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Contents

Federal Register

Vol. 89, No. 87

Friday, May 3, 2024

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 89, No. 87
Friday, May 3, 2024

Presidential Documents

Title 3—

The President

Proclamation 10735 of April 30, 2024

Asian American, Native Hawaiian, and Pacific Islander Heritage Month, 2024

By the President of the United States of America

A Proclamation

This month, we celebrate the Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities, whose ingenuity, grit, and perseverance have pushed our great American experiment forward.

From Native Hawaiians and Pacific Islanders whose ancestors have called their lands home for hundreds of years to Asian immigrants who have newly arrived and those whose families have been here for generations—AA and NHPI heritage has long been a part of the history of our great country and a defining force in the soul of our Nation. As artists and journalists, doctors and engineers, business and community leaders, and so much more, AA and NHPI peoples have shaped the very fabric of our Nation and opened up new possibilities for all of us. I am proud that they serve at the highest levels of my Administration, including Vice President Kamala Harris, Ambassador Katherine Tai, Acting Secretary of Labor Julie Su, and Director of the White House Office of Science and Technology Policy Arati Prabhakar, who make this country a better place each and every day. This year, we are also celebrating the 25th anniversary of the White House Initiative and President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, who work across government to advance equity, opportunity, and justice for AA and NHPI communities.

I have always believed that diversity is our Nation's greatest strength. That is why I launched the first-ever National Strategy to Advance Equity, Justice, and Opportunity for AA and NHPI Communities. This strategy works to harness the full potential of these communities—from combating anti-Asian hate to making government services accessible in more languages. To ensure the legacies of AA and NHPI peoples are properly honored in the story of America, I signed historic legislation that will bring us closer to a National Museum of Asian Pacific American History and Culture. I also issued a Presidential Memorandum to consider expanding protections for the Pacific Remote Islands to conserve this unique area's significant natural and cultural resources and honor the traditional practices and ancestral pathways of Pacific Island voyagers, and I signed the Amache National Historic Site Act to establish a memorial honoring the 10,000 Japanese Americans who were unjustly incarcerated there during World War II. Throughout my time in office, the First Lady and I have hosted celebrations at the White House that highlight the incredible diversity of AA and NHPI communities, like Diwali and the first-ever White House Lunar New Year celebration. This year, to ensure that the full diversity of AA and NHPI communities is seen and valued as new policy is being made, we updated the Federal Government's standards for collecting data on race and ethnicity for the first time in over 25 years.

Meanwhile, we are creating new opportunities for AA and NHPI communities by building an economy that works for everyone, including investing in AA and NHPI small businesses and entrepreneurs. Since I took office, the Small Business Administration provided over $22 billion in loans to AA and NHPI entrepreneurs. We have seen the results: During my Administration, we achieved the highest Asian American employment and entrepreneurship rates in over a decade.

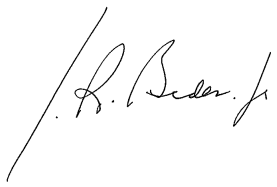
Last year, the First Lady and I witnessed the absolute courage of the Native Hawaiian people and Hawaii's Asian American and Pacific Islander communities when we visited Maui in the wake of the devastating fires. The destruction upended so many lives, and yet the community showed up ready to help rebuild stronger than before. My Administration has their backs—we are committed to making sure Maui has everything the Federal Government can offer to heal and build back better and as fast as possible. Throughout these efforts, we remain focused on rebuilding the way the people of Maui want to build by respecting sacred lands, cultures, and traditions.

Racism, harassment, and hate crimes against people of AA and NHPI heritage also persist—a tragic reminder that hate never goes away; it only hides. Hate must have no safe harbor in America—that is why I signed the bipartisan COVID–19 Hate Crimes Act, which makes it easier for Americans to report hate crimes, and I also hosted the first-ever White House summit against hate-fueled violence. We are also working to address the scourge of gun violence, which takes the lives of too many AA and NHPI loved ones. I signed the most significant gun safety law in nearly 30 years. My Administration has taken actions to expand background checks and fund efforts to strengthen red flag laws to keep Americans out of harm's way. There is still so much to do, and I continue to urge the Congress to ban assault weapons and high-capacity magazines.

Our Nation was founded on the idea that we are all created equal and deserve to be treated equally throughout our lives. We have never fully realized this promise, but we have never fully walked away from it either. As we celebrate the historic accomplishments of AA and NHPIs across our Nation, we promise we will never stop working to form a more perfect Union.

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 May 2024 as Asian American, Native Hawaiian, and Pacific Islander Heritage Month. I call upon all Americans to learn more about the histories of the AA and NHPI community and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09808
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Presidential Documents

Proclamation 10736 of April 30, 2024

Jewish American Heritage Month, 2024

By the President of the United States of America

A Proclamation

For centuries, the perseverance, hope, and unshakeable faith of the Jewish people have inspired people around the world. During Jewish American Heritage Month, we celebrate the immeasurable impact of Jewish values, contributions, and culture on our Nation's character and recommit to realizing the promise of America for all Jewish Americans.

In 1654, a small band of 23 Jewish refugees fled persecution abroad and sailed into the port of modern-day New York City. They fought for religious freedom, helping define one of the bedrock principles upon which our Nation was built. Jewish American culture has been inextricably woven into the fabric of our country. Jewish American suffragists, activists, and leaders marched for civil rights, women's rights, and voting rights. Jewish American scientists, doctors, and engineers have made scientific breakthroughs that define America as a land of possibilities. They have served our Nation in uniform, on the Nation's highest courts, and at the highest levels of my Administration. As public servants, artists, entertainers, journalists, and poets, they have helped write the story of America, making it—as Emma Lazarus' poem on the Statue of Liberty states—a home for the ''huddled masses yearning to breathe free.''

As we celebrate the Jewish American community's contributions this month, we also honor their resilience in the face of a long and painful history of persecution. Hamas' brutal terrorist attack on October 7th against Israel marked the deadliest day for Jews since the Holocaust, resurfacing, including here in the United States, painful scars from millennia of antisemitism and genocide of Jewish people. Jews across the country and around the world are still coping with the trauma and horror of that day and the months since. Our hearts are with all the victims, survivors, families, and friends whose loved ones were killed, wounded, displaced, or taken hostage—including women and girls whom Hamas has subjected to appalling acts of rape and sexual violence.

As I said after Hamas' terror attack, my commitment to the safety of the Jewish people, the security of Israel, and its right to exist as an independent Jewish state is ironclad. The recent attack by Iran, firing a barrage of hundreds of missiles and drones at Israel, reminds us of the existential threats that Israel faces by adversaries that want nothing less than to wipe it off the map. Together with our allies and partners, the United States defended Israel, and we helped defeat this attack.

At the same time, my Administration is working around the clock to free the hostages who have been held by Hamas for over half a year; as I have said to their families, we will not rest until we bring them home. We are also leading international efforts to deliver urgently needed humanitarian aid to Gaza and an immediate ceasefire as part of a deal that releases hostages and lays the groundwork for an enduring two-state solution.

Here at home, too many Jews live with deep pain and fear from the ferocious surge of antisemitism—in our communities; at schools, places of worship, and colleges; and across social media. These acts are despicable and echo the worst chapters of human history. They remind us that hate never goes

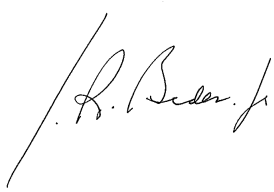
away—it only hides until it is given oxygen. It is our shared moral responsibility to forcefully stand up to antisemitism and to make clear that hate can have no safe harbor in America.

