that could arise if carriers were required to provide disclosures in a way that differed from how customers were used to receiving important information from their carriers.

D. TRS Breach Reporting

55. In 2013, the Commission adopted privacy rules applicable to telecommunications relay services (TRS) providers, to protect the CPNI of TRS users. In doing so, the Commission found that ''for TRS to be functionally equivalent to voice telephone services, consumers with disabilities who use TRS are entitled to have the same assurances of privacy as do consumers without disabilities for voice telephone services.'' The privacy rules for TRS include a breach notification rule that is equivalent to section 64.2011 in terms of the substantive protection afforded to TRS users.

56. To maintain functional equivalency, the Commission amends section 64.5111 so that it continues to provide equivalent privacy protection for TRS users in line with its amendments to section 64.2011. Thus, in this Order the Commission applies its breach notification and reporting obligations for TRS providers to covered data, including PII and CPNI. The Commission also expands the definition of ''breach'' in section 64.5111 to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed. The Commission also requires TRS providers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach, except in cases where a breach affects fewer than 500 individuals, and a provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. As with the Commission's breach reporting rules for telecommunications carriers, where a TRS provider is unable to reasonably determine that no harm to consumers is reasonably likely to occur as a result of the breach, it must promptly notify the relevant Federal agencies regardless of the size of the breach. Any breach affecting fewer than 500 individuals where there is no reasonable likelihood of harm to customers must be reported simultaneously to the Commission, Secret Service, and FBI in a single, consolidated annual filing. The Commission further revises its rules to require TRS providers to report breaches to the Commission, Secret Service, and FBI contemporaneously via the existing centralized portal that providers already use and with which they are familiar. In terms of the content of such notifications, the Commission mandates that notifications to the Commission, Secret Service, and FBI must, at a minimum, include: TRS provider address and contact information; a description of the breach incident; a description of the customer information that was used, disclosed, or accessed; the method of compromise; the date range of the incident and approximate number of customers affected; an estimate of the financial loss to providers and customers, if any; and the types of data breached. More specifically, the Commission clarifies that, if any data, whether partial or complete, on the contents of conversations is compromised as part of a breach—such as call transcripts—the compromise must be disclosed as part of the notification to the Commission, Secret Service, and FBI.

57. Regarding breach notifications furnished to TRS users, the Commission introduces a harm-based trigger and eliminate the requirement to notify TRS users of a breach in those instances where a TRS provider can reasonably determine that no harm to TRS users is reasonably likely to occur as a result of the breach. The Commission further revises its rules to eliminate the mandatory seven business day waiting period to notify TRS users and instead require TRS providers to notify TRS users of breaches without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach, unless law enforcement requests a longer delay. The Commission also recommends minimum categories of information for inclusion in TRS user notifications. Notifications shall be provided in formats that are accessible to individuals with disabilities.

58. As with its revisions to section 64.2011, the Commission finds that these changes will best protect and inform TRS users without resulting in overreporting or excessively burdening TRS providers or Federal agencies. These changes to Commission rules will also allow the Commission and its law enforcement partners to receive the information they require in a timely manner so that they can mitigate the harm and fallout of breaches while also taking action to deter future breaches.

1. Defining ''Breach''

59. In this section, the Commission applies its breach notification and reporting obligations for TRS providers to covered data, including PII and CPNI. The Commission also takes the opportunity to emphasize that covered data under the TRS data breach notification rule includes call content given the unique concerns that arise with respect to call content in the TRS context. And, the Commission expands the definition of ''breach'' in section 64.5111 to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed.

60. *Covered Data.* Consistent with the provisions the Commission adopts above for carriers, the Commission applies its breach notification and reporting obligations for TRS providers to covered data, including PII and CPNI. The Commission does so for the reasons discussed above with respect to its breach notification and reporting obligations for carriers. In addition, as discussed below, section 225 of the Act directs the Commission to ensure that TRS are available to enable communication in a manner that is functionally equivalent to voice telephone services. The Commission has found that applying the privacy protections of the Commission's regulations to TRS users advances the functional equivalency of TRS. In order to ensure the functional equivalency of TRS, and to ensure that TRS users enjoy the same protections as customers of telecommunications carriers and interconnected VoIP providers, the Commission applies its TRS data breach obligations to the same scope of customer information, including both PII and CPNI. The Commission also incorporates, by reference, the scope of covered PII adopted above, for the same reasons as discussed above.

61. The Commission disagrees with Hamilton Relay that the ''assurances of privacy'' that TRS users can expect ''are limited to CPNI and should not be extended to other elements of personal information, including sensitive personal information.'' In the *Data Breach Notice,* the Commission

recognized that providers possess proprietary information of customers other than CPNI, which customers have an interest in protecting from public exposure. This interest is particularly acute in the case of TRS users. TRS providers have access to the contents of customers' conversations, and, as AARO notes, any potential disclosure of TRS conversation content is a ''grave privacy concern.'' While section 225 and the Commission's TRS rules generally prohibit TRS providers from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call, that prohibition is not sufficient to protect TRS users from risks that may arise from data breaches. For instance, if a breach were to expose transcripts of TRS calls that were in progress at the time of the breach, the breaching party could obtain conversation contents between a TRS user and medical professionals, romantic partners, family members, friends, or professional colleagues, and as such may include sensitive details, such as a user's medical history, disability status, financial situation, political views, relationship status and dynamics, and religious beliefs. The disclosure of such information could lead to serious consequences, including embarrassment, ostracization from family and friends, and extortion by the breaching party or others who have gained access to the information.

62. Indeed, information about call content is not commonly available to traditional voice service providers, and thus traditional voice service customers do not face the same privacy risks in this regard as TRS users. As a result, it is particularly important in the TRS context that the Commission emphasizes the need for breach notifications with respect to call content. CPNI, PII, and the contents of calls are non-exclusive, and potentially overlapping, categories of information. Consistent with the congressional directive that the Commission's TRS rules guard against the disclosure of call content, and to promote functional equivalence between TRS and traditional voice communications services, the Commission therefore makes explicit in the text of section 64.5111 of its rules that a breach involving call content implicates those notification requirements.

63. Just as with telecommunications carriers, the Commission believes that the unauthorized exposure of sensitive personal information that the provider has received from the customer or about the customer in connection with the customer relationship (*e.g.,* initiation, provision, or maintenance, of service) is reasonably likely to pose risk of customer harm. Accordingly, any unauthorized disclosure of such information warrants notification to the customer, the Commission, and other law enforcement. Consumers expect that they will be notified of substantial breaches that endanger their privacy, and businesses that handle sensitive personal information should expect to be obligated to report such breaches.

64. The Commission further disagrees with Hamilton Relay's assertion that its privacy authority does not extend to other elements of personal information beyond CPNI, or that doing so would be inconsistent with the plain language of the Act or result in duplicative or inconsistent requirements between Commission rules and State laws. The Commission does so for the reasons discussed above, and because of the principle of functional equivalency. By ensuring that the same data breach notification requirements the Commission applies to traditional telecommunications carriers also apply to TRS providers, the Commission advances the interest of ensuring that consumers can have the same expectations regarding services that they view as similar. Thus, the approach the Commission adopts not only reflects the practical expectations of consumers but also honors the intention of Congress. For example, as discussed in more detail below, Congress ratified the Commission's 2007 decision to extend section 222-based privacy protections for telecommunications service customers to the customers of interconnected VoIP providers. And ensuring equivalent protections for TRS subscribers advances Congress' directive to endeavor to ensure functionally equivalent service.

65. EPIC concurs with this approach. The Commission notes that covered data would include PII that a TRS provider collects to register a customer in the TRS User Registration Database in order to provide services. In November 2021 and March 2022 orders revoking the operating authority of certain telecommunications carriers, the Commission further stated that all communications service providers have ''a statutory responsibility to ensure the protection of customer information, including PII and CPNI.''

66. Because TRS providers have access to proprietary information of customers other than CPNI, and customers have an interest in protecting that information from public exposure, the Commission finds that TRS providers should be obligated to comply with the Commission's breach notification rule whenever customers' personally identifiable information is the subject of a breach, whether or not the information is CPNI.

67. *Inadvertent Access, Use, or Disclosure.* The Commission expands the definition of ''breach'' in section 64.5111 to include inadvertent access, use, or disclosure of covered data, except in those cases where such information is acquired in good faith by an employee or agent of a TRS provider, and such information is not used improperly or further disclosed. Section 64.5111(e) of the Commission's rules currently defines a breach more narrowly as occurring ''when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.'' As noted above, this construction was adopted in response to the practice of pretexting. As discussed above, in the years since, numerous data breaches have shown that the inadvertent exposure—as much as intentional exposure—of customer information can and does result in the loss and misuse of sensitive information by scammers, phishers, and other bad actors, and can thus trigger a need to inform the affected consumers so that they can take appropriate action to protect themselves and their sensitive information. Whether a breach was intentional may not be readily apparent, and continuing to require disclosure of only intentional breaches could thus lead to underreporting. It is moreover critical that the Commission and law enforcement be made aware of any unintentional access, use, or disclosure of covered data so that the Commission can investigate and advise TRS providers on how best to avoid future breaches and so that the Commission is prepared and ready to investigate if and when any of the affected information is accessed by malicious actors. Requiring notification for accidental breaches will encourage TRS providers to adopt stronger data security practices and will help the Commission and law enforcement to better identify and address systemic network vulnerabilities, consistent with the Commission's analysis above.

68. The record in this proceeding confirms the need for the Commission to expand the definition of ''breach'' in section 64.5111 to include inadvertent disclosures. As AARO note in their comments, the Commission must keep pace with evolving threats to consumer privacy, and ''adopt measures that can effectively counter increasingly complex and evolving breaches.'' AARO further agrees with the Commission's assessment that an intentionality

requirement would lead to legal ambiguity and underreporting. According to AARO and EPIC, the industry will ''continue to witness breaches unless companies that operate in this area'' are required or incentivized to ''make proper investments in their 'staff and procedures to safeguard the consumer data with which they have been entrusted.' '' The Commission agrees with these commenters that expanding the definition of ''breach'' in section 64.5111 to include inadvertent access, use, or disclosure of covered data will help provide this incentive. The only two commenters who opposed expanding the Commission's definition of ''breach'' in section 64.5111 to include inadvertent disclosures of customer information were Hamilton Relay and Sorenson, and both modified their opposition to state that they only opposed such an expansion *unless* accompanied by the introduction of a harm-based trigger for data breach notification. As the Commission adopts a harm-based trigger for data breach notifications to consumers below, there is no need to address these two comments further.

69. *Good-Faith Exception.* While the Commission expands the definition of ''breach'' in section 64.5111 to include inadvertent access, use, or disclosure of covered data, consistent with its approach to the carrier data breach rule, the Commission carves out an exception for a good-faith acquisition of covered data by an employee or agent of a TRS provider where such information is not used improperly or further disclosed. No commenters opposed this amendment to the Commission's rules for TRS providers. The Commission rejected more general criticisms of such a rule above. With only a handful of exceptions, the vast majority of State statutes include a similar provision excluding from the definition of ''breach'' a good-faith acquisition of covered data by an employee or agent of a company where such information is not improperly used or disclosed further, and the Commission sees no reason not to include such an exception in the TRS rule. This good-faith exception will help reduce overreporting and, by extension, will avoid worrying consumers unnecessarily.

2. Notifying the Commission and Other Federal Law Enforcement of Data Breaches

70. In this section, the Commission requires TRS providers to notify the Commission, in addition to the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach, except in those instances where a breach implicates fewer than 500 individuals and a TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. Where a breach affects fewer than 500 individuals and the TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, the Commission requires that providers report such breaches annually to the Commission, Secret Service, and FBI in a single, consolidated annual filing. The Commission also requires TRS providers to report breaches to the Commission, Secret Service, and FBI contemporaneously via the existing centralized portal maintained by the Secret Service, and implement mandatory minimum content requirements for notifications filed with the Commission and law enforcement.

71. *Notification to the Commission and Law Enforcement.* The Commission requires TRS providers to notify the Commission, in addition to the Secret Service, and the FBI, of breaches through the central reporting facility. The Commission will maintain a link to the reporting facility at *http://www.fcc.gov/eb/cpni* or a successor URL designated by the Bureau. This requirement is consistent with other Federal sector-specific laws, including HIPAA and the Health Breach Notification Rule, which require prompt notification to the Department of Health and Human Services (HHS) and the Federal Trade Commission (FTC), respectively.

72. As the Commission found when it adopted the current data breach rules, notifying law enforcement of breaches is consistent with the goal of protecting customers' personal data because it enables such agencies to investigate the breach, ''which could result in legal action against the perpetrators,'' thus ensuring that they do not continue to breach sensitive customer information. The Commission also anticipated that law enforcement investigations into how breaches occurred would enable law enforcement to advise providers and the Commission to take steps to anticipate and prevent future breaches of a similar nature. While this reasoning remains sound, in the years since the Commission's rules were adopted it has become apparent that large-scale security breaches need not be purposeful in order to be harmful. As discussed above, breaches that occur as a result of lax or inadequate data security practices and employee training can be just as devastating as those perpetrated by malicious actors. Notification to the Commission of breaches, including inadvertent breaches, will provide Commission staff with critical information regarding data security vulnerabilities, and will help to shed light on TRS providers' ongoing compliance with the Commission's data breach rules.

73. The record in this proceeding supports requiring TRS providers to notify the Commission, the Secret Service, and the FBI of breaches. EPIC agrees that a breach impacting TRS users requires notification to the Commission in addition to the impacted user(s), and no commenter opposed amending the Commission's rules to require notification to the Commission concurrently with the Secret Service and FBI in the specific context of TRS. The Commission rejected more general criticisms of such a rule above.

74. *Reporting Threshold.* The Commission requires providers to inform Federal agencies, via the central reporting facility, of all breaches, regardless of the number of customers affected or whether there is a reasonable risk of harm to customers. For breaches that affect 500 or more customers, or for which a TRS provider cannot determine how many customers are affected, the Commission requires providers to file individual, per-breach notifications as soon as practicable, but no later than seven business days after reasonable determination of a breach. As the Commission describes below, these notifications must include detailed information regarding the nature of the breach and its impact on affected customers. This same type of notification, and the seven business day timeframe for submission, will also be required in instances where the TRS provider has conclusively determined that a breach affects fewer than 500 customers unless the provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach.

75. For breaches in which a TRS provider can reasonably determine that a breach affecting fewer than 500 customers is not reasonably likely to harm those customers, the Commission requires the provider to file an annual summary of such breaches with the Commission, Secret Service, and FBI via the central reporting facility, instead of a notification. TRS providers must submit, via the existing central reporting facility and no later than February 1, a consolidated summary of breaches that occurred over the course of the previous calendar year which affected fewer than 500 customers, and where the provider

could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. To ensure that TRS providers may be held accountable regarding their determinations of a breach's likelihood of harm and number of affected customers, the Commission requires providers to keep records of the bases of those determinations for two years. The Commission also notes that TRS providers may voluntarily file notification of such a breach in addition to, but not in place of, this annual summary filing. In circumstances where a TRS provider initially determines that contemporaneous breach notification to Federal agencies is not required under these provisions, but later discovers information that would require such notice, the Commission clarifies that a TRS provider must report the breach to Federal agencies as soon as practicable, but no later than seven business days after their discovery of this new information. The Commission delegates authority to the Bureau to coordinate with the Secret Service regarding any modification to the portal that may be necessary to permit the filing of this annual summary. The Commission also delegates authority to the Bureau, working in conjunction with the Public Safety and Homeland Security Bureau and the Disability Rights Office, and based on the record of this proceeding—or any additional notice and comment that might be warranted—to determine the content and format requirements of this filing and directs the Bureau to release a public notice announcing these requirements. As above with respect to carriers, the Commission instructs the Bureau to minimize the burdens on TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Bureau should develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and consider streamlined ways for filers to report this summary information. The first annual report will be due the first February 1 after the Office of Management and Budget (OMB) approves the annual reporting requirement under the Paperwork Reduction Act. The first report should cover all breaches between the effective date of the annual reporting requirement and the remainder of the calendar year.

76. As the Commission determined above, this reporting threshold will enable the Commission to receive more granular information regarding larger breaches to aid its investigations while also being able to study trends in breach activity through reporting of smaller breaches in annual submissions. Such a reporting threshold is also consistent with many State statutes that require notice of breaches to State law enforcement authorities. Moreover, given the Commission's expansion of the definition of ''breach'' in today's Order to include inadvertent exposure of CPNI and other types of data, allowing TRS providers to file information regarding certain smaller breaches in a summary format on an annual basis will tailor administrative burdens on TRS providers to reflect those scenarios where reporting is most critical. At the same time, requiring TRS providers to report breaches that fall below the threshold in a single, consolidated annual filing will continue to enable the Commission and its Federal law enforcement partners to investigate, remediate, and deter smaller breaches. The Commission notes that no commenter addressed this potential amendment to its rule for TRS providers in response to the *Data Breach Notice,* and addresses more general comments in this regard in Section III.B.2, above. As above, in circumstances where a TRS provider initially determines that contemporaneous breach notification to Federal agencies is not required under these provisions, but later discovers information that would require such notice, the Commission clarifies that the TRS provider must report the breach to Federal agencies as soon as practicable, but no later than within seven business days of their discovery of this new information.

77. The Commission applies this threshold trigger only to notifications to Federal agencies, and not to customer notifications. Breaches affecting even just a few customers can pose just as much risk to those customers as could breaches with wider impact. For this reason, as discussed above, the Commission continues to require TRS providers to notify Federal agencies within seven business days of breaches that implicate a reasonable risk of customer harm, regardless of the number of customers affected. Doing so will permit Federal agencies to investigate smaller breaches where there is a risk of customer harm, and also allow law enforcement agencies to request customer notification delays where such notice would ''impede or compromise an ongoing or potential criminal investigation or national security,'' as specified in the Commission's rules.

78. *Timeframe.* The Commission retains its existing rule and require TRS providers to notify the Commission of a reportable breach contemporaneously with the Secret Service and FBI, as soon as practicable, and in no event later than seven business days, after reasonable determination of a breach. While the Commission proposed eliminating the seven business day deadline in the *Data Breach Notice,* the record received convinced the Commission that it should instead retain the more definite timeframe. The Commission agrees with AARO that the earlier TRS users are notified of breaches, the more time they will have to take actions to reduce the extent of the potential damage, and that eliminating the seven business day deadline would potentially extend the period between a breach and notification far beyond the current deadline, thus ''leaving consumers unable to remediate harms.'' The Commission finds that retaining the seven business day deadline properly balances the need to afford TRS providers sufficient time to conduct remediation efforts prior to submitting notifications with the need to ensure that customers receive timely notifications regarding breaches affecting their data. There is insufficient evidence that the current timeline is inadequate to accomplish the Commission's goals, and requiring breaches to be reported ''as soon as practicable'' without a definite timeframe could potentially be interpreted differently by different TRS providers or even by law enforcement and the Commission, thereby placing TRS providers at risk of inadvertently violating the Commission's rules should they construct ''as soon as practicable'' to mean something different than the Commission.

79. The Commission does not believe it is necessary to shorten the existing timeframe of seven business days. As Sorenson notes, businesses with any internet presence ''must routinely investigate large numbers of potential security events,'' and find that a shorter deadline would put tremendous pressure on providers to report all potential security incidents before having time to determine whether a breach is reasonably likely to have occurred. Such a result would distract providers from investigating and correcting any incident that may have occurred. As Sorenson notes, the current reporting timeline of seven business days allows providers a reasonable opportunity to investigate potential incidents and determine whether a breach is reasonably likely to have occurred.

80. The Commission disagrees with Hamilton Relay that the rigid structure

in its current rules is ''out of step'' with other data breach notification obligations and ''does not provide TRS providers with sufficient flexibility to address the different circumstances that surround data breaches.'' To begin, numerous States as well as HIPAA, the Health Breach Notification Rule, and CIRCIA impose a specific time limit on when breach notifications must be made to the State or relevant Federal agency. Furthermore, there is nothing in the record beyond Hamilton Relay's unsupported assertion to indicate that TRS providers find the current seven day business deadline to be unduly burdensome or inflexible. Indeed, Sorenson advocates in favor of retaining the current seven business day deadline. Even if the Commission were to assume the seven business day deadline to be a more burdensome or inflexible standard than a more open-ended standard, the Commission still finds that the countervailing interest in ensuring customers are notified quickly of breaches affecting them outweighs this hypothetical burden. As above, the Commission clarifies that a reasonable determination that a breach has occurred does not mean reaching a conclusion regarding every fact surrounding a data security incident that may constitute a breach. Rather, a TRS provider will be treated as having ''reasonabl[y] determin[ed]'' that a breach has occurred when the provider has information indicating that it is more likely than not that there was a breach.

81. *Content of Notification.* As currently structured, the existing central reporting facility requires TRS providers to report: information relevant to a breach, including TRS provider address and contact information; a description of the breach incident; the method of compromise; the date range of the incident and approximate number of customers affected; an estimate of the financial loss to providers and customers, if any; and the types of data breached. The record supports the imposition of minimum content requirements for breach notifications to the Commission, Secret Service, and FBI. Of the commenters who addressed this issue, only Hamilton Relay opposes minimum content requirements for TRS providers, and as their comments pertain specifically to the content of breach notifications to *customers,* the Commission addresses them below.

82. While the Commission finds that these existing content requirements are largely sufficient, it agrees with AARO that the nature of TRS and the sensitive information involved warrants more granular clarification regarding the required disclosures as part of notifications in that context. As AARO notes, TRS users face privacy risks that voice telephone service users do not face because TRS providers and their commercial partners collect particularly sensitive data about TRS users that could be accessed in a data breach. In particular, TRS providers and their partners have direct access to call audio, transcripts, and other data on the contents of TRS users' conversations. Given this, the Commission finds that providers must include a description of the customer information that was used, disclosed, or accessed as part of their notification, including whether data on the contents of conversations, such as call transcripts, are compromised as part of a breach. The Commission notes that the actual call audio or transcripts themselves *should not* be disclosed as part of the notification, as doing so would be a violation of the Commission's rules. Because of the unique nature of TRS technology, which often result in the creation of transcripts or similar artifacts, the Commission finds that clarifying these additional details of the disclosures will better protect consumers and better enable the Commission and its Federal law enforcement partners to investigate, remediate, and deter breaches.

83. *Method of Notification.* Under current Commission rules, TRS providers are required to notify the Secret Service and FBI ''through a central reporting facility'' to which the Commission maintains a link on its website. The Commission retains this requirement and revises it slightly to clarify that notifications filed through the existing central reporting facility will be transmitted to and accessible by the Disability Rights Office (DRO) of the Commission's Consumer and Governmental Affairs Bureau (CGB), in addition to the Secret Service and FBI. The Commission delegates authority to the Bureau, working in conjunction with CGB, to ensure that the central reporting facility sufficiently relays notifications to DRO. The Commission finds that retaining the existing central reporting facility, rather than creating and operating a new centralized reporting facility as contemplated in the *Data Breach Notice,* will be the simplest and most efficient approach, and will not result in the unnecessary expenditure of resources needed to build and operate a new electronic reporting facility when one already exists. It will also reduce potential provider confusion and simplify regulatory compliance by allowing providers to continue filing notifications through the existing reporting facility. The Commission notes that no commenter addressed this potential amendment to its rule governing TRS providers in response to the *Data Breach Notice,* and the Commission discusses more general comments regarding the method of disclosure to the Commission in Section III.B.5, above.

3. Customer Notification

84. In this section, the Commission introduces a harm-based trigger and eliminates the requirement to notify customers of a breach in any instance where a TRS provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. The Commission also eliminates the mandatory seven business day waiting period to notify customers and instead requires TRS providers to notify customers of breaches without unreasonable delay after notification to the Commission and law enforcement, and in no case later than 30 days after reasonable determination of the breach, unless law enforcement requests a longer delay. The Commission recommends minimum categories for information inclusion in customer notifications. The Commission declines to specify the method that notifications to customers must take, instead leaving such a determination to the discretion of TRS providers, except that such notifications must be accessible to TRS users.

85. *Harm-Based Notification Trigger.* The Commission's current TRS data breach rule requires notification to customers in every instance where a breach of their information has occurred, regardless of the risk of harm. The Commission modifies that standard and foregoes the requirement to notify customers of a breach in those instances where a TRS provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. In order to ensure the functional equivalency of TRS, and to ensure that TRS users enjoy the same protections as customers of telecommunications carriers and interconnected VoIP providers, the Commission adopts here the same definition of ''harm'' as that adopted above in the context of telecommunications carriers, for the reasons stated above.

86. In determining whether ''harm'' is likely to occur, providers should consider all the factors enumerated in the Commission's discussion above. In situations where call content—including call audio, transcripts, or other data on the contents of TRS users'

conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. As with the rules the Commission adopts for telecommunications services above, where a TRS provider is unable to make a determination regarding harm, the obligation to notify customers of a breach would remain. For the reasons discussed above, and in order to ensure functional equivalency for TRS users, the Commission also adopts a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the TRS provider has definitive evidence that the encryption key was not also accessed, used, or disclosed. To the extent that a threat actor appears to have circumvented encryption, however, the TRS provider should conduct a harm-based analysis as if the data was never encrypted.