That is why I released the first-ever United States National Strategy to Counter Antisemitism and clarified the civil rights protections for Jews under Title VI of the Civil Rights Act of 1964. In addition, the Department of Education has launched investigations into antisemitism on college campuses, the Department of Justice is investigating and prosecuting hate crimes, and the Department of Homeland Security and the Federal Bureau of Investigation are focused on enhancing security in Jewish communities. We also secured the largest increase in funding ever for the physical security of nonprofits like synagogues, Jewish Community Centers, and Jewish schools. I appointed Deborah Lipstadt, a Holocaust expert, as the first-ever Ambassador-level Special Envoy to Monitor and Combat Antisemitism. Together, we are sending the message that, in America, evil will not win. Hate will not prevail. The venom and violence of antisemitism will not be the story of our time.

This Jewish American Heritage Month, we honor Jewish Americans, who have never given up on the promise of our Nation. We celebrate the contributions, culture, and values that they have passed down from generation to generation and that have shaped who we are as Americans. We remember that the power lies within each of us to rise together against hate, to see each other as fellow human beings, and to ensure that the Jewish community is afforded the safety, security, and dignity they deserve as they continue to shine their light in America and around the world.

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 May 2024 as Jewish American Heritage Month. I call upon all Americans to learn more about the heritage and contributions of Jewish Americans and to observe this month with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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.



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Presidential Documents

Proclamation 10737 of April 30, 2024

National Building Safety Month, 2024

By the President of the United States of America

A Proclamation

During National Building Safety Month, we thank the engineers, construction workers, trades unions, building inspectors, and other building professionals, who make our buildings stronger, more sustainable, and more resilient.

Building codes help to keep us all safe at home, at work, and in our communities. But two in three communities have not yet adopted the latest building codes, leaving them more vulnerable to fires, floods, and storms, which pose a growing threat in the face of climate change. There is so much we can do to change that by investing in housing, infrastructure, and code enforcement to prevent accidents and protect our families.

Today, a record 1.7 million new housing units are under construction nationwide, and my Budget has a plan to build 2 million more affordable homes, boosting supply and bringing down costs for families. My Administration is making the most significant investment in generations in our Nation's infrastructure while working to remove poisonous lead pipes from every home and school in America so that every child can turn on the faucet and drink clean water. We are modernizing our power grid and investing in energy-efficient buildings and homes so that when disasters hit, the lights stay on. We are weatherizing homes so that families are safe and comfortable inside during extreme heat or cold, storms, and other extreme weather and pay less for utilities. For all of these Federal projects, we are making sure that construction materials are safe, environmentally friendly, high quality, and made in America.

I am calling on the Congress to pass legislation that would provide tax credits for first-time homebuyers and fortify housing to be safe from extreme weather and climate change and built to last.

At the same time, we are making the most significant investment in fighting climate change in history—providing tax credits so folks can make their homes more energy efficient and affordable while also ensuring that the clean energy industries of the future are being built here at home. We are working to dedicate 40 percent of the overall benefits of certain Federal investments in our sustainable housing, clean energy, and building safety projects to disadvantaged communities that have borne the brunt of economic disinvestment for too long so they can be stronger and more resilient in the face of a changing climate.

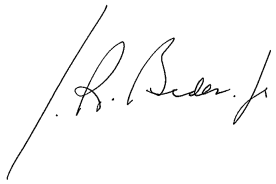
To make sure all of these new projects are safe, my Administration launched the National Initiative to Advance Building Codes and is investing over $1 billion to help thousands of communities adopt modern building codes to strengthen their housing and communities from risk. The Department of Housing and Urban Development is working to ensure federally funded housing is safe from flooding through safer flood standards. The Federal Emergency Management Agency is helping communities devastated by floods, fires, tornadoes, and hurricanes to rebuild more safely by incentivizing the adoption of modern building codes. For every dollar invested in sturdier new buildings that meet modern codes, it saves 11 times that in avoided disaster repair and recovery costs down the line.

Every American has a part to play in keeping their homes safe and secure and building a more resilient Nation. You can start by changing the batteries in your smoke alarms regularly and ensuring you have backup power for your critical appliances. Get rid of mold and pests to avoid health issues. If wildfires are a concern where you live, clear leaves and debris from around your community and home to reduce the risk of fires. If you plan to renovate, make sure you follow local home improvement requirements or get expert advice and quality work from a professional contractor who honors those codes.

Today, America is in the midst of a great national comeback. Our economy is strong, and we are building a future of possibilities, investing in our infrastructure, our communities, and our people. That is what America is all about. This month, we recommit to the work of keeping our Nation's buildings safe and built to last for generations to come.

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 May 2024 as National Building Safety Month. I encourage citizens, government agencies, businesses, nonprofits, and other interested groups to join in activities that raise awareness about building safety. I also call on all Americans to learn more about how they can contribute to building safety at home, at work, and in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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.



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Presidential Documents

Proclamation 10738 of April 30, 2024

National Foster Care Month, 2024

By the President of the United States of America

A Proclamation

The nearly 370,000 children in foster care deserve to grow up in safe and loving homes that help them reach their full potential. During National Foster Care Month, we share our gratitude for the foster parents who show foster youth unconditional love and the biological parents who work hard to reunite with their children despite difficult circumstances. We thank all the dedicated staff and volunteers who help foster youth find temporary and permanent homes. We commend the immeasurable courage of kids in foster care, who truly represent the best of our American spirit.

No young person should have to face the challenges that foster youth endure. The trauma they experience, including being separated from their biological families at a young age, can leave lasting emotional, mental, and physical scars that take a toll on their adult lives. Too often, it is children of color who bear the brunt of this toll: One in nine Black children and one in seven Native American children have been in foster care. Our Nation has a moral responsibility to ensure all our children are taken care of, especially our foster youth.

That begins with giving families the support and resources they need to provide for their children. The Child Tax Credit I championed during the pandemic cut taxes for millions and cut child poverty in half—the lowest rate ever. It gave families some breathing room, making sure they had the funds they needed to provide for their children. Ensuring families have access to support and resources is so important, especially because poverty can lead to unnecessary interventions that remove children from their homes. My Administration has also invested hundreds of millions of dollars in expanding and improving neglect prevention and child protective services.

At the same time, we are prioritizing helping the children and youth already in the foster care system find supportive and caring temporary and permanent homes. Relative and kinship caregivers take care of one-third of all children in the foster care system. That is why I have called to make adoption and legal guardianship more affordable for those caregivers by making the adoption tax credit fully refundable and extending it to legal guardians—including grandparents, aunts, uncles, and other relatives. For biological parents who want to safely reunite with their children, we are working to ensure that they have access to legal representation, which is critical for navigating the child welfare system.

To ensure every capable, loving family has the opportunity to foster, I signed an Executive Order that removed barriers making it harder for LGBTQI+ families to foster and adopt. We are also making sure that the 30 percent of all foster youth who identify as LGBTQI+ are placed in environments that love and support them for who they are.

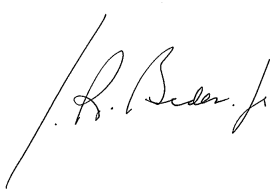
There is still so much to do to ensure our foster youth are set up for success in their adult lives. That is why I proposed providing $9 billion to establish a housing voucher program for all 20,000 youths aging out of foster care every year, giving them the security to begin adulthood. I have also called for over $2 billion to help youth aging out of foster care

find a job, enroll in and afford higher education, obtain basic necessities, and access preventative health care.