87. The Commission finds that introducing a harm-based trigger for notifications to customers of TRS data breaches will benefit customers by avoiding confusion and ''notice fatigue'' with respect to breaches that are unlikely to cause harm. Given that it is not only emotionally distressing, but also time consuming and expensive to deal with the fallout of a data breach, the Commission believes that introducing a harm-based trigger will spare customers the time, effort, and financial strain of changing their passwords, purchasing fraud alerts or credit monitoring, and freezing their credit in the wake of any breach that is not reasonably likely to result in harm. A harm-based notification trigger also has a basis in the data breach notification frameworks employed by States, many of which do not require covered entities to notify customers of breaches when a determination has been made that the breach is unlikely to cause harm.

88. The Commission finds further that employing a harm-based notification trigger will not only benefit customers, but also assist TRS providers by allowing them to better focus their resources on improving data security and ameliorating the harms caused by data breaches rather than providing notifications to customers in instances where harm is unlikely to occur. Nor will the introduction of a harm-based trigger overburden providers by saddling them with the task of determining whether particular breaches are reasonably likely to cause harm. By making the standard for notification a rebuttable presumption of harm, providers must assume that harm is reasonably likely to occur as a result of a breach except where they can reasonably determine otherwise.

89. When determining whether a breach is reasonably likely to result in harm, TRS providers should consider the same factors laid out in the discussion above. In addition, in situations where call content—including call audio, transcripts, or other data on the contents of TRS users' conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. TRS providers must construe ''harm'' in this context broadly. Even in those instances where no harm to customers is reasonably likely to occur, and thus the requirement to notify customers of a data breach is not triggered, TRS providers must still notify the Commission, Secret Service, and FBI of any such breach affecting 500 or more customers as soon as practicable and in any event no later than seven business days after reasonable determination of the breach via the central reporting facility. In the case of such breaches affecting fewer than 500 customers, they must be reported annually in a single, consolidated filing to the Commission, Secret Service, and FBI. While a harm-based trigger will help reduce customer notice fatigue and spare customers the time, effort, and financial strain of dealing with the fallout of a breach that is not reasonably likely to result in harm, the Commission and its law enforcement partners can still garner critical information regarding data security vulnerabilities by analyzing larger breaches, even those that are not reasonably likely to result in harm to customers.

90. The record generally supports the adoption of a harm-based trigger for TRS consumer breach notifications. AARO, however, argues that ''harm-based triggers should not be used in the context of TRS breach reporting to customers . . . because of the inherent privacy risks faced by TRS users.'' AARO goes on to argue that, because TRS involves the collection of data on the content of a user's conversation, the Commission should presume that any data breach of a TRS provider is harmful and require the disclosure of that breach to customers and law enforcement. While the Commission agrees that the Commission and law enforcement should be apprised of all breaches, it disagrees that customers must be made aware of breaches where no harm to customers is reasonably likely to result. While the Commission agrees that TRS users face heightened privacy risks because of the nature of the technology involved, such risk alone does not justify a requirement that customers receive notification of breaches in instances where a provider can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach. TRS providers can and *must* take the heightened risks inherent to TRS users into account when determining whether harm is likely to result in the wake of a breach, and the Commission reiterates that providers must assume, in every case, that harm is reasonably likely to occur as a result of a breach *except* where they can reasonably determine otherwise. Moreover, the Commission reiterates that, in situations where call content—including call audio, transcripts, or other data on the contents of TRS users' conversations—has been or has the potential to be disclosed as a result of a breach, a TRS provider must assume that harm has or is reasonably likely to occur, and the obligation to notify customers of a breach would remain. The Commission agrees with AARO that, given the sensitive data at stake, ''it is conceivable that a TRS user would want to be aware of a data breach, even if the harm of that breach is not fully determined, so that they can take remedial measures,'' which is why the Commission imposes a rebuttable presumption of harm that requires notification in cases where the harm of a breach cannot be fully determined, or where call content has been or has the potential to be disclosed. The Commission finds that imposing a rebuttable presumption of harm, and requiring TRS providers to consider the heightened privacy risks experienced by TRS users when attempting to rebut this presumption, sufficiently addresses AARO's concerns without the need for mandatory consumer notifications that may result in notice fatigue and obligate consumers to expend time, effort, and resources dealing with the fallout of breaches that are not reasonably likely to result in harm.

91. The Commission agrees with Sorenson that, without a harm-based trigger, these rules could result in over-notification regarding non-critical security events without any corresponding benefit to consumers. The Commission also agrees with Hamilton Relay that such over-notification could very well result in notice fatigue and consumer indifference, which would perversely cause consumers to ignore or discount notifications, leading to failure to take

action even in those instances where a breach is substantially likely to result in harm, and thus eliminating the main benefit of requiring consumer notifications. The Commission therefore concludes that a harm-based trigger strikes the correct balance between keeping TRS users adequately informed, and reducing over-notification and notice fatigue while reducing the attendant burdens on TRS providers.

92. The Commission disagrees with EPIC that a harm-based trigger will lead to ''legal ambiguity and underreporting,'' or that it will delay reporting ''as it may take time to assess whether the minimum threshold for reportable harm has been met.'' By adopting a rebuttable presumption of harm and requiring consumer notification except in those instances where a provider can reasonably determine that no harm to customers is reasonably likely to occur, the Commission does not think that underreporting is a likely risk, as customers will still be made aware of breaches where protective action from the consumer is required. While the Commission does not here include a specific definition of how or under what circumstances this presumption may be rebutted—finding that such an approach would be too prescriptive—the Commission nevertheless provides guidance for evaluating customer harm, as outlined above. And, as discussed below, the rules require notification to customers without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach unless law enforcement requests a longer delay.

93. *Notifying Customers of Data Breaches Without Unreasonable Delay.* The Commission's current TRS data breach rule prohibits TRS providers from notifying customers or disclosing a breach to the public until at least seven full business days after notification to the Secret Service and FBI. The Commission eliminates this mandatory waiting period and instead requires TRS providers to notify customers of CPNI breaches without unreasonable delay after notification to law enforcement, and in no case later than 30 days after reasonable determination of a breach, unless law enforcement requests a longer delay.

94. In adopting the current rule, the Commission concluded that once customers have been notified of a breach, it becomes public knowledge, ''thereby impeding law enforcement's ability to investigate the breach, identify the perpetrators, and determine how the breach occurred.'' The Commission found that ''immediate customer notification may compromise all the benefits of requiring carriers to notify law enforcement of CPNI breaches,'' and that a short delay was thus warranted.

95. As discussed above, given the sheer volume of personal data at risk, and the proliferation of malicious schemes designed to exploit that data, the Commission finds that the need to notify victims of breaches as soon as possible has grown exponentially in the years since these rules were adopted. The rules adopted in this Order will better serve the public interest by increasing the speed at which customers may receive the important information contained in a notification, except in those circumstances when law enforcement specifically requests otherwise. The Commission finds that a requirement to notify customers of data breaches without unreasonable delay after discovery of a breach and notification to law enforcement appropriately balances legitimate law enforcement needs with customers' need to take swift action to protect their information in the wake of a breach.

96. The revised rule is consistent with many existing data breach notification laws that require expedited notice but refrain from requiring a specific timeframe. While requiring notification to customers without unreasonable delay will increase the speed at which customers receive important information related to a breach, the Commission declines to adopt a specific timeframe, and finds that such an approach would be overly prescriptive. Because each data breach is different, providers must be given sufficient latitude to address each breach separately, in the manner best befitting the nature of the breach. Even so, the Commission finds it appropriate to impose an outside limit on when customers must be notified of a breach. Requiring providers to notify customers no later than 30 days after reasonable determination of a breach, unless a longer delay is requested by law enforcement, will allow TRS providers sufficient flexibility to deal with each breach on an individual basis while simultaneously installing a backstop to ensure that customers are not made unaware of a breach indefinitely.

97. This approach is generally consistent with HIPAA, which requires notification to individuals ''without unreasonable delay and in no case later than 60 calendar days after discovery of a breach,'' as well as the Health Breach Notification Rule, which requires notification to individuals ''without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security.'' Additionally, many States impose an outside limit on when customers must be notified of a breach following discovery of said breach.

98. Consistent with the Commission's current rules implementing section 222, the rule adopted here will allow law enforcement to direct a TRS provider to delay customer notification for an initial period of up to 30 days if such notification would interfere with a criminal investigation or national security. The Commission finds that in those instances where a provider reasonably decides to consult with law enforcement, a short initial delay of no longer than 30 days pending such consultation is reasonable under the ''without unreasonable delay'' standard the Commission adopts for customer notification. The Commission notes that HIPAA, the GLBA, and the Health Breach Notification Rule all allow for a delay of customer notification if law enforcement determines notification to customers would ''impede a criminal investigation or cause damage to national security,'' but only if law enforcement officials request such a delay. More specifically, both HIPAA and the Health Breach Notification Rule allow for notification delays of up to 30 days if orally requested by law enforcement. Similarly, most, if not all, States permit delays in notifying affected customers for legitimate law enforcement reasons. The Commission finds that the rule it adopts here strikes the appropriate balance between the needs of law enforcement to have sufficient time to investigate criminal activity and the needs of customers to be notified of data breaches without unreasonable delay.

99. The record supports reconfiguring the Commission's rules in this manner. As Hamilton Relay notes, TRS providers require flexibility when addressing data breaches, and a standard requiring providers to notify customers of a breach as soon as practicable will allow TRS providers sufficient time to determine the nature of the incident, ''including what consumer data may be implicated, if any. And the Commission agrees with Sorenson that imposing a rigid timeline on providers without offering sufficient time to investigate runs the risk of placing ''tremendous pressure on providers to report all potential security incidents before having time to determine whether a breach is reasonably likely to have occurred,'' and that such a result would not only overload the Commission but ''also distract providers from investigating and correcting any incident that may have occurred.'' The

Commission finds that retaining the seven business day deadline for Federal-agency notifications will allow TRS providers a reasonable opportunity to investigate potential incidents, determine whether a breach is reasonably likely to have occurred, and report it to the Commission and its law enforcement partners, if necessary, while the elimination of the mandatory seven business day waiting period and imposition of a 30-day backstop will ensure that customers receive notification of any such breach in a timely fashion.

100. The Commission disagrees with AARO that the timeframe revisions it makes will result in unwarranted delays of notifications to customers. On the contrary, the Commission finds that the pairing of an unreasonable delay standard with the elimination of the mandatory seven business day waiting period between notification of law enforcement and notification of customers is more likely to result in consumers receiving notice of a breach more quickly than they would under the Commission's current rule in many instances. By requiring TRS providers to issue consumer notifications without unreasonable delay, but in no case later than 30 days after a breach has been detected unless a longer delay is requested by law enforcement, the Commission believes that the revised rule balances the needs of law enforcement and TRS providers—to respond flexibly, with sufficient time to investigate data breaches—and customers—to take swift action in the wake of a breach.

101. *Content of Customer Breach Notification.* Consistent with the Commission's current TRS data breach rule, the Commission declines to adopt specific minimum categories of information required in a customer breach notification. The Commission makes clear, however, that a notification must include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. While all 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have laws requiring private or governmental entities to notify individuals of breaches involving their personal information, of these, less than half impose minimum content requirements on the notifications that must be transmitted to affected individuals in the wake of a data breach. As noted above regarding carriers, adding requirements with the potential to differ from such a high number of State requirements may create unnecessary burdens on small TRS providers. The Commission also finds that specifying the required content of customer notifications beyond the basic standard described above would inhibit TRS providers from having the flexibility to craft notifications that are more responsive to, and appropriate for, the specific facts of a breach, the customers, and the provider involved. A stricter standard could conflict with other customer notice requirements—thus burdening providers and potentially sowing confusion among consumers—and could delay providers' ability to timely notify their customers of a breach, since it could take time to gather all of the necessary details and information even in cases where it would be in customers' best interests to receive notification more quickly, albeit with less detail.

102. Instead, the Commission adopts as recommendations the following categories of information in security breach notifications to TRS customers: (1) the date of the breach; (2) a description of the customer information that was used, disclosed, or accessed; (3) whether data on the contents of conversations, such as call transcripts, was compromised as part of the breach; (4) information on how customers can contact the provider to inquire about the breach; (5) information about how to contact the Commission, FTC, and any State regulatory agencies relevant to the customer and the service; (6) if the breach creates a risk of identity theft, information about national credit reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring, credit reporting, or credit freezes the provider is offering to affected customers (Breaches which involve data such as a social security number, birth certificate, taxpayer identification number, bank account number, driver's license number, and other similar types of personally identifiable information unique to each person create the highest level of risk of identity theft. While breaches involving the types of data listed here should be considered to create a risk of identity theft for customers, this is not an exclusive list and should not be considered as such. There may be other types of data not listed here that, either alone or in conjunction with other data, may potentially create a risk of identity theft for customers.); and (7) what other steps customers should take to mitigate their risk based on the specific categories of information exposed in the breach.

103. The Commission finds that adopting recommendations for minimum consistent fields of information will further the goal of assisting customers in better understanding the circumstances and nature of a breach while retaining some flexibility for TRS providers to precisely tailor each notification, depending on the specific facts and details of each breach. The Commission agrees with Hamilton Relay that the Commission should give providers the flexibility to craft breach notifications that include relevant information in an accessible format, depending on the circumstances of each breach. While the Commission acknowledges arguments by AARO and EPIC supporting the imposition of minimum content requirements for customer breach notifications, the Commission is wary of imposing specific requirements that could conflict with many State regulations, and of attempting to impose a one-size-fits-all solution for all providers and all data breaches. Rather, the Commission finds that the seven categories of information recommended in this Order appropriately balance the goal of empowering consumers to take the necessary steps to protect themselves and their information in the wake of a data breach while simultaneously enabling TRS providers to respond flexibly to data breaches as they occur, and to issue customer notifications as swiftly as possible without the need to delay as they gather all of the information needed to satisfy a rigidly prescribed set of predetermined informational categories.

104. *Method of Customer Breach Notification.* The Commission declines to specify the form that notifications to customers must take, instead leaving such a determination to the discretion of TRS providers, except to require that such notifications be provided in a format accessible to individuals with disabilities. In this proceeding, commenters were uniform in their insistence that the method of customer breach notification be left to the discretion of providers where it is not specified in State law. As CCA notes, the ''best means for reaching business customers and residential customers . . . can differ significantly, and carriers are best positioned based on their experience and contact with consumers to know customers' preferred way of receiving notifications.'' CTIA argues further that mandating the manner of customer CPNI incident notifications could ''reduc[e] carrier flexibility to provide the most up-to-date information to customers in fluid situations.'' As

Hamilton Relay points out, ''TRS providers do not have standard billing information for their customers because . . . most if not all TRS users do not pay for the service.'' Because this lack of standard billing information may complicate notifications to such users, the Commission agrees with Hamilton Relay that the Commission should grant TRS providers the discretion to take all reasonable steps necessary to provide the required information to their customers in a ''usable and readily understandable format'' whenever a breach occurs. The Commission thus declines to specify the manner that accessible notifications to customers must take, and leaves such a determination to the discretion of TRS providers where the manner of customer breach notifications is not specified by applicable State law.

105. *TRS User Registration Information.* In their comments, Sorenson notes that ''TRS customers must undergo intrusive identity and address verification that other voice telephone customers do not,'' and that data retention requirements of TRS providers put customers who rely on these critical services at heightened risk. Sorenson thus recommends that the Commission's revised rules permit TRS providers to delete sensitive customer information, such as copies of users' driver's licenses/passports and other identity or address identifying information. Convo Communications take this recommendation a step further, advocating that the Commission not just permit but *require* providers to destroy identifying records regarding TRS users after a user is successfully registered in the TRS User Registration Database (TRS URD).

106. The Commission declines to adopt these recommendations at this time. The requirements to collect and retain user registration information for registration in the TRS User Registration Database are outside the scope of this proceeding. The TRS User Registration Database is a centralized system of registration records established to protect the TRS Fund from waste, fraud, and abuse and to improve the Commission's ability to manage and oversee the TRS program. A necessary component of the administration and oversight of the TRS User Registration Database and the TRS program in general, is the ability of the Commission, the TRS User Registration Database administrator, and the TRS Fund administrator to review and audit the registration information of TRS users and the registration practices of TRS providers. Any consideration of changes to the rules concerning TRS providers retaining required registration information for TRS users must include an assessment of the impact of the ability of the Commission and relevant administrators to review the data upon which users were verified in the database. The record in this proceeding is incomplete as the Commission did not seek comment on this issue. The Commission therefore does not take action on this issue at this time.

E. Legal Authority

107. The Commission finds that sections 201(b), 222, 225, and 251(e) provide the Commission with authority to adopt the breach notification rules enumerated in this Order. The Commission concludes further that it has authority to apply these revised rules to interconnected VoIP providers. Lastly, the Commission finds that Congress' nullification of the Commission's revisions to its data breach rules in the *2016 Privacy Order* pursuant to the Congressional Review Act (CRA) does not now preclude the Commission from adopting the rules set forth in this Order.

1. Section 222

108. Section 222 of the Act provides authority for the requirements the Commission adopts and revises today. Section 222(a) imposes a duty on carriers to ''protect the confidentiality of proprietary information of, and relating to'' customers, fellow carriers, and equipment manufacturers. Section 222(c) imposes more specific requirements on carriers as to the protection and confidentiality of customer proprietary network information. Both subsections independently provide the Commission authority to adopt rules requiring telecommunications carriers and interconnected VoIP providers to address breaches of customer information, but the breadth of section 222(a) provides the additional clarity that the Commission's breach reporting rules can and must apply to all PII rather than just to CPNI.

109. The Commission has long required carriers to report data breaches as part of their duty to protect the confidentiality of customers' information. The revisions to the Commission's data breach reporting rules adopted in this Order reinforce carriers' duty to protect the confidentiality of their customers' information, including information that may not fit the statutory definition of CPNI. Data breach reporting requirements also reinforce the Commission's other rules addressing the protection of customer information by meaningfully informing customer decisions regarding whether to give, withhold, or retract their approval for carriers to use or disclose their information. Moreover, requiring carriers to notify the Commission in the event of a data breach will better enable the Commission to identify and confront systemic network vulnerabilities and help investigate and advise carriers on how best to avoid future breaches, while simultaneously assisting carriers in fulfilling their duty pursuant to section 222(a) to protect the confidentiality of their customers' information.

110. The Commission rejects Lincoln Network's argument that section 222 does not grant the Commission authority to adopt rules requiring telecommunications carriers and interconnected VoIP providers to address breaches of covered data. Section 222 explicitly imposes a duty on telecommunications carriers to ''protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers.'' To argue, as Lincoln Network does, that section 222 does not grant the Commission ''clear authority to protect the security of data'' contravenes the clear language and intent of section 222. Ever since it began implementation of the 1996 Act, the Commission has understood section 222(a) as a source of carriers' duties and as a source of Commission rulemaking authority. To the extent that the Commission has described its section 222 authority as coextensive with the definition of CPNI, the Commission disavows such an interpretation. In those proceedings, the Commission was not examining the distinction between CPNI and other sensitive personal information, and it never explicitly decided that section 222(a) does not reach other forms of personal information. In fact, the Commission in 2007 described section 222(a)'s duty as extending to ''proprietary or personal customer information,'' and more recent enforcement actions have affirmed that carriers' duty to protect customer information extends beyond CPNI. As noted below, the general interpretation of section 222 in the *TerraCom NAL* also was confirmed by the Commission in a subsequent rulemaking order. And as noted above, in November 2021 and March 2022 orders revoking the operating authority of certain telecommunications carriers, the Commission further stated that all communications service providers have ''a statutory responsibility to ensure the protection of customer information,

including PII and CPNI.'' To find that carriers have no duty to protect the confidentiality of non-CPNI PII would be inconsistent with the plain language of section 222(a)'s use of the term ''proprietary information of, and relating to, . . . customers'' and is not the best interpretation of that provision. Instead, consistent with those recent Commission actions, the Commission finds that the phrase ''information of, and relating to, . . . customers'' in section 222(a) is naturally—and indeed best—interpreted to have the same definition as PII, subject to the additional limitation that the information be ''proprietary'' to the carrier—*i.e.,* obtained in connection with establishing or maintaining a communications service. NCTA asserts that ''most PII . . . is not 'proprietary information,'' but does not justify why the Commission should adopt an understanding of that term different than the one here. Finally, given the larger context discussed below, to the extent that an obligation to take reasonable measures to protect all PII were not derived directly from section 222(a), that would be because Congress understood it already to be based in section 201(b)'s prohibition on unjust or unreasonable practices.

111. Some commenters contend that section 222(a) simply sets out high-level principles the substantive details of which are specified elsewhere. The Commission rejects NCTA's claim that ''legislative history supports an interpretation of Section 222 that does not impose an affirmative obligation under Section 222(a), which shows that Congress deliberately chose not to use 'personally identifiable information' in Section 222.'' NCTA cites a statement from the conference report that '' 'the new section 222 strives to balance both competitive and consumer privacy interests with respect to CPNI.''' But as even commenters opposed to the Commissin's interpretation of section 222(a) recognize, section 222 applies to more than just CPNI, undercutting any understanding of that statement as reflecting the full scope and contours of section 222. NCTA also cites a House Report discussing earlier statutory language considered by the House, which would have specified a different scope of covered information. But that alternative definition also was part of a statutory provision that different in many other ways from section 222 as ultimately adopted, *see* July 24, 1995 House Rep., at 22–23, and section 222 as enacted ultimately was based on the Senate version. In sum, the Commission sees nothing in the legislative history that would persuade it to depart from what it sees as the best interpretation of section 222(a) based on the statutory text. But even beyond the foregoing analysis, that interpretation of section 222(a) is at odds with the fact that section 222(a) lists ''equipment manufacturers'' among the classes of entities owed confidentiality protections as part of a carrier's ''general'' duty. Given that section 222 never otherwise mentions confidentiality protections owed to those entities, this reinforces the Commission's view that section 222(a) is best read as imposing enforceable obligations on telecommunications carriers separate and apart from the requirements of section 222(b) and (c). Admittedly, as CTIA points out, *see* CTIA Comments at 12, section 273(d)(2) separately prohibits ''[a]ny entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment . . . from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information.'' But CTIA fails to demonstrate that the entities that are the focus of section 222(a)—*i.e.,* telecommunications carriers—are fully subsumed by (or even substantially overlap with) the entities that are the focus of section 273(d)(2)—*e.g.,* entities that establish equipment standards or requirements or certify such equipment. The significant mismatch between sections 222(a) and 273(d)(2) thus gives the Commission no reason to question its understanding of section 222(a). Nor does section 222(a) otherwise include textual indicia at odds with the Commission's understanding. Section 222(a) employs regulatory terminology in imparting a general ''duty'' on telecommunications carriers. Section 222(a)'s heading of ''In General'' also is fully compatible with the Commission's understanding of that provision as imposing a general duty—in contrast to alternative headings such as ''Purpose'' or ''Preamble'' that would indicate that the ''duty'' announced by such a provision is merely precatory or a ''statement of purpose'' with no legal force of its own.

112. Contrary to some commenters' claims, the Commission's interpretation of section 222(a) also otherwise is compatible with the remainder of section 222. The Commission reads section 222(a) as imposing a broad duty that can and must be read in harmony with the more specific mandates set forth elsewhere in the statute. This understanding of section 222(a) also accords with the fact that the Commission generally has relied on a ''reasonableness'' standard when evaluating carriers' protection of information under section 222. Provisions such as sections 222(b) and (c) directly impose specific requirements on telecommunications carriers to address concerns that were particularly pressing at the time of section 222's enactment, which continue to control over the more general duty in section 222(a) to the extent of any overlap. The Commission's interpretation of section 222(a) thus preserves the role of each of these provisions within the section 222 framework. And given the more detailed statutory specification of carriers' requirements regarding CPNI in section 222, it is understandable the Congress made a point of establishing express exceptions from those requirements in section 222(d). Part of interpreting section 222(a) in harmony with section 222 as a whole includes interpreting it in harmony with section 222(d). Thus, the Commission does not interpret the grounds for disclosure authorized by section 222(d) as violating carriers' obligation to protect the confidentiality of proprietary information imposed by section 222(a). The Commission's analysis is the same regarding other provisions of section 222, such as the subscriber information disclosure requirements in section 222(e) and (g). Thus, the Commission does not interpret section 222(a) to impose obligations inconsistent with those disclosure requirements, either. Because the Commission reads section 222(a) in harmony with the remainder of section 222 there is no incompatibility in its approach. And the mere omission of section 222(a) from provisions like section 222(d), (e), and (g) would have been an oblique and indirect way of dictating an interpretation of section 222(a) that runs counter to its plain meaning: a reasonable person would not interpret ''a duty to protect the confidentiality'' of customer information as prohibiting its use for billing, for example, as is permitted by section 222(d)(1).

113. Lincoln Network attempts to draw a distinction between security and confidentiality that is unavailing. Lincoln Network itself appears to recognize that something that could be characterized as a ''security'' breach can

result in loss of confidentiality for data or information. Thus, even assuming *arguendo* that breaches of security and breaches of confidentiality are not coextensive, that would matter only if the Commission were attempting to act beyond the scope of section 222's statutory grant of authority with respect to confidentiality—which is not the case here. Based on relevant textual indicia, the Commission concludes that ''confidentiality'' within the meaning of section 222 encompasses impermissible access to, use of, and/or disclosure of covered information. Section 222(a) establishes carriers' ''duty to protect the confidentiality of proprietary information . . . .'' Section 222(b), in turn, is entitled ''[c]onfidentiality of carrier information,'' and limits carriers' ''use'' of proprietary information. Section 222(c) is entitled ''[c]onfidentiality of customer proprietary network information'' and limits how carriers ''use, disclose, or permit access to'' individually identifiable CPNI. ''Although section headings cannot limit the plain meaning of a statutory text, 'they supply cues' as to what Congress intended.'' Against that backdrop the Commission rejects Lincoln Network's attempts to rely on isolated examples of terminology uses from recent industry reports or the like. The Commission's data breach reporting requirements focus on ''breaches,'' which occur when ''a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data.'' The ''covered data'' is defined in terms of the statutory categories of proprietary information and customer proprietary network information, and the focus on access, use, and disclosure of those data fits comfortably within the Commission's section 222 authority.