Throughout my life, I have had the honor of meeting incredible young people who grew up in foster care with wonderful foster parents, who loved them unconditionally. This month, we affirm to foster youth across America that we have their backs, and we recommit to supporting both foster and biological parents in creating safe and loving homes.

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 May 2024 as National Foster Care Month. I call upon all Americans to observe this month by reaching out in their neighborhoods and communities to the children and youth in foster care and their families, to those at risk of entering foster care, and to kin families and other caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09818
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Presidential Documents

Proclamation 10739 of April 30, 2024

National Mental Health Awareness Month, 2024

By the President of the United States of America

A Proclamation

During National Mental Health Awareness Month, we recognize the bravery and resilience of the tens of millions of Americans living with mental health conditions, and we show our gratitude for the dedicated mental health professionals and devoted loved ones who stand by them every step of the way. Mental health care is health care, and my Administration will ensure that every American has the care they need to thrive—we have your back.

Being able to get health care when you need it is essential to living a full, productive, and healthy life—that goes for mental health care too. Mental health care can help people find joy and purpose; ensuring they have access to the care they need is about dignity. But for millions of Americans, mental health care is out of reach. In 2020, less than half of all adults with a mental illness diagnosis received care for it. It is worse for kids—nearly 70 percent of children who need mental health care cannot get it. Imagine being a parent searching for a way to help their child but never finding it, no matter how hard they look. This is an all-too-common experience as many Americans face mental health challenges: Two in five adults report experiencing anxiety or depression, and suicide is a leading cause of death among young people. We know that mental health treatment works, but we need to make it more accessible and affordable for all Americans.

That is why, as President, I have taken steps to dramatically expand access to mental health care in America. I signed the Bipartisan Safer Communities Act—the largest investment in youth mental health ever, and we are investing $1 billion of that funding to help schools across the country hire and train new mental health counselors. We also added more than 140 Certified Community Behavioral Health Clinics across the Nation, which serve everyone regardless of their ability to pay and provide a range of services, including 24-hour crisis support. We launched 988, the Nationwide Suicide and Crisis Lifeline, which anyone can call, text, or chat to be connected to a trained crisis counselor. Further, my Administration developed new resources to support the mental health and resilience of frontline workers; expanded Medicare coverage to include additional substance use disorder services and expand mental health services; made it easier for schools to leverage Medicaid to deliver mental health care to millions of children and youth; and invested in mental health programs that help service members and veterans as well as their families, caregivers, and survivors.

We are also working to ensure full mental health parity so that mental health care is covered the same as physical health care. We have proposed requiring health insurance plans to identify the gaps in the mental health care they provide, and if they find they are not covering mental health care on par with physical health care, to make changes to fix it. Finally, we are taking action to ensure that State and local government employees have the same mental health parity protections as millions of other Americans who get health insurance from their jobs, which is why we are working to close loopholes so these dedicated public servants can more easily access

the mental health care they need with fewer limits on care and lower co-pays.

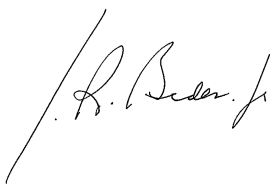
At the same time, my Administration is working to end the opioid and overdose epidemic by cracking down on fentanyl trafficking and increasing public health efforts to save lives. This month, we celebrate the absolute courage of the Americans in recovery and reaffirm our commitment to care for those suffering.

My Administration will also keep fighting to end the youth mental health crisis—and that means addressing social media's contributions to it. I continue to call on the Congress to restrict the personal data that companies collect, ban advertising that targets minors, and take action to ensure that social media platforms prioritize the health and safety of our Nation's children.

Each one of us has a role to play in changing the narrative and ending the stigmatization of mental health issues. We can start by showing compassion so everyone feels free to ask for help and learning the warning signs of emotional distress and suicide. If you are facing a crisis, dial 988 to reach the National Suicide and Crisis Lifeline. If you are a new or expecting mother, you can call 1–833–TLC–MAMA for confidential advice on mental health from a professional. If you are feeling overwhelmed or just need someone to talk to, ask your health care provider, contact the Substance Abuse and Mental Health Services Administration's National Helpline at 1–800–662–HELP, or visit FindSupport.gov. To anyone struggling with mental health, know that you are not alone. As Americans, we have a duty of care to reach out to one another and leave no one behind. We are all in this together.

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 May 2024 as National Mental Health Awareness Month. I call upon citizens, government agencies, private businesses, nonprofit organizations, and other groups to join in activities and take action to strengthen the mental health of our communities and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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.



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Presidential Documents

Proclamation 10740 of April 30, 2024

National Physical Fitness and Sports Month, 2024

By the President of the United States of America

A Proclamation

Sports and physical fitness reflect the best of the American spirit: hard work, collaboration, and big dreams. Some of my favorite memories and most enduring values come from the time I spent playing football as a kid. But you do not have to compete in organized sports to benefit from physical activity—being active in any way helps to improve your health, clear your mind, and make our Nation stronger. During National Physical Fitness and Sports Month, we commit to doing more to help give every American the opportunity to exercise and live a healthy life.

Whether doing yard work, walking to the store, going on a run with a friend, or playing basketball in the park, exercise makes us healthier and stronger. Exercise lowers the risk of heart disease, diabetes, stroke, certain cancers, and more; and it increases quality of life. It boosts mental health, easing depression and anxiety while improving memory and sleep. It helps young people build lasting friendships—teaching key lessons about discipline, teamwork, and winning and losing and preparing them to be leaders.

But not everyone has that same chance. Today, less than half of all Americans live within a half-mile of a park. Tens of millions of children do not have access to a playground within a 10-minute walk of their home. Cash-strapped schools are too often cutting physical education programs. Youth sports leagues can be expensive, leaving too many kids with few options. The United States of America can do better.

My Administration has kept that in mind from the start. We are making the biggest investment in infrastructure in generations, including $800 million to make sidewalks and crosswalks across the Nation safer for people to walk, run, bike, and skate. I signed the biggest investment in fighting climate change ever—protecting and restoring our great outdoors, which offer so many cherished recreational activities. We are providing over $300 million to help cities and towns build new parks and expand opportunities for outdoor recreation. To make National Parks more accessible to Americans, I signed legislation that made National Park entry free for our veterans and members of our Gold Star Families. We are also working to repair the bridges and roads that lead to our National Parks so more families can visit these natural treasures.

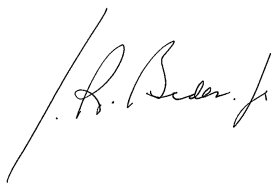
At the same time, I convened the first White House Conference on Hunger, Nutrition, and Health in a half-century, releasing a national strategy to end hunger and, among other things, make it easier for Americans to exercise. Since then, 14 major sports leagues and players associations have signed agreements with my Council on Sports, Fitness, and Nutrition to expand access to physical activity, integrate messaging and education about nutrition, and promote healthy lifestyles to the millions of people who engage with their programs every year. My Administration galvanized nearly $10 billion from companies, non-profits, and other stakeholders to meet that goal—helping with everything from making youth sports more affordable to taking children on trips to national parks. Meanwhile, the Centers for Disease Control and Prevention is working with local governments, schools, and community organizations to get 27 million Americans more active by 2027

by working with communities to implement evidence-based strategies for increasing physical activity across various sectors and settings. The Department of Health and Human Services' ''Move Your Way'' campaign launched a website with a tool that helps you build an exercise plan—go to health.gov/moveyourway.

We can all come together, feel better, and live longer if we stay active, exercise, and keep moving. It makes us healthier, and that is good for our families, our economy, and our Nation. This month, I encourage all Americans to do more—walk to the store, join a local sports team, sign up for a class or a race, and get out and enjoy the natural wonders of America. I will keep working to make sure everyone has the same fair shot to do so.

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 May 2024 as National Physical Fitness and Sports Month. I call upon the people of the United States to make daily physical activity a priority, to support efforts to increase access to sports opportunities in their communities, and to pursue physical fitness as an essential part of healthy living.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09820
Filed 5–2–24; 8:45 am]
Billing code 3395–F4–P

Presidential Documents

Proclamation 10741 of April 30, 2024

Older Americans Month, 2024

By the President of the United States of America

A Proclamation

Older Americans have worked their whole lives to achieve the American Dream for their families and communities, making our Nation stronger and building a future of possibilities for new generations. This month, we celebrate their immense contributions to our country and stand firm in our efforts to ensure that every American can age with the dignity and financial security that they deserve.

Sixty years ago, a third of older Americans still lived in poverty, and close to half had no health insurance. Over the years, Social Security, Medicare, and Medicaid helped to change that. Today, they are lifelines for tens of millions of Americans and proof of what government can do to transform lives for the better. I will always fight to protect and strengthen these programs. Folks have paid into Social Security and Medicare from their very first paychecks; the benefits of these programs belong to the American people. It is a sacred trust that people rely on. That is why I have proposed strengthening Social Security—not cutting it as others have suggested—by asking the highest-income Americans to pay their fair share. My new Budget would also extend the life of the Medicare Hospital Insurance Trust Fund indefinitely to protect the crucial health insurance that nearly 67 million Americans today rely on. At the same time, we are cracking down on so-called junk fees on retirement savings to ensure financial advisors give advice that is in your best interest rather than theirs, protecting the savings you have worked for your whole life.

Across the board, we are also working to cut the cost of health insurance and prescription drugs to give folks a little more breathing room. After years of others trying, we finally beat Big Pharma, giving Medicare the power to negotiate lower drug prices as the Department of Veterans Affairs has done for years. Our Inflation Reduction Act also caps the cost of insulin for people on Medicare at $35 per month, down from as much as $400 per month. Next year, it will cap out-of-pocket prescription drug costs for seniors on Medicare at $2,000 per year, even for expensive drugs that cost many times that. We have also expanded the range of services that people on Medicare have access to, including dental, mental health, and nutritional health services. Additionally, following an Executive Order I signed, hearing aids are now available over the counter, so millions of people with hearing loss can now buy them at a store or online without a prescription, saving up to $3,000 per pair.

Folks who have spent their whole lives building a community deserve to live, work, and participate in that community as long as they would like. That is why my Administration is also making historic investments in home care. The American Rescue Plan delivered $37 billion to help States strengthen their Medicaid home care programs by recruiting, training, and paying more home care workers and providing counseling, training, and support to family caregivers. Last year, I signed the Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers, the most comprehensive set of executive actions in history for improving care

for hardworking families. My new Budget would significantly expand Medicaid home care services to reduce the long waiting list and empower more folks to continue full lives in their communities. We made sure home care workers are getting a bigger share of Medicaid payments and nursing homes have enough staff to guarantee every resident the safe, healthy, caring environment they deserve. Further, we're making groundbreaking investments in the fight to end cancer and other deadly diseases as we know it, reminding us that our country can do big things when we work together.

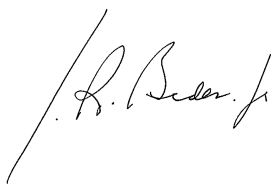
There is still so much we can do to support our seniors. I have also called to strengthen the Earned Income Tax Credit for low-paid workers who are not raising children in their homes—saving Americans, including our Nation's older workers, an average of $800 on their taxes. My new Budget requests funding to extend my Administration's Affordable Connectivity Program, which has made internet more affordable for 4 million seniors.

Older Americans are the backbone of our Nation. They have built the foundation that we all stand upon today, guided by the core values that define America—freedom, equality, decency, and opportunity. Their work has helped prove that our Nation can do big things when we come together. Now, it is up to all of us to build a future on those same values—a future where we defend democracy instead of diminish it, safeguard our freedoms, invest in communities that have too often been left behind, and deliver for older Americans while ensuring the people they love will be taken care of for generations to come.

This month, we celebrate older Americans' contributions by recommitting to those ideals and defending everyone's right to live full lives with dignity and respect. We will always have their backs.

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 May 2024 as Older Americans Month. This month and beyond, I call upon all Americans to celebrate older adults for their contributions, support their independence, and recognize their unparalleled value to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09821
Filed 5–2–24; 8:45 am]
Billing code 3395–F4–P

Presidential Documents

Proclamation 10742 of April 30, 2024

Law Day, U.S.A., 2024

By the President of the United States of America

A Proclamation

Over two centuries ago, our Founding Fathers created the United States of America based on an idea: We are all created equal and deserve to be treated equally throughout our lives. Ours would be a government by and for the people, enshrining in our Constitution, over time, the right to vote and to have that vote counted—the threshold of our liberty and democracy. On Law Day, we recommit to protecting this Constitutional right. We reflect on the enduring power of ''We the People.'' We rededicate ourselves to the ongoing pursuit of perfecting our Union.

Right now, we face a rare moment in the history of our Union: Freedom is under attack at home and abroad, at the very same time. Overseas, Russia is continuing its brutal assault against Ukraine's sovereignty, attempting to sow chaos throughout Europe and beyond. Here at home, our democracy is facing threats from waves of States that have proposed dozens of anti-voting laws to suppress the will of the people—reflecting the same dark motivations of the violent mob that stormed the Capitol 3 years ago in an effort to overturn a free and fair election.

Simply put: We are in a battle for the soul of our Nation—between those who want to pull America back to the past and those who want to move America into the future.

I am determined to move our Nation forward to build a future based on equality, decency, and dignity. In this country, that effort begins and ends with the ballot box. That is why I signed an Executive Order that promotes access to voting—from making vote.gov available in 12 languages to providing voter registration services at naturalization ceremonies for our Nation's newest citizens. I also signed into law the Electoral Count Reform Act, which establishes clear guidelines for certifying and counting electoral votes so no mob can again believe that, through violence, it can suppress the will of the people. The Department of Justice has doubled its voting rights staff, increasing their capacity to hold people accountable for voter suppression. Further, the Department is promoting equal access to justice to help every American have access to quality legal aid. I continue to call on the Congress to pass the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act. Passing these laws would mean the Department can take action against discriminatory voting laws before they go into effect. It is critical to fully secure the right to vote in every State.

We also have to make sure every voice in America has an opportunity to be heard because diversity is our Nation's greatest strength. That is why I signed the COVID–19 Hate Crimes Act into law, which helps State and local law enforcement better track and identify hate crimes. My Administration also convened the first-ever White House summit on combating hate-fueled violence, working with community leaders across the country to ensure hate has no safe harbor in America.