2. Section 201(b)

114. Section 201(b) of the Act requires practices of common carriers to be just and reasonable and declares any unjust or unlawful practices to be unlawful. The Commission concluded in the *TerraCom NAL* that section 201(b) was violated when carriers failed to notify customers whose personal information had been breached by the carriers' inadequate data-security policies. The *TerraCom NAL* explicitly put carriers ''on notice that in the future [the Commission] fully intend[s] to assess forfeitures for such violations'' under section 201(b). As NCTA points out, the Commission did not propose a forfeiture under section 201(b), NCTA Reply at 10–11, but that was because it was the first time the Commission had declared a carrier's practices related to its failure to notify consumers of a data breach to be a violation of section 201(b). The Commission made explicit that, in the future, such violations would be penalized under section 201(b). The Commission now makes that clear again here. The Commission therefore concludes that its authority to prohibit unjust and unreasonable practices and to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of'' the Act pursuant to section 201(b) provides independent authority for the Commission to consider PII as protected consumer information and to require carriers to notify customers, law enforcement, and the Commission about breaches as discussed throughout this Report and Order.

115. CTIA provides no explanation for its conclusory assertion that carriers' data privacy and security practices are not practices ''in connection with'' communications services. The Commission is no more persuaded by arguments that take a different tack and contend that the carrier actions at issue in this proceeding are not ''charges,'' ''practices,'' ''classifications,'' or ''regulations'' within the meaning of section 201(b). This argument relies on the theory that the Supreme Court has held ''that activity is not covered by Section 201(b) unless it '*resembles* activity that . . . transportation and communications agencies have long regulated.' '' But in that decision, the Supreme Court did not so hold; it merely considered that factor in support of its threshold determination that the activity at issue there ''easily fits within the language of the statutory phrase'' as understood ''in ordinary English.'' The Commission sees no reason why a carrier's privacy and data breach notification practices with respect to customer PII that it has by virtue of its service relationship with them would not easily fit within the ordinary understanding of that statutory phrase, as well. Independently, the Commission also observes that the Commission has, in fact, historically regulated carriers' privacy practices under its section 201(b) authority. Certainly any information collected from a customer or prospective customer related to establishing or maintaining the provision of a communications service would qualify. As discussed above, it is well established that carriers have come into possession of, and sometimes suffered breaches of, sensitive personal information that may not be CPNI. Nor does the canon of statutory construction about specific provisions governing general ones apply here. Section 222, adopted as part of the Telecommunications Act of 1996 (1996 Act), was not intended to narrow carriers' privacy duties or the Commission's authority to oversee carriers' privacy practices. The Commission rejects contrary arguments premised on the fact that section 222 does not itself include a savings clause expressly preserving the Commission's authority under section 201, in contrast to section 251 of the Act. The 1996 Act made clear that ''the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.'' Nothing in section 222 expressly modifies, impairs, or supersedes the Commission's authority under section 201(b) to act to ensure that carriers' practices are just and reasonable. While it is not entirely clear why Congress felt the need for an additional savings clause in section 251(i), it might simply have done so ''to be doubly sure,'' *Barton* v. *Barr,* 140 S. Ct. 1442, 1453 (2020), particularly given the responsibilities assigned to the States in the implementation of sections 251 and 252 of the Act. Nor is the Commission persuaded by contrary claims based on high-level statements in legislative history about the balancing various interests underlying various legislative alternatives that eventually led to section 222 of the Act. *See, e.g.,* CTIA Dec. 6, 2023 *Ex Parte* at 5–6. Such high-level statements in legislative history do not persuade the Commission to depart from what it sees as the best interpretation of the statutory text. Nor is it even clear that the relevant balancing of interests in the cited legislative history necessarily is relevant to the particular exercise of section 201(b) authority at issue here. *See, e.g.,* H.R. Rep. No. 103–559, at 60 (June 24, 1994) (discussing the ''careful balance of competing, often conflicting, considerations'' of consumers' need ''to be sure that information about them that carriers can collect is not misused'' with consumers' expectation that ''the carrier's employee will have available all relevant information about their service,'' which ''argues for looser restrictions on internal use of customer information''). The Commission regulated carriers' privacy practices under its general Title II authority even before enactment of the 1996 Act, and the 1996 Act codified the privacy duty and enacted specific restrictions for the new competitive environment that the Act was intended to promote. In the course of rejecting a request that carriers be compelled to share customer

information with certain other carriers to protect against discrimination against competitors under sections 201(b) and 202(a) of the Act, the Commission stated that ''the specific consumer privacy and consumer choice protections established in section 222 supersede the general protections identified in sections 201(b) and 202(a).'' Understood in context, that simply stands for the proposition that where consumer privacy issues addressed specifically in section 222 are implicated, the requirements of section 222 are controlling over more general protections in section 201(b) and 202(a) that are unrelated to privacy—such as advancing competitive neutrality. The Commission similarly rejects attempts to rely on statements about section 222 that the Commission made in analogous statutory contexts where it rejected pro-competition requirements under statutory provisions like sections 272 or 274 in light of the privacy requirements of section 222. More generally, to the extent that the Commission has made statements that its section 222 authority supersedes its authority under section 201(b), the Commission disavows such an interpretation for the reasons stated in this section. Independently, with particular respect to data breach notification requirements, the Commission does not find either section 201(b) or section 222 to be a more specific provision. And even assuming *arguendo* that section 222 were controlling within its self-described scope, the Commission's rules are fully consistent with that authority as well. As the Commission stated in 1998, ''Congress . . . enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.'' For the reasons discussed throughout this Report and Order, notification to customers, law enforcement, and the Commission are essential to the Commission's oversight of carriers' privacy practices.

116. The structure of the Communications Act and its relationship with the Federal Trade Commission Act also demonstrate that this Commission has authority to make rules governing common carriers' protection of PII. The FTC has broad statutory authority to protect against ''unfair or deceptive'' acts or practices, but that authority is limited by carving out several exceptions for categories of entities subject to oversight by other regulatory agencies, one of which is common carriers subject to the Communications Act. The clear intent is that the expert agencies in those areas will act based on the authorities provided by those agencies' statutes. It is implausible that Congress would have exempted common carriers from any obligation to protect their customers' private information that is not CPNI. Insofar as some parties contend that section 222 establishes a comprehensive scheme of privacy regulation for carriers to the exclusion of section 201(b), yet also contest the Commission's interpretation of section 222(a), they effectively ask the Commission to accept that the supposedly comprehensive privacy scheme that Congress enacted intentionally left the non-CPNI PII of carriers' customers unprotected by Federal law. As discussed, the Commission not only finds that view contrary to the statutory text, but find it implausible more generally.

3. Interconnected VoIP

117. The Commission finds that section 222 and the Commission's ancillary jurisdiction grant the Commission authority to apply the rules it adopts here to interconnected VoIP providers. Interconnected VoIP providers have been explicitly subject to the Commission's data breach rules since 2007, when the Commission first adopted the data breach notification rule. In the *2007 CPNI Order,* the Commission recognized that if interconnected VoIP services were telecommunications services, they self-evidently would be covered by section 222 and the Commission's implementing rules. Although the Commission has not broadly addressed the statutory classification of interconnected VoIP as a general matter, it has consistently recognized that a provider may offer VoIP on a Title II basis if it voluntarily ''holds itself out as a telecommunications carrier and complies with appropriate Federal and State requirements.'' But because the Commission generally had not classified interconnected VoIP, the Commission also exercised its Title I ancillary jurisdiction to extend its CPNI rules to interconnected VoIP services, finding that ''interconnected VoIP services fall within the subject matter jurisdiction granted to [the Commission] in the Act,'' and that ''imposing CPNI obligations is reasonably ancillary to the effective performance of the Commission's various responsibilities.''

118. The Commission proceeds under the same alternative bases here, and concludes that legal and factual bases for the findings relied on in the *2007 CPNI Order* have only grown more persuasive since then. The Commission observed at the time that ''interconnected VoIP service 'is increasingly used to replace analog voice service.' '' This trend has continued. Interconnected VoIP now accounts for a far larger share of the residential fixed voice services market than legacy switched access services, and ''fixed switched access continues to decline while interconnected VoIP services continue to increase.'' Therefore, as the Commission found in 2007, today's consumers should reasonably expect ''that their telephone calls are private irrespective of whether the call is made using the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, given that these services, from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable.'' The Commission likewise thinks interconnected VoIP subscribers should reasonably expect their other information to also be protected and treated confidentially consistent with the other protections that apply under section 222. Furthermore, extending section 222's protections to interconnected VoIP service customers remains ''necessary to protect the privacy of wireline or wireless customers that place calls to or receive calls from interconnected VoIP customers.'' Indeed, following the *2007 CPNI Order,* Congress ratified the Commission's decision to apply section 222's requirements to interconnected VoIP services, adding language to section 222 that applied provisions of section 222 to users of ''IP-enabled voice service.'' These revisions to section 222 would not make sense if the privacy-related duties of subsections (a) and (c) did not apply to interconnected VoIP providers. The Commission notes that no commenter chose to address this issue in the course of this proceeding.

119. In the case of interconnected VoIP providers that have obtained direct access to telephone numbers, the Commission concludes that section 251(e) also gives the Commission authority to condition that access on those providers' compliance with privacy requirements equivalent to those that apply to telecommunications carriers. The Commission previously exercised its authority under section 251(e) to ensure, for example, that an interconnected VoIP provider receiving direct access to numbers ''possesses the financial, managerial, and technical expertise to provide reliable service.'' Ensuring that interconnected VoIP providers remain on the same regulatory footing as telecommunications carriers with respect to customer privacy—as was the case when direct access to numbers for interconnected VoIP providers began—will ensure a level

competitive playing field and ensure that consumers' expectations are met regarding the privacy of their information when using the telephone network.

4. Legal Authority To Adopt Rules for TRS

120. The Commission finds that it has separate and independent authority under sections 225 and 222 to amend its data breach rule for TRS to ensure that TRS users receive privacy protections equivalent to those enjoyed by users of telecommunications and VoIP services. Section 225 of the Act directs the Commission to ensure that TRS are available to enable communication in a manner that is functionally equivalent to voice telephone services. In the *2013 VRS Reform Order,* the Commission found that applying the privacy protections of the Commission's regulations to TRS users advances the functional equivalency of TRS. The Commission concluded further that the specific mandate of section 225 to establish ''functional requirements, guidelines, and operations procedures for TRS'' authorizes the Commission to make the privacy protections included in the Commission's data breach regulations applicable to TRS users.

121. The Commission also found that extending its privacy—including data breach—regulations to TRS users was ancillary to its responsibilities under section 222 of the Act to telecommunications service subscribers that place calls to or receive calls from TRS users, because TRS call records include call detail information concerning all calling and called parties. The Commission moreover determined that applying data breach requirements to point-to-point video services provided by VRS providers (such point-to-point services, while provided in association with VRS, are not themselves a form of TRS) is ancillary to its responsibilities under sections 222 and 225, including the need to protect information that VRS providers had by virtue of being a given customer's registered VRS provider—even in the context of point-to-point video service—and to guard against the risk to consumers who are likely to expect the same privacy protections when dealing with VRS providers, whether they are using VRS or point-to-point video services.

122. The Commission concludes that, for the same reasons cited in the *2013 VRS Reform Order,* these sources of authority for establishing the current data breach rule for TRS now authorize the Commission to amend this rule to ensure that TRS users continue to receive privacy protections equivalent to those enjoyed by users of telecommunications and VoIP services. The record in this proceeding supports this conclusion. As AARO states, the Commission has ''ample legal authority'' to amend its data breach rule for TRS under sections 222 and 225.

5. Impact of the Congressional Disapproval of the *2016 Privacy Order*

123. In 2016, the Commission attempted to revise its breach notification rules as part of a larger proceeding addressing privacy requirements for broadband internet service providers (ISPs). In 2015, the Commission classified broadband internet access service as a telecommunications service subject to Title II of the Act, a decision that the D.C. Circuit upheld in *U.S. Telecom Ass'n* v. *FCC,* 825 F.3d 674 (D.C. Cir. 2016). As a result of classifying broadband internet access service as a telecommunications service, such services were subject to sections 201 and 222 of the Act. The rules the Commission adopted in the *2016 Privacy Order* applied to telecommunications carriers and interconnected VoIP providers in addition to ISPs, which had been classified as providers of telecommunications services in 2015. In 2017, however, Congress nullified those 2016 revisions to the Commission's privacy rules under the CRA. Pursuant to the language of the Resolution of Disapproval, the *2016 Privacy Order* was rendered ''of no force or effect.'' That resolution conformed to the procedure set out in the CRA, which requires agencies to submit most rules to Congress before they can take effect and provides a mechanism for Congress to disapprove of such rules. Pursuant to the operation of the CRA, the *2016 Privacy Order* ''may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.''