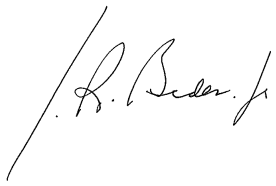
At the same time, we are committed to defending freedom around the world. The United States has brought together a coalition of more than 50 nations to support the brave people of Ukraine as they defend themselves and their sovereignty against Russia's vicious onslaught. We unified NATO—

the greatest military alliance in the history of the world—and have continued to defend liberty, democracy, and the rule of law. Together, we have made it clear that the United States stands up for freedom. We stand strong with our allies. We bow down to no one—certainly not Vladimir Putin.

America can and should be a Nation that defends democracy, protects our rights and freedoms, and pioneers a future of possibilities for all Americans. History and common sense show us that this can only come to pass in a democracy, and we must be its keepers. Democracy begins with and will be preserved by ''We the People,'' in habits of the heart and in our character; in optimism that is tested yet endures; in courage that digs deep when we need it; and in the willingness to see each other not as enemies but as fellow Americans. This Law Day, U.S.A., may we recommit to protecting every American's right to vote as we build a Union that is free and fair, just and strong, and noble and whole.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2024, as Law Day, U.S.A. I call upon all Americans to acknowledge the importance of our Nation's legal and judicial systems with appropriate ceremonies and activities and to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09822
Filed 5–2–24; 8:45 am]
Billing code 3395–F4–P

Presidential Documents

Proclamation 10743 of April 30, 2024

Loyalty Day, 2024

By the President of the United States of America

A Proclamation

America is home to people from every place on Earth, some whose ancestors have been here for thousands of years and others who have only just arrived. We all came from somewhere, but we are all American—loyal not to a person or a place but to an idea: We are all created equal and deserve to be treated equally throughout our lives. This idea is our Nation's North Star. While we have never fully lived up to it, we have never stopped pursuing it. This Loyalty Day, we promise to always keep fighting for a more perfect Union.

Our Nation's North Star guided us through historic challenges to Nation-defining triumphs. Through abolition, the Civil War, women's suffrage, the Great Depression, World Wars, and the Civil Rights Movement, the idea of America animated our many movements and gave us hope for a better future. Today, that light—that promise—still shines brightly as we build an America that is more prosperous, free, and just.

Now more than ever, we must stay loyal to our North Star and the founding values that are the bedrock of this Nation. In the face of forces that want to pull America back into the past, we must honor our Constitution and uphold the rule of law. We must respect free and fair elections and honor the will of the people. We must reject violence as a political tool and stamp out hate, giving it no safe harbor in America. We must open the doors of opportunity wider for everyone and remember that diversity is our greatest strength. We must respect the dignity and integrity of our service members, who put their lives on the line for our flag. We must believe in honesty, decency, and respect for others as well as patriotism, justice for all, and possibilities.

Today, we also recognize the men and women across the country who have protected and defended our Nation. We owe a debt of gratitude to our brave service members and veterans along with their families, caregivers, and survivors, who have sacrificed so much to defend our democracy around the globe. We thank all the courageous first responders who protect our communities, the diplomats who support and protect American citizens abroad, and all the hardworking Americans who are the engines of our economy and strengthen our Nation.

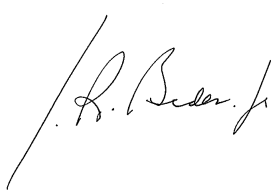
This Loyalty Day, we recognize that nothing about our democracy is guaranteed—we must defend it, protect it, and stand up for it. Our democracy began and will be preserved in ''We the People,'' in the habits of our hearts, and in our character—in an optimism that is tested yet endures, a courage that digs deep when we need it, and an empathy that fuels our hearts and inspires all of us to see each other not as enemies but as fellow Americans.

To celebrate our shared American spirit and the sacrifices so many of our fellow citizens have made, the Congress, by Public Law 85–529, as amended, has designated the first day of May each year as Loyalty Day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim May 1, 2024, as Loyalty Day. This Loyalty

Day, I call upon the people of the United States to join in this national observance, display the American Flag, and pledge allegiance to our Republic for which it stands.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, 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. 2024–09823
Filed 5–2–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 89, No. 87
Friday, May 3, 2024

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 JUSTICE

28 CFR Part 106

[JMD Docket No. 157; A.G. Order No. 5922–2024]

RIN 1105–AB71

Implementation of HAVANA Act of 2021; Correction

AGENCY: Department of Justice.

ACTION: Interim final rule; correction.

SUMMARY: The Department of Justice is correcting an interim final rule titled ''Implementation of HAVANA Act of 2021'' that appeared in the **Federal Register** on April 19, 2024. The document implemented the HAVANA Act, which authorizes agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. The interim final rule covers current and former Department of Justice employees and their dependents.

DATES: This correction is effective May 20, 2024.

FOR FURTHER INFORMATION CONTACT: Morton J. Posner, General Counsel, Justice Management Division, (202) 514–3452.

SUPPLEMENTARY INFORMATION:

Need for Correction

On April 19, 2024, the Department of Justice published an interim final rule and request for comments in the **Federal Register** at 89 FR 28633 that provided for the Department's implementation of the HAVANA Act of 2021, Public Law 117–46, 135 Stat. 391 (2021) (codified at 22 U.S.C. 2680b(i)). The HAVANA Act authorizes agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. The interim final rule covers current and former Department of Justice employees and their dependents.

This document corrects an error in the numbering of two paragraphs in the interim final rule published on April 19, 2024. In § 106.1, the two paragraphs designated as (1) and (2) should have been designated as paragraphs (a) and (b).

Federal Register Correction

In FR Doc. 2024–08336, appearing on page 28633 in the **Federal Register** of Friday, April 19, 2024, the following correction is made:

§ 106.1 [Corrected]

■ On page 28636, in the third column, in § 106.1, redesignate paragraphs (1) and (2) as paragraphs (a) and (b).

Dated: April 29, 2024.

Rosemary Hart,

Special Counsel, U.S. Department of Justice.

[FR Doc. 2024–09593 Filed 5–2–24; 8:45 am]

BILLING CODE 4410–AR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0203]

RIN 1625–AA00

Safety Zone; Seddon Channel, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Seddon Channel in Tampa Bay, Tampa, Florida during the US Special Operations Command capabilities demonstration (CAPE DEMO). The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by airborne and waterborne activities occurring during the exercise. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP), St. Petersburg or a designated representative.

DATES: This rule is effective from May 6, 2024 through May 9, 2024. It will only be subject to enforcement, however, from 7:30 a.m. until 4 p.m. on each of the days it is in effect.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0203 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 MST1 Mara J. Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Mara.J.Brown@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 and contrary to the public interest to do so. The Coast Guard received insufficient notice from the event sponsor to be able to publish an NPRM, receive, consider, and respond to public comments in time to publish a final rule prior to the date of the event.

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 by 30 days is impracticable because the notice we received is also insufficient to do so if the rule is to go into effect on May 6.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector St. Petersburg (COTP) has determined that potential hazards associated with the demonstration will be a safety concern for anyone within the exercise area. This rule is needed to protect personnel,

vessels, and the marine environment in the navigable waters within the safety zone during the demonstration.

IV. Discussion of the Rule

This rule establishes a safety zone which will be subject to enforcement from 7:30 a.m. until 4 p.m., daily, from May 6, 2024 through May 9, 2024. The safety zone will cover an area of the Seddon Channel in the vicinity of the Tampa Convention Center, in Tampa, Florida. The US Special Operations Command capabilities demonstration (CAPE DEMO) is expected to consist of multiple airborne and waterborne activities, including people using blank ammunition, fast-roping, and jumping out of helicopters, as well as engaging in high-speed boat pursuits, and in amphibious vehicles operations.

The duration of the zone is intended to ensure the safety of the participants, spectators, and the general public during the scheduled events. No vessel or person, not involved in the events, will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) the safety zone only being enforced for a total of eight and a half hours each day; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the 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 that will prohibit non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the waters of the Seddon Channel in the vicinity of Tampa, Florida for a period, over three days. 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; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0203 to read as follows:

§ 165.T07–0203 Safety Zone; Seddon Channel, Tampa, FL

(a) *Location.* The following area is established as a safety zone. All waters of Seddon Channel encompassed within the following points: 27°56′14″ N, 082°27′25″ W, thence to position 27°56′15″ N, 082°27′19″ W; thence to position 27°56′22″ N, 082°27′16″ W, thence to position 27°56′25″ N, 082°27′17″ W; thence to position 27°56′30″ N, 082°27′29″ W, thence to position 27°56′29″ N, 082°27′33″ W, thence to position 27°56′25″ N, 082°27′35″ W, thence to position 27°56′23″ N, 082°27′33″ W, thence back to the original position 27°56′14″ N, 082°27′25″ W. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Enforcement Period.* This rule will be enforced daily from 7:30 a.m. until 4 p.m., from May 6, 2024 through May 9, 2024.

Dated: April 29, 2024.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2024–09697 Filed 5–2–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0138]

RIN 1625–AA00

Safety Zone; Panama City, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Gulf of Mexico in Panama City, FL. The safety zone is needed to protect mariners from the hazards associated with the 2024 Gulf Coast Salute Airshow. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective from May 3, 2024, through May 5, 2024, from 9 a.m. to 4:30 p.m. each day.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0138 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 Larry Schad, Waterways Management Division, U.S. Coast Guard; telephone 251–382–8653, email *Sectormobilewaterways@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
GICW Gulf Intracoastal Waterway
USACE U. S. Army Corps of Engineers

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 and contrary to public interest to delay the effective date of this rule. Immediate action is needed to protect people and property on the waterway from potential hazards associated with the 2024 Gulf Coast Salute Airshow. The Coast Guard was unable to publish an NPRM because we must establish this safety zone by May 3, 2024, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Furthermore, delaying the effective date would be contrary to the safety zone's intended objectives of enhancing maritime safety and security while ensuring protection of people and property on the navigable waterway.

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 impracticable because immediate action to restrict vessel traffic is needed to protect life and property and mitigate potential

maritime hazards involved with the 2024 Gulf Coast Salute Airshow.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with the 2024 Gulf Coast Salute Airshow beginning on May 3, 2024, will be a safety concern for anyone within the safety zone. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone during the 2024 Gulf Coast Salute Airshow.

IV. Discussion of the Rule

This rule establishes a safety zone on certain navigable waters of the Gulf of Mexico in Panama City, FL beginning 500′ from shore within the following coordinates: 30°13′17.88″ N; 85°53′42.32″ W, thence southeast to 30°12′16.44″ N; 85°51′46.60″ W, thence southwest to 30°11′55.47″ N; 85°52′01.09″ W, thence northwest to 30°12′56.60″ N; 85°53′55.85″ W. Enforcement of this safety zone is from 9 a.m. until 4:30 p.m., daily, from May 3, 2024, through May 5, 2024. The duration of the zone is intended to protect personnel, vessels, and ensure maritime safety and security in these navigable waters during the 2024 Gulf Coast Salute Airshow. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will be enforced on three days for approximately 7½ hours each day and prohibit vessel movement on a portion of the Gulf of Mexico in Panama City, FL. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting three days for approximately 7½ hours each day and prohibit vessel movement on a portion of the Gulf of Mexico in Panama City, FL. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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.T08–0138 to read as follows:

§ 165.T08–0138 Safety Zone; Gulf of Mexico, Panama City, FL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Gulf of Mexico in Panama City, FL, beginning 500' from shore within the following coordinates: 30°13′17.88″ N; 85°53′42.32″ W, thence southeast to 30°12′16.44″ N; 85°51′46.60″ W, thence southwest to 30°11′55.47″ N; 85°52′01.09″ W, thence northwest to 30°12′56.60″ N; 85°53′55.85″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Sector Mobile Captain of the Port (COTP) 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. No person may anchor, dredge, or trawl in the safety zone unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative on VHF–CH 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced May 3, 2024, through May 5, 2024, from 9 a.m. to 4:30 p.m. each day. The enforcement period will be announced via marine broadcast, local notice to mariners, or by an on-scene oral notice as appropriate.

Dated: April 29, 2024.

U.S. Mullins,

Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.

[FR Doc. 2024–09762 Filed 5–2–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0313]

RIN 1625–AA00

Safety Zone; Pipeline 5 HAUV/ROV Survey; Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of the vessels Ugle Duckling and Streak. The safety zone is necessary to protect vessels while a HAUV/ROV survey is conducted of the Enbridge Line 5 pipelines. Entry of vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Northern Great Lakes (COTP).

DATES: This rule is effective from May 28, 2024, 5:30 a.m. through July 31, 2024, 6:30 p.m. local time. Comments and related material must be received by the Coast Guard on or before May 20, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0313 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Rebecca Simpson, Sector Northern Great Lakes Waterways Management Division, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@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
HAUV Hybrid Autonomous Underway Vehicle
ROV Remotely Operated Vehicle

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable.

It is impracticable to publish an NPRM because this safety zone must be established by May 28, 2024, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

For the same reasons discussed in the preceding paragraph, a 30 day delay of the effective date would be contrary to public interest because action is needed to respond to the potential safety hazards associated with the HAUV/ROV survey of the Enbridge Line 5 pipelines and the potential hazard from other vessels transiting the Straits of Mackinac at the same time this project is being conducted.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that the potential hazards associated with the HAUV/ROV survey of the Enbridge Line 5 pipelines starting May 28, 2024 will be a safety concern to anyone within a 500-yard radius of the vessels Ugle Duckling and Streak. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the HAUV/ROV survey is being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 5:30 a.m. on May 28, 2024 through 6:30 p.m. on July 31, 2024. The safety zone will cover all navigable waters within the Mackinac Regulated Navigation Area within 500 yards of vessels being used to conduct the HAUV/ROV survey of the Enbridge Line 5 pipelines. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the HAUV/ROV survey is being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration and location of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Local Notice to Mariners about the safety zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to cover all navigable waters within the Mackinac Regulated Navigation Area within 500 yards of vessels being used to conduct a HAUV/ROV survey of the Enbridge Line 5 pipelines. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. 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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0313 to read as follows:

§ 165.T09–0313 Safety Zone; Vessels Ugle Duckling and Streak operating in the Straits of Mackinac, MI

(a) *Location.* The following area is a safety zone: All navigable waters within 500 yards of the vessels Ugle Duckling and Streak while conducting a HAUV/ROV survey of the Enbridge Line 5 pipelines.

(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 Northern Great Lakes (COTP) 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 VHF Channel 16 or telephone at (906) 635–3233. 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 periods.* This section will be enforced from 5:30 a.m. to 6:30 p.m. each day from May 28, 2024, through July 31, 2024.

Dated: April 29, 2024.

J.R. Bendle,

Captain, U.S. Coast Guard, Captain of the Port Sector Northern Great Lakes.