124. In analyzing the impact of the Resolution of Disapproval of the *2016 Privacy Order,* the Commission first explains its understanding of the CRA's prohibition on reissuance. The Commission also shows that, in any event, the revisions made here to the breach notification rule are different in substantial ways from those that were included in the *2016 Privacy Order.*

125. First, the Commission concludes that the CRA is best interpreted as prohibiting the Commission from reissuing the *2016 Privacy Order* in whole, or in substantially the same form, or from adopting another item that is substantially the same as the *2016 Privacy Order.* It does not prohibit the Commission from revising its breach notification rules in ways that are similar to, or even the same as, some of the revisions that were adopted in the *2016 Privacy Order,* unless the revisions adopted are the same, in substance, as the *2016 Privacy Order* as a whole. To be clear, although the CRA would permit the Commission to adopt a breach notification rule that is the same as the breach notification rule that was adopted by the *2016 Privacy Order,* the rule that the Commission adopts here has substantial differences. The Commission rejects arguments that there was insufficient notice for the Commission to adopt this interpretation of the effect of the CRA resolution of disapproval. In pertinent part, notice under the APA requires ''reference to the legal authority under which the rule is proposed'' and ''either the terms or substance of the proposed rule or a description of the subjects and issues involved.'' The *Data Breach Notice* described the proposal to adopt expanded data breach notification requirements pursuant to its statutory authority under sections 222, 225, and other possible sources of authority. In the course of this request for comment, the Commission sought specific comment regarding ''the effect and scope of the Congressional disapproval of the *2016 Privacy Order.*'' This satisfies the requirements of the APA. Even beyond that, however, the Commission's interpretation flows from ordinary tools of statutory interpretation, first and foremost by focusing on the relevant statutory text and context. Contrary to the suggestion of some, the Commission finds nothing ''novel'' about this interpretive approach, providing additional grounds to conclude that the notice and comment requirements of the APA were satisfied here.

126. Congress's Resolution of Disapproval, by its terms, disapproved ''the rule submitted by the Federal Communications Commission relating to 'Protecting the Privacy of Customers of Broadband and Other Telecommunications Services' (81 FR 87274 (December 2, 2016)).'' This referred to the *2016 Privacy Order* in its entirety, which was summarized in the cited **Federal Register** document. The statutory term ''rule,'' as used in the CRA, refers to ''the whole or a part of an agency statement of general or particular applicability and future effect

designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.'' Thus, ''rule'' can and does refer to an entire decision that adopts rules. In implementing Congress's resolution of disapproval, the Commission treated the *2016 Privacy Order* as a single rule. In a ministerial order, the Commission ''simply recogniz[ed] the effect of the resolution of disapproval'' should be that ''the *2016 Privacy Order* 'shall be treated as though [it] had never taken effect.' '' As a result, all of the changes that the *2016 Privacy Order* made to the Commission rules codified in the Code of Federal Regulations were reversed, with the result that all of the Commission rules in part 64, subpart U, were restored to how they read prior to their amendment by the *2016 Privacy Order.* The term ''rule'' can also refer to parts of such a decision, or to various requirements as adopted or amended by such a decision. In the context of the CRA's bar on reissuance, the Commission must consider which rule is specified by that bar. The reissuance bar, 5 U.S.C. 801(b)(2), provides that ''a new rule that is substantially the same as such a rule may not be issued''—where ''such a rule'' refers to the rule specified in the joint resolution of disapproval as described in section 802. As shown above, the joint resolution referred to the entirety of the *2016 Privacy Order.* Therefore, the Commission concludes that the ''rule'' to which the reissuance bar applies is the entire *2016 Privacy Order* with all of the rule revisions adopted therein.

127. The Commission concludes that it would be erroneous to construe the resolution of disapproval as applying to anything other than all of the rule revisions, as a whole, adopted as part of the *2016 Privacy Order.* That resolution had the effect of nullifying each and every provision of the *2016 Privacy Order*—each of those parts being rules under the APA—but not ''the rule'' specified in the resolution of disapproval. By its terms, the CRA does not prohibit the adoption of a rule that is merely substantially similar to a limited portion of the disapproved rule or one that is the same as individual pieces of the disapproved rule. The Commission rejects arguments that because the CRA borrows from the APA's definition of ''rule'' as referring to the whole or a part of certain agency statements of general applicability and future effect, an agency cannot adopt a rule substantially similar to any part of an agency rulemaking decision that does not take effect due to a resolution of disapproval under the CRA. The key issue is not the definition of ''rule'' in the abstract, but the wording of 5 U.S.C. 801(b)(2) (along with the wording of the resolution of disapproval itself). And 5 U.S.C. 801(b)(2) is worded in singular terms—referring to ''*A rule* that does not take effect (or does not continue) under paragraph (1) . . . '' as opposed to saying ''*Any rule* that does not take effect (or does not continue) under paragraph (1) . . . '' or ''*Rules* that do not take effect (or do not continue) under paragraph (1) . . . .'' So even if there might be multiple APA rules that do not take effect as a result of a resolution of disapproval, the CRA's focus is on a singular ''rule'' that does not take effect. Since the whole *2016 Privacy Order* was the subject of the resolution of disapproval, and the whole *2016 Privacy Order* did not take effect as a result, the Commission concludes that the whole *2016 Privacy Order* is the relevant ''rule'' for purposes of 5 U.S.C. 801(b)(2). And although some commenters claim that the Commission's approach to interpreting the CRA could lead to uncertainty about what is subject to 5 U.S.C. 801(b)(2), they do not identify any actual ambiguity as the Commission's approach is applied here—instead, they seemingly just dislike the outcome. Nor is the Commission persuaded that Congress lacks the tools to address any concerns about the scope of a resolution of disapproval if any were to arise. For example, the record does not reveal why Congress could not specify the ''relating to'' criterion in the resolution of disapproval language required by 5 U.S.C. 802(a) in more granular or detailed ways. Independently, Congress also always remains free to enact laws outside the CRA process that reject agency rules with as much detail and precision as they wish should ambiguity concerns become a practical problem.

128. To prohibit an agency from making any of the individual decisions made in an entire disapproved rulemaking action would not only be contrary to the text of the resolution of disapproval, interpreted consistently with the CRA, but also would be contrary to the apparent intent of the CRA. When Congress adopted the CRA, it recognized that it would be necessary for agencies to interpret the scope of the bar on reissuance in the future. According to a floor statement that its authors intended to be authoritative,

> [t]he authors [of the CRA] intend the debate on any resolution of disapproval to focus on the law that authorized the rule and make the congressional intent clear regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval. It will be the agency's responsibility in the first instance when promulgating the rule to determine the range of discretion afforded under the original law and whether the law authorizes the agency to issue a substantially different rule. Then, the agency must give effect to the resolution of disapproval.

129. Accordingly, the Commission observes that, in the floor debate on the resolution of disapproval in 2017, supporters of the resolution did not mention the breach notification provision apart from a brief reference. Senators who spoke in favor of the resolution cited the *2016 Privacy Order's* treatment of broadband providers and the information they hold as different from providers of other services on the internet. The debate gives no reason to believe that the breach notification rule motivated those members of Congress who supported the resolution. Although the Commission's conclusion that the whole *2016 Privacy Order* is the relevant ''rule'' for purposes of 5 U.S.C. 801(b)(2) is fully justified even without considering the legislative history of the resolution of disapproval, the Commission rejects arguments that it is inappropriate to also look at that history and contentions that the Commission is misinterpreting that history. In addition to legislative history of the CRA that indicates that the legislative history of each resolution of disapproval should be relevant, out of an abundance of caution given the lack of an authoritative determination specifying the details of how to evaluate whether a rule is substantially the same under 5 U.S.C. 801(b)(2), the Commission considers whether there are indicia from the legislative history of the resolution of disapproval here to inform that analysis. For instance, if the legislative history indicated that the resolution of disapproval of the *2016 Privacy Order* somehow hinged entirely or significantly on concern about some or all of the 2016 data breach reporting requirements, the Commission then could consider whether and how to account for that in the 5 U.S.C. 801(b)(2) analysis notwithstanding the fact that there is little practical overlap between this order and the entirety of the *2016 Privacy Order.* Although data breach notification issues occasionally appear to have been raised by opponents of the resolution of disapproval, high-level statements by supporters of the resolution about ''FCC overreach'' or the like do not, without more, persuade the Commission that the 2016 data breach notification requirements played a

significant role in motivating the resolution of disapproval. Thus, the Commission sees nothing in the legislative history of the resolution of disapproval that would cause the Commission to question its conclusion that its action here does not adopt substantially the same rule for CRA purposes.

130. As EPIC notes in its comments, Congressional disapproval of the *2016 Privacy Order* under the CRA was largely predicated on claims that the Order would create duplicative privacy authority with the Federal Trade Commission as relates to broadband internet service providers. A review of the Congressional record from 2017 reveals that this indeed appears to have been the animating justification for Congressional disapproval of the *2016 Privacy Order.* Whatever the merits of such an argument, the Commission finds that it does not now preclude the Commission from adopting the rules set forth in this Order. As EPIC notes, the rules the Commission adopts here are not privacy measures directed at broadband internet service providers, but rather, data security measures directed at providers of telecommunications, interconnected VoIP services, and TRS, and which build upon rules that have existed since 2007. Thus, the primary animating justification behind Congressional disapproval of the *2016 Privacy Order* is irrelevant to the present case.

131. In addition, the revisions that the Commission makes here to the breach notification rule are different in substantial ways from those that Congress disapproved in 2017. The *2016 Privacy Order* was focused in large part on adopting privacy rules for broadband internet access service, and also made a number of changes to the Commission's privacy rules more generally that, among other things, required carriers to disclose their privacy practices, revised the framework for customer choice regarding carriers' access, use, and disclosure of the customers' information, and imposed data security requirements in addition to data breach notification requirements. When the *2016 Privacy Order* is viewed as a whole, it is clear that there is at most a small conceptual overlap between the adoption of data breach notification requirements at issue here and the many actions taken in that *Order* of which data breach notification requirements represented only a small fraction.

132. Independently, even assuming *arguendo* that the CRA were interpreted to require an evaluation on a more granular basis here, the Commission is not persuaded that the requirements it adopts here are substantially the same as analogous requirements in the *2016 Privacy Order.* For example, the customer notification requirement the Commission adopts here is materially less prescriptive regarding the content and manner of customer notice than what the Commission adopted in 2016. Further, the 2016 data breach notification rules for customer notifications and government agency notifications did not incorporate the good-faith exception from the definition of covered breaches that the Commission adopts here. With respect to the Federal agency notification requirements, as compared to the 2016 rules, the rules the Commission adopts here in that regard provide for the Commission and other law enforcement agencies to gain a much more complete picture of data breaches, including trends and emerging activities, consistent with the demonstrated need for such oversight. Consequently, even assuming *arguendo* that one were to conduct the 5 U.S.C. 801(b)(2) evaluation on a more granular basis, the Commission is not persuaded that the data breach notification requirements the Commission adopts here would be substantially the same as breach notification requirements adopted in the *2016 Privacy Order.* Even assuming one were to conduct the 5 U.S.C. 801(b)(2) evaluation at a more granular basis, the Commission is not persuaded that the breach notification rule from the *2016 Privacy Order* is the right level of granularity, nor that the evaluation of whether rules are substantially the same should be conducted based on high-level policy similarities, as some commenters contend. For example, the customer notification requirement is itself a ''rule'' within the meaning of the APA, as is the Federal agency notification requirement. Ultimately, however viewed, the Commission is persuaded that the rules it adopts here are not substantially the same as a disapproved rule for purposes of the CRA.