[FR Doc. 2024–09611 Filed 5–2–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2024–0018]

RIN 0651–AD80

Adoption of Updated WIPO Standard ST.26; Revision to Incorporation by Reference

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) is adopting version 1.7 of World Intellectual Property Organization (WIPO) Standard ST.26, which was approved December 8, 2023, for incorporation by reference into the USPTO's regulations addressing application disclosures containing nucleotide and/or amino acid sequences. Among other enhancements, version 1.7 of ST.26 provides technical terminology consistency and improves descriptions.

The USPTO first amended its rules in 2022 to incorporate by reference certain provisions of WIPO Standard ST.26. In addition to simplifying the process for applicants filing in multiple countries, the ST.26 requirement to submit a single sequence listing in eXtensible Markup Language (XML) format provides better preservation, accessibility, and sorting of the submitted sequence data for the public.

DATES: This final rule is effective on July 1, 2024. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, at 571–272–0909; or Raul Tamayo, Senior Legal Advisor, at 571–272–7728, both of the Office of Patent Legal Administration; or to *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: The ''WIPO Handbook on Intellectual Property Information and Documentation'' sets forth standards for the presentation of data in many contexts. One such standard is WIPO Standard ST.26, which is titled ''RECOMMENDED STANDARD FOR THE PRESENTATION OF NUCLEOTIDE AND AMINO ACID SEQUENCE LISTINGS USING XML (EXTENSIBLE MARKUP LANGUAGE).'' WIPO Standard ST.26 defines the disclosures of nucleotide and/or amino acid sequences in patent applications that must be presented in a sequence listing in XML format in the manner specified in the standard.

In a final rule published May 20, 2022, at 87 FR 30806, the USPTO created new rules 37 CFR 1.831–1.839 that incorporate by reference WIPO Standard ST.26. 37 CFR 1.839(b)(1) specifically identifies the version of WIPO Standard ST.26 that has been incorporated by reference. In a final rule published May 26, 2023, 88 FR 34089, the USPTO updated 37 CFR 1.839(b)(1) to reflect version 1.6 of WIPO Standard ST.26. On December 8, 2023, WIPO adopted a new version (version 1.7) of WIPO Standard ST.26. As a result, the USPTO is again updating 37 CFR 1.839(b)(1).

WIPO provides free online public access to view copies of its standards, including version 1.7 of WIPO Standard ST.26, on its website at *www.wipo.int/standards/en/part_03_standards.html.* WIPO Standard ST.26 is also available on the USPTO's Sequence Listing Resource Center at *www.uspto.gov/patents/apply/sequence-listing-resource-center.*

WIPO Standard ST.26 is comprised of eight documents: the main body of the standard, a first annex (Annex I) setting forth the controlled vocabulary for use with the main body, Annex II setting forth the Document Type Definition (DTD) for the Sequence Listing, Annex III containing a sequence listing specimen (XML file), Annex IV setting forth the character subset from the Unicode Basic Latin Code Table, Annex V setting forth additional data exchange requirements for IPOs, Annex VI containing a guidance document with illustrated examples, and Annex VII setting forth recommendations for the transformation of a sequence listing from WIPO Standard ST.25 format to WIPO Standard ST.26 format, including guidance on how to avoid adding or deleting subject matter.

Revisions to WIPO Standard ST.26 under version 1.7 affect the main body and Annex VI. The changes to the main body improve the consistency of technical terminology. In paragraph 3(f), all instances of ''3′-monophosphate'' were changed to ''5′-monophosphate'' to be consistent with paragraph 3(g) and standard nucleotide naming conventions.

Similarly, the changes to Annex VI improve consistency and clarity of terminology and correct technical errors. All instances of ''3′-monophosphate'' were changed to ''5′-monophosphate'' to be consistent with the changes made to the main body. In Examples 14–1 and 30–2, scientific and grammatical corrections were made to clarify the example disclosures. In

addition, Annex VI includes two new examples that demonstrate how sequences with inverted nucleotides should be included in a sequence listing. Finally, the ''Example Index'' in Annex VI was simplified by removing the ''Cross-referenced examples.''

Thus, the changes in version 1.7 of WIPO Standard ST.26 are ministerial changes that will not have a meaningful substantive impact on disclosing parties.

Discussion of Specific Rules

Section 1.839: Section 1.839(b)(1) is amended to provide an updated citation to version 1.7 of WIPO Standard ST.26 that is being incorporated by reference.

Rulemaking Considerations

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules. See *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (changes to procedural rules are not subject to notice and comment review under the Administrative Procedure Act (APA)); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 349 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Substantive rules ''effect a change in existing law or policy or which affect individual rights and obligations,'' whereas interpretative rules ''clarify or explain existing law or regulation and are exempt from notice and comment'' review under the APA.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c) or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

In addition, the USPTO finds good cause pursuant to the authority at 5 U.S.C. 553(b)(B) to dispense with prior notice and opportunity for public comment because such procedures are unnecessary in this instance. The changes in this rulemaking merely update the regulations to incorporate by reference version 1.7 of WIPO Standard ST.26, which was adopted on December 8, 2023, by the WIPO Committee on Standards. These revisions are largely procedural in nature, and do not impose any additional requirements or fees on applicants. Thus, the USPTO implements this final rule without prior notice and opportunity for comment.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993), as amended by Executive Order 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency's regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded

Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: This final rule does not impact information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Incorporation by reference, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble and under the authority contained in 35 U.S.C. 2, as amended, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. In § 1.839, revise paragraph (b)(1) to read as follows:

§ 1.839 Incorporation by reference.

* * * * *

(b) * * *

(1) WIPO Standard ST.26. WIPO Handbook on Intellectual Property Information and Documentation, Standard ST.26: Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings Using XML (eXtensible Markup Language) including Annexes I–VII, version 1.7, approved December 8, 2023; IBR approved for §§ 1.831 through 1.834.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–09618 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0175; FRL–11888–02–R9]

Determination To Defer Sanctions; California; California Air Resources Board and Local California Air Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a revised rule and has also submitted revised rules on behalf of the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Ventura County Air Pollution Control District (VCAPCD), and South Coast Air Quality Management District (SCAQMD) that correct deficiencies in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning ozone nonattainment requirements for controlling volatile organic compounds (VOCs) at crude oil and natural gas facilities. This determination is based on a proposed approval and conditional approval, published elsewhere in this **Federal Register**, of a California statewide rule, six California air districts rules, and associated reasonably available control technology (RACT) determinations for that source category. The effect of this interim final determination is to defer the imposition of sanctions that was triggered by EPA's previous disapproval. If the EPA finalizes its proposed approval of CARB's submission, relief from these sanctions will become permanent.

DATES: This rule is effective on May 3, 2024. However, comments will be accepted on or before June 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0175 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 disabilities 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: Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4126 or by email at *law.nicole@epa.gov.*

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

Table of Contents

I. Background

On September 30, 2022 (87 FR 59314), the EPA issued a limited approval and limited disapproval for the California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (''CARB Oil and Gas Methane Rule'') that had been submitted by CARB to the

EPA on December 11, 2018. That action also finalized a disapproval of the reasonably available control technology (RACT) demonstrations for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) for sources covered by the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (''2016 Oil and Gas CTG'') and regulated by SCAQMD, SJVUAPCD, Sacramento Metro Air Quality Management District (SMAQMD), VCAPCD, and Yolo-Solano Air Quality Management District (YSAQMD). In this 2022 action, we determined that while the CARB SIP revision submittal strengthened the SIP, the submittal contained various deficiencies related to enforceability and stringency that prevented full approval. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, the limited disapproval of the CARB Oil and Gas Methane Rule and the disapproval of the RACT demonstrations for the 2008 and 2015 ozone NAAQS action under title I, part D, started a sanctions clock for imposition of mandatory sanctions unless the EPA affirmatively determines that the deficiency forming the basis of the action has been corrected, the offset sanctions under section 179(b)(2) will apply 18 months after the action's effective date of October 31, 2022, and highway sanctions under section 179(b)(1) will apply 6 months after the offset sanction is imposed.