133. Nor is the Commission adopting something substantially the same as the *2016 Privacy Order* as a whole through the aggregate effect of individual Commission actions. For one, the theory that classification of broadband internet access service as a telecommunications service will automatically subject those services to the Commission's privacy rules, including the data breach notification requirements adopted here, is belied by multiple considerations: (1) the Commission has simply sought comment on those classification issues in its *Open internet Notice* and has not yet acted in that regard; (2) the *2015 Open internet Order* shows that the Commission is willing and able to decline to apply rules that might be triggered by a classification decision, having done so there, for example, by forbearing from all rules implementing section 222 pending consideration in a subsequent proceeding; and (3) the *Open internet Notice* sought comment on following the same approach to privacy that the Commission took in the *2015 Open internet Order* and specifically noted the resolution of disapproval of the *2016 Privacy Order* as a relevant consideration bearing on how it proceeds there. The Commission's analysis also is not materially altered by arguments that the Commission otherwise has adopted ''data security, customer authentication, employee training, and other requirements.'' In addition to being unpersuaded that such requirements substantially ''mirror provisions of the 2016 order,'' the Commission independently is not persuaded that the aggregation of such requirements and the data breach notification requirements adopted here lead to such a significant overlap with the *2016 Privacy Order* as to render the Commission's collective actions substantially the same as the *2016 Privacy Order* as a whole. For example, in the recent *SIM Swap Order,* the Commission adopted certain privacy requirements focused on wireless carriers' practices in the specific context of account transfers (or ''swaps'') from a device associated with one subscriber identity module (SIM) to a device associated with a different SIM on in connection with a wireless number being ported out. That is a vastly different focus than the *2016 Privacy Order,* which focused on the general privacy practices of all carriers. Thus, even assuming *arguendo* some high-level conceptual similarities, the operation and practical effect is significantly different than even arguably analogous requirements that were part of the *2016 Privacy Order.* As discussed above, the primary focus of the *2016 Privacy Order* was privacy rules for broadband internet access service, along with a number of changes to the Commission's privacy rules more generally that, among other things, required carriers to disclose their privacy practices, and revised the framework for customer choice regarding carriers' access, use, and disclosure of the customers' information. Given the other significant issues central to that decision, even assuming *arguendo* that there were some conceptual overlap between the

issues addressed in the *2016 Privacy Order* and data security, customer authentication, and employee training requirements recently adopted by the Commission—and even considered in conjunction with the data breach notification rules the Commission adopts here—the Commission is not persuaded that the Commission has adopted substantially the same rule as the *2016 Privacy Order.* Separately, insofar as the Commission considers the legislative history of the 2017 resolution of disapproval, data security, customer authentication, and employee training requirements likewise received only isolated mention, and then primarily with respect to broadband internet access service. Consequently, that legislative history does not reveal that the resolution of disapproval hinged entirely or significantly on concerns about such issues, even considered collectively. Thus, whether viewed alone or in the aggregate, the Commission is not persuaded that it has adopted substantially the same rule as the *2016 Privacy Order* as a whole. And the Commission notes, of course, that Congressional disapproval of a particular rule implementing a statute does not nullify an agency's general authority under that statute.

II. Effective Dates

134. The revised recordkeeping and reporting requirements adopted in this Report and Order, including the revisions to 47 CFR 64.2011 and 64.5111 set forth in Appendix A, are subject to approval by the Office of Management and Budget (OMB). Unless and until such time as OMB approves these new or modified requirements, the current, unmodified versions of 47 CFR 64.2011 and 64.5111 shall continue to apply.

135. The Commission directs the Wireline Competition Bureau to announce OMB approval and effective dates for the modified rules contained within this Order by subsequent public notice. Pursuant to this process, the Commission anticipates that carriers of all sizes will have ample time to come into compliance with these requirements, and therefore rejects CCA's request for a 12-month implementation timeline.

III. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Data Breach Reporting Requirements* (*Data* Breach *Notice*), released in January 2023. The Commission sought written public comment on the proposals in the *Data Breach Notice,* including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. The *Report and Order* takes several important steps aimed at updating the Commission's rules regarding data breach notifications, both to Federal agencies and to customers, to better protect consumers from the dangers associated with data security breaches of customer information and to ensure that the Commission's rules keep pace with modern challenges.

3. First, the Commission expands the scope of the data breach notification rules to cover various categories of personally identifiable information (PII) that carriers hold with respect to their customers. Second, the Commission expands the definition of ''breach'' for telecommunications carriers to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or futher disclosed. Third, the Commission requires carriers to notify the Commission, in addition to the United States Secret Service (Secret Service) and Federal Bureau of Investigation (FBI), as soon as practicable, and in no event later than seven business days after reasonable determination of a breach. Fourth, the Commission eliminates the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed. Fifth, the Commission eliminates the mandatory waiting period for carriers to notify customers, and instead requires carriers to notify customers of breaches of covered data without unreasonable delay after notification to Federal agencies, and in no case more than 30 days following reasonable determination of a breach, unless a delay is requested by law enforcement. Sixth, and finally, to ensure that telecommunications relay service (TRS) customers enjoy the same level of protections as customers of telecommunications carriers, the Commission adopts equivalent requirements for TRS providers. By adopting these requirements the Commission increases the the protection of consumers from improper use and/or disclosure of their information consistent with approaches to protect the public adopted by the Commission's Federal and State government partners.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the Commission considered the general comments received about the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible, as discussed below, to reduce the compliance burden and the economic impact of the rules adopted in the *Report and Order* on small entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at

the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

8. 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.

9. 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.''

1. Wireline Carriers

10. *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.

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *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. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

14. *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. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange

Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

16. *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. 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. The Commission notes 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. Therefore, the Commission is 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.

17. *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 a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 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.

2. Wireless Carriers

18. *Wireless Telecommunications Carriers (except Satellite*). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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 $38.5 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. 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.

3. Resellers

20. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size

standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 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.

4. Other Entities

23. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

24. In the *Report and Order,* the Commission expanded the scope of the Commission's breach notification rules to cover various categories of customer PII held by telecommunications carriers. The Commission also adopted a requirement that all telecommunications carriers notify the Commission, in addition to the Secret Service and the FBI, as soon as practicable, and in no event later than seven business days after reasonable determination of a breach of covered data. The Commission exempted from this notification requirement breaches that affect fewer than 500 customers and for which the carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. Instead, the Commission required carriers to sign and file with the Commission and other law enforcement an annual summary regarding all such breaches occurring in the previous calendar year. Carriers must also notify affected customers of breaches, with the exception of instances where a carrier can reasonably determine that no harm to such customers is reasonably likely to occur as a result of the breach. Additionally, the Commission applied similar rules to TRS providers.

25. The Commission's review of the record included comments about unique burdens for small businesses that may be impacted by the notification requirements adopted in the *Report and Order.* Accordingly, the Commission considered, and adopted provisions to mitigate, some of those concerns. For example, the Commission decided to utilize the existing reporting portal, which small and other carriers and TRS providers are already accustomed to using to notify the Commission along with the Secret Service and FBI of breaches rather than creating a centralized reporting facility operated by the Commission to report breaches to the Commission and these agencies as proposed in the *Data Breach Notice.* As such, the Commission anticipates that the requirement to notify it of data breaches will have de minimis cost implications because small and other carriers and TRS providers are already obligated to notify the Secret Service and FBI of such breaches, and will use the existing portal to do so. The Commission delegated authority to the Wireline Competition Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported, thereby ensuring that no additional burden would be imposed on small and other carriers and TRS providers. The Commission also adopted a threshold trigger that permits carriers and TRS providers to forgo notifying Federal agencies of breaches that are limited in scope and unlikely to pose harm to customers, instead requiring small and other carriers and TRS providers to maintain the information, and file an annual summary of such breaches. Additionally, with the support of several small carriers, the Commission adopted a harm-based notification trigger for reporting breaches to customers, which allows small and rural providers to focus their resources on data security and mitigation measures rather than generating notifications where harm to the consumer is unlikely.

26. In the *Report and Order* the Commission also adopted a ''without unreasonable delay, but no later than 30 days after reasonable determination of the breach'' timeframe for notifying customers of covered data breaches. Consistent with the comments in support of small carriers interests, the Commission recognizes that this reporting standard can take into account factors such as the provider's size, as a small carrier may have limited resources and could require additional time to investigate a data breach than a large carrier. The Commission notes that many State laws similarly require breach notifications which are in line with the requirements that the Commission adopts today. Therefore, although the Commission cannot quantify the compliance costs, it does not expect the adopted rules to impose any significant cost burdens for small entities, or require these entities to hire professionals to meet their compliance obligations.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. 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.''

28. The Commission took steps and considered alternatives in this proceeding that may reduce the impact of the adopted rule changes on small entities. For example, the Commission's expansion of the definition of ''breach'' included consideration of whether to include situations where a telecommunications carrier, or a third party discovers conduct that could have reasonably led to exposure of customer CPNI, even if it has not yet determined if such exposure occurred. Small and other commenters generally opposed such an expansion, and the Commission ultimately declined to expand ''breach'' to include these situations. Conversely, although some commenters on behalf of small entities opposed requiring breach notification to the Commission, the Commission was not persuaded by their arguments. The Commission disagreed that the existing requirement to notify the Secret Service and the FBI is sufficient and that adding the Commission to the list of recipients of the same breach notifications Commission rules already require carriers to submit would impose any additional burden on carriers. Several actions the Commission takes in the *Report and Order* will avoid imposing additional burdens on small and other carriers who have to file breach notifications with the Commission.

29. As an initial matter the Commission considered, and included a good-faith exception that excluded from the definition of ''breach'' a good-faith acquisition of covered data by an employee or agent of a carrier where such information is not used improperly or further disclosed. The Commission believes this exception will help avoid excessive notifications to consumers, and reduce reporting burdens on small and other carriers. Furthermore, in the *Data Breach Notice,* the Commission proposed to create a new portal for reporting breaches to the Commission. However, in the *Report and Order* the Commission decided instead to make use of the existing portal which small and other carriers and TRS providers are already accustomed to using for data breach reporting requirements to Federal law enforcement agencies. The Commission's decision to continue using a portal that small and other carriers and providers are already familiar and comfortable working with reduces the administrative burdens on small entities of learning a new mechanism and creating new reporting processes. Additionally, the contents of the notification to the Commission are the same fields that carriers and providers already report to the Secret Service and the FBI. The Commission agreed with commenters on behalf of small entities that the breach notification information small and other carriers and providers are required to submit to the FBI and Secret Service is largely sufficient, and the Commission should generally require reporting of the same information. As such, the impact of also reporting the breach to the Commission should be de minimis on small carriers and providers. The Commission considered adopting a lower reporting threshold for the affected-customer notification of no-harm-risk breaches to the Federal agencies but ultimately decided to adopt a 500-customer threshold because that is consistent with many other State laws, and would therefore promote consistency and efficiency in compliance. A lower threshold could impose higher burdens on small and other carriers and providers, so the Commission declined to adopt such a rule. Likewise for consistency and efficiency, the Commission similarly declined to adopt a threshold of 5000 affected customers to trigger notification to Federal agencies. The Commission also considered ways to reduce the burden of the annual reporting requirement for breaches affecting fewer than 500 individuals and where the carrier or TRS provider could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. In determining the content and format requirements of the annual report, the Commission instructed the Bureau to minimize the burdens on carriers and TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. At a minimum, the Commission directed the Bureau to develop requirements that are less burdensome than what is required for individual breach submissions to the reporting facility, and to consider streamlined ways for filers to report this summary information.

30. The Commission also considered adopting minimum requirements for the contents of customer notifications for telecommunications carriers and TRS providers. However, the Commission declined to impose such minimum requirements on carriers and TRS providers because doing so may create unnecessary burdens on carriers and TRS providers, particularly small ones. Specifically, the Commission considered but declined to adopt minimum reporting requirements harmonizing content requirements for carriers with the information required under the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) as part of their notifications to Federal agencies. In the absence of final rules, and a potential for imposing duplicative or inconsistent fields, by declining to adopt such a requirement the Commission minimizes the economic impact for small entities. Relatedly, the Commission declined to adopt a specific method of notification for customers, instead deciding that carriers and TRS providers have pre-established methods of reaching their customers, each carrier or TRS provider is in the best position to know how best to reach their customers, and imposing a specific method would add unnecessary burdens to the industry. The Commission also considered requiring notification to all customers whenever a breach occurred. Such a requirement would lead to increased obligations to notify customers of every instance which qualified as a ''breach''

under the expanded definition and scope of the rules described in the *Report and Order.* However, by adopting the harm-based trigger, the Commission limits the applicability of the customer-notification obligations to breaches which are likely to cause harm to customers, thereby reducing burdens on small and other telecommunications carriers and TRS providers. In addition, the Commission also adopted a safe harbor under which customer notification is not required where a breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed, further reducing burdens on small and other carriers from the Commission's customer notification requirements.

31. The Commission's actions and the considerations discussed above lead the Commission to believe that the new requirements adopted in the *Report and Order* are minimally burdensome, and small carriers and TRS providers should not have any increased regulatory burdens, or significant compliance issues with including these new breach notification requirements in their existing processes. Nevertheless, the importance of the breach notification requirements adopted in the *Report and Order* to safeguard the public against improper use or disclosure of their customer data, to hold telecommunications carriers and TRS providers accountable, and to ensure customers are provided with the necessary resources to protect themselves in the event their data through their association with a telecommunications carrier or TRS provider is compromised, outweighs any minimal burdens that telecommunications carriers and TRS providers may experience in providing information to the Commission, and Federal law enforcement agencies.

G. Report to Congress

32. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the **Federal Register**.

IV. Procedural Matters

33. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission's Final Regulatory Flexibility Analysis is set forth in Appendix B. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

34. *Paperwork Reduction Act.* This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such new or modified requirements will be submitted to 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. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 47 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

35. In this Report and Order, the Commission has assessed the effects of (1) expanding the scope of the data breach notification rules to cover specific categories of PII that carriers hold with respect to their customers; (2) expanding the definition of ''breach'' to include inadvertent access, use, or disclosure of customer information, except in those cases where such information is acquired in good faith by an employee or agent of a carrier, and such information is not used improperly or further disclosed; (3) requiring carriers to notify the Commission, in addition to Secret Service and FBI, as soon as practicable, and in no event later than seven business days after reasonable determination of a breach; (4) eliminating the requirement that carriers notify customers of a breach in cases where a carrier can reasonably determine that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involved encrypted data and the carrier had definitive evidence that the encryption key was not also accessed, used, or disclosed; and (5) applying similar rules to TRS providers, and the Commission finds that the impact on small businesses with fewer than 25 employees will be minimal. While the Commission expanded the scope of the data breach notification rules, the Commission also adopted a good-faith exception from the definition of breach which limits the reportable instances. Additionally, the Commission decided to utilize the existing reporting portal, which small carriers and TRS providers are already accustomed to using, for Federal agency breach notifications rather than creating a new centralized portal. The Commission delegated authority to the Wireline Competition Bureau to coordinate with the Secret Service, the current administrator of the reporting facility, and the FBI, to the extent necessary, to ensure that the Commission will be notified when data breaches are reported, thereby ensuring that no additional burden would be imposed on small and other carriers and TRS providers from separate reporting requirements. The Commission also exempted from the Federal agency reporting requirement breaches that affect fewer than 500 customers and for which the carrier reasonably determines that no harm to customers is reasonably likely to occur, and instead require carriers to file with Federal agencies an annual summary regarding all such breaches occurring in the previous calendar year. This annual reporting requirement is intended to minimize the burden of reporting such breaches to Federal law enforcement and the Commission. In determining the content and format requirements of the annual report, the Commission instructed the Bureau to minimize the burdens on carriers and TRS providers by, for example, limiting the content required for each reported breach to that absolutely necessary to identify patterns or gaps that require further Commission inquiry. Additionally, with the support of several small carriers, the Commission adopted a harm-based notification trigger for reporting breaches to customers, which allows small providers to focus their resources on data security and mitigation measures rather than generating notifications where harm to the consumer is unlikely.

36. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

37. *OPEN Government Data Act.* The OPEN Government Data Act, requires agencies to make ''public data assets'' available under an open license and as ''open Government data assets,'' *i.e.,* in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and

based on an open standard that is maintained by a standards organization. This requirement is to be implemented ''in accordance with guidance by the Director'' of the OMB. The term ''public data asset'' means ''a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under [the Freedom of Information Act (FOIA)].'' A ''data asset'' is ''a collection of data elements or data sets that may be grouped together,'' and ''data'' is ''recorded information, regardless of form or the media on which the data is recorded.'' The Commission delegates authority, including the authority to adopt rules, to the Wireline Competition Bureau, in consultation with the agency's Chief Data Officer and after seeking public comment to the extent it deems appropriate, to determine whether to make publicly available any data assets maintained or created by the Commission pursuant to the rules adopted herein, and if so, to determine when and to what extent such information should be made publicly available. In doing so, the Bureau shall take into account the extent to which such data assets should not be made publicly available because they are not subject to disclosure under the FOIA.

38. *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).

39. *Contact Person.* For further information, please contact Mason Shefa, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2494 or *mason.shefa@fcc.gov.*

V. Ordering Clauses

40. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 222, 225, 251, 303(b), 303(r), 332, and 705 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201, 202, 222, 225, 251, 303(b), 303(r), 332, 605, this Report and Order *is adopted.*

41. *It is further ordered* that part 64 of the Commission's rules *is amended* as set forth in Appendix A of the *Report and Order.*

42. *It is further ordered* that this Report and Order *shall be* effective thirty (30) days after publication of the text or a summary thereof in the **Federal Register**, except that the amendments to 47 CFR 64.2011 and 64.5111, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, will not be 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 notice in the **Federal Register** announcing completion of such review and the relevant effective date. It is the Commission's intention in adopting the foregoing Report and Order that, if any provision of the Report and Order or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Report and Order and the rules not deemed unlawful, and the application of such Report and Order and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

43. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

44. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Carrier equipment, Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Effective March 13, 2024, the heading for subpart U is revised to read as follows:

Subpart U—Privacy of Customer Information

■ 3. Delayed indefinitely, amend § 64.2011 by revising the section heading and paragraphs (a) through (e) to read as follows:

§ 64.2011 Notification of security breaches.

(a) *Commission and Federal Law Enforcement Notification.* Except as provided in paragraph (a)(3) of this section, as soon as practicable, but no later than seven business days, after reasonable determination of a breach, a telecommunications carrier shall electronically notify the Commission, the United States Secret Service (Secret Service), and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility on its website.

(1) A telecommunications carrier shall, at a minimum, include in its notification to the Commission, Secret Service, and FBI:

(i) The carrier's address and contact information;

(ii) A description of the breach incident;

(iii) The method of compromise;

(iv) The date range of the incident;

(v) The approximate number of customers affected;

(vi) An estimate of financial loss to the carrier and customers, if any; and

(vii) The types of data breached.

(2) If the Commission, or a law enforcement or national security agency, notifies the carrier that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security.

(3) A telecommunications carrier is exempt from the requirement to provide notification to the Commission and law enforcement pursuant to paragraph (a) of this section of a breach that affects fewer than 500 customers and the

carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. In circumstances where a carrier initially determined that it qualified for an exemption under this paragraph (a)(3), but later discovers information such that this exemption no longer applies, the carrier must report the breach to Federal agencies as soon as practicable, but no later than within seven business days of this discovery, as required in this paragraph (a).

(b) *Customer notification.* Except as provided in paragraph (a)(2) of this section, a telecommunications carrier shall notify affected customers of a breach of covered data without unreasonable delay after notification to the Commission and law enforcement pursuant to paragraph (a) of this section, and no later than 30 days after reasonable determination of a breach. This notification shall include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. Notwithstanding the foregoing, customer notification shall not be required where a carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the carrier has definitive evidence that the encryption key was not also accessed, used, or disclosed.

(c) *Recordkeeping.* All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Commission, Secret Service, and the FBI pursuant to paragraph (a) of this section, and notifications made to customers pursuant to paragraph (b) of this section. The record shall include, if available, dates of discovery and notification, a detailed description of the covered data that was the subject of the breach, the circumstances of the breach, and the bases of any determinations regarding the number of affected customers or likelihood of harm as a result of the breach. Carriers shall retain the record for a minimum of 2 years.

(d) *Annual Reporting of Certain Small Breaches.* A telecommunications carrier shall have an officer, as an agent of the carrier, sign and file with the Commission, Secret Service, and FBI, a summary of all breaches occurring in the previous calendar year affecting fewer than 500 individuals and where the carrier could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. This filing shall be made annually, on or before February 1 of each year, through the central reporting facility, for data pertaining to the previous calendar year.

(e) *Definitions.* (1) As used in this section, a ''breach'' occurs when a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data. A ''breach'' shall not include a good-faith acquisition of covered data by an employee or agent of a telecommunications carrier where such information is not used improperly or further disclosed.

(2) As used in this section, ''covered data'' includes both a customer's CPNI, as defined by § 64.2003, and personally identifiable information.

(3) As used in this section, ''encrypted data'' means covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.

(4) As used in this section, ''encryption key'' means the confidential key or process designed to render encrypted data useable, readable, or decipherable.

(5) Except as provided in paragraph (e)(6) of this section, as used in this section, ''personally identifiable information'' means:

(i) An individual's first name or first initial, and last name, in combination with any government-issued identification numbers or information issued on a government document used to verify the identity of a specific individual, or other unique identification number used for authentication purposes;

(ii) An individual's username or email address, in combination with a password or security question and answer, or any other authentication method or information necessary to permit access to an account; or

(iii) Unique biometric, genetic, or medical data.

(iv) Notwithstanding the above:

(A) Dissociated data that, if linked, would constitute personally identifiable information is to be considered personally identifiable if the means to link the dissociated data were accessed in connection with access to the dissociated data; and

(B) Any one of the discrete data elements listed in paragraphs (e)(5)(i) through (iii) of this section, or any combination of the discrete data elements listed above is personally identifiable information if the data element or combination of data elements would enable a person to commit identity theft or fraud against the individual to whom the data element or elements pertain.

(6) As used in this section, ''personally identifiable information'' does not include information about an individual that is lawfully made available to the general public from Federal, State, or local government records or widely distributed media.

* * * * *

■ 4. Delayed indefinitely, amend § 64.5111 by revising the section heading and paragraphs (a) through (e) to read as follows:

§ 64.5111 Notification of security breaches.

(a) *Commission and Federal law enforcement notification.* Except as provided in paragraph (a)(3) of this section, as soon as practicable, but not later than seven business days, after reasonable determination of a breach, a TRS provider shall electronically notify the Disability Rights Office of the Federal Communications Commission's (Commission) Consumer and Governmental Affairs Bureau, the United States Secret Service (Secret Service), and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility on its website.

(1) A TRS provider shall, at a minimum, include in its notification to the Commission, Secret Service, and FBI:

(i) The TRS provider's address and contact information;

(ii) A description of the breach incident;

(iii) A description of the customer information that was used, disclosed, or accessed;

(iv) The method of compromise;

(v) The date range of the incident;

(vi) The approximate number of customers affected;

(vii) An estimate of financial loss to the provider and customers, if any; and

(viii) The types of data breached.

(2) If the Commission, or a law enforcement or national security agency notifies the TRS provider that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the TRS provider not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the TRS provider when it appears that public disclosure or notice to affected customers will no longer

impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the TRS provider, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by TRS providers.

(3) A TRS provider is exempt from the requirement to provide notification to the Commission and law enforcement pursuant to paragraph (a) of this section of a breach that affects fewer than 500 customers and the carrier reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach. In circumstances where a carrier initially determined that it qualified for an exemption under this paragraph (a)(3), but later discovers information such that this exemption no longer applies, the carrier must report the breach to Federal agencies as soon as practicable, but not later than within seven business days of this discovery, as required in this paragraph (a).

(b) *Customer Notification.* Except as provided in paragraph (a)(2) of this section, a TRS provider shall notify affected customers of breaches of covered data without unreasonable delay after notification to the Commission and law enforcement as described in paragraph (a) of this section, and no later than 30 days after reasonable determination of a breach. This notification shall include sufficient information so as to make a reasonable customer aware that a breach occurred on a certain date, or within a certain estimated timeframe, and that such a breach affected or may have affected that customer's data. Notwithstanding the foregoing, customer notification shall not be required where a TRS provider reasonably determines that no harm to customers is reasonably likely to occur as a result of the breach, or where the breach solely involves encrypted data and the provider has definitive evidence that the encryption key was not also accessed, used, or disclosed.

(c) *Recordkeeping.* A TRS provider shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the Commission, Secret Service, and the FBI pursuant to paragraph (a) of this section, and notifications made to customers pursuant to paragraph (b) of this section. The record shall include, if available, the dates of discovery and notification, a detailed description of the covered data that was the subject of the breach, the circumstances of the breach, and the bases of any determinations regarding the number of affected customers or likelihood of harm as a result of the breach. TRS providers shall retain the record for a minimum of 2 years.

(d) *Annual reporting of certain small breaches.* A TRS provider shall have an officer, as an agent of the provider, sign and file with the Commission, Secret Service, and FBI, a summary of all breaches occurring in the previous calendar year affecting fewer than 500 individuals and where the provider could reasonably determine that no harm to customers was reasonably likely to occur as a result of the breach. This filing shall be made annually, on or before February 1 of each year, through the central reporting facility, for data pertaining to the previous calendar year.

(e) *Definitions.* (1) As used in this section, a ''breach'' occurs when a person, without authorization or exceeding authorization, gains access to, uses, or discloses covered data. A ''breach'' shall not include a good-faith acquisition of covered data by an employee or agent of a TRS provider where such information is not used improperly or further disclosed.

(2) As used in this section, ''covered data'' includes:

(i) A customer's CPNI, as defined by section 64.5103;

(ii) Personally identifiable information, as defined by section 64.2011(e)(5); and

(iii) The content of any relayed conversation within the meaning of § 64.604(a)(2)(i).

(3) As used in this section, ''encrypted data'' means covered data that has been transformed through the use of an algorithmic process into a form that is unusable, unreadable, or indecipherable through a security technology or methodology generally accepted in the field of information security.

(4) As used in this section, ''encryption key'' means the confidential key or process designed to render encrypted data useable, readable, or decipherable.

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[FR Doc. 2024–01667 Filed 2–9–24; 8:45 am]

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