CARB submitted an amended CARB Oil and Gas Methane Rule on April 2, 2024, as well as six amended California district rules on various dates [1] that addressed the deficiencies identified in our September 30, 2022 action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of the amended CARB Oil and Gas Methane Rule and the six California district rules into the State's SIP, as well as approval of the 2016 Oil and Gas CTG RACT requirement for four California districts, and conditional approval of the RACT demonstration for one California district.[2] Based on this proposed approval action, we are also making this interim final determination, effective upon publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our September 30, 2022 disapproval, because we believe CARB's 2024 submittal and the amended rules correct the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full and conditional approval of the CARB Oil and Gas Methane Rule, local California air district rules, and associated RACT demonstrations, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2022 action would be permanently terminated on the effective date of our final approval of the CARB Oil and Gas Methane Rule and associated RACT demonstrations.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval on the 2018 submittal of the CARB Oil and Gas Methane Rule and disapprovals of associated RACT determinations. This determination is based on our concurrent proposal to approve SIP revisions from CARB that resolve the deficiencies that were the basis of our prior disapproval that triggered sanctions under section 179 of the CAA. This includes proposing approval and conditional approval of CARB's 2024 submittal of the CARB Oil and Gas Methane Rule, six amended California air district rules, and associated RACT demonstrations.

Because the EPA has preliminarily determined that the SIP revisions addressing the deficiencies are approvable, relief from sanctions should be provided as quickly as possible. Therefore, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act (APA) because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. For the reasons outlined above, the EPA is invoking the good cause exception under the APA in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is still providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. 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);

[1] San Joaquin Unified Air Pollution Control District Rule 4401, 4409, and 4623 were submitted on October 13, 2023. Ventura County Air Pollution Control District Rule 71.1 was submitted on January 10, 2024. South Coast Air Quality Management District Rules 463 and 1178 were submitted on October 13, 2024, and February 14, 2024, respectively.

[2] The CARB Oil and Gas Methane Rule exempts sources from compliance with portions of the CARB Oil and Gas Methane Rule if those sources comply with certain existing California air district rules. The CARB Oil and Gas Methane Rule references SCAQMD Rule 1148.1—Oil and Gas Production Wells (Amended March 5, 2004), which contains an enforceability deficiency that is described more fully in our proposed rule. This deficiency precludes a full approval of the RACT requirement for sources covered by the 2016 Oil and Gas CTG in SCAQMD. In a letter included in their submittal on April 2, 2024, CARB has committed to submitting, within 12 months of the effective date of the EPA's final rulemaking, an amended version of South Coast Rule 1148.1 that will address the identified deficiency. Consistent with CAA section 110(k)(4), the EPA is proposing to conditionally approve the SCAQMD CTG RACT requirement for sources covered by the 2016 Oil and Gas CTG, based on this commitment to remedy the identified deficiency. The proposed conditional approval for the newly-identified deficiency in SCAQMD Rule 1148.1, as discussed in the CARB Oil and Gas Methane Rule TSD, is distinct from the deficiencies that were the basis of our 2022 disapproval, which started CAA sanction clocks. Pursuant to our order of sanction regulations, 40 CFR 52.31(d)(2), a proposal to ''fully or conditionally approve'' a revised plan that cures the deficiency that prompted the finding starting the sanctions, along with an interim final determination, shall defer the application of sanctions.

• 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);
• 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; and
• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
• 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).
• Is subject to the Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.,* and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

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 July 2, 2024. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review, nor does it extend the time within which petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: April 24, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–09309 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2024–0123; FRL–11819–01–R10]

Ocean Dumping; Withdrawal of Designated Disposal Sites; Nome, Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to withdraw from EPA regulation and management two designated ocean dredged material disposal sites, the Nome East and Nome West Sites (Sites), located near Nome, Alaska, pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended. The EPA is taking this action because the United States Army Corps of Engineers (USACE) has not used the Sites for disposal of dredged material since 2009, has no plans to use the Sites for any future disposal of dredged material, and the Sites are no longer suitable for USACE's needs. This action will withdraw these sites from the regulations.

DATES: This rule is effective on August 1, 2024 without further notice unless the EPA receives adverse comment by June 3, 2024. If the EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OW–2024–0123; FRL–11819–01–R10, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov/* index. Although listed in the index, some information may not be publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov/* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue Seattle, Washington 98101. The EPA Region 10 Library is open from 9 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding Federal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Betsy McCracken, Water Division, U.S. Environmental Protection Agency, Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Anchorage, AK 99513; (907) 271–1206, *mccracken.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rulemaking because we view this as a noncontroversial action and anticipate no adverse comment. In 1989, the EPA designated the Sites for the disposal of dredged material removed from the Nome Channel and harbor areas (54 FR 23481 June 1, 1989). The Sites have not been used since 2009 because the USACE has instead placed dredged material from the Nome Channel and harbor area onshore for the beneficial use of beach nourishment. The USACE intends to continue to place such dredged material onshore for the

beneficial use of beach nourishment. Placement of dredged material onshore for the beneficial use of beach nourishment is not affected by this withdrawal and will continue to be available for the disposal of suitable dredged material. The ability of the USACE, the Port of Nome, and other interested parties to find suitable dredged material disposal options will not be changed by this action. Environmental assessments conducted by the USACE indicates that there will be no unacceptable adverse impacts to the marine environment once the EPA relinquishes management of the Sites. Therefore, the EPA is now taking the administrative action of withdrawing the Sites from regulation and relinquishing future management of the Sites.

II. Does this action apply to me?

In 1989, the EPA designated the Sites to be used for dredged material from the Nome channel and harbor area. The USACE is most affected by this action because it had used the Sites for disposal of Nome channel and harbor area operations and maintenance (O&M) dredged material. However, since 2009, the USACE has placed dredged material from Nome channel and harbor O&M dredging onshore for the beneficial use of beach nourishment. The USACE intends to continue to place such dredged material onshore for the beneficial use of beach nourishment. Placement of dredged material onshore for the beneficial use of beach nourishment is not affected by this withdrawal and will continue to be available for the disposal of suitable dredged material. For any questions regarding the applicability of this action to a particular person or entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What is the legal authority of this final rule?

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1402(c), provides that the Administrator of the EPA may, in a manner consistent with established criteria, designate sites for ocean dumping. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This withdrawal is made pursuant to that authority.

The EPA Ocean Dumping Regulations provide that modifications in disposal site use that involve withdrawal of designated disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made through promulgation of an amendment to the disposal site designation set forth in 40 CFR part 228 and will be based on the results of the analyses of impact described in 40 CFR 228.10 or upon changed circumstances concerning use of the site (40 CFR 228.11(a)). This site withdrawal is made in accordance with 40 CFR 228.11(a) based upon changed circumstances concerning use of the Sites.

IV. Background

A. History of Disposal Sites Near Nome, Alaska

The USACE began to dispose of dredged material offshore of Nome, Alaska around 1923. The disposal of dredged material offshore was necessary to keep navigation open to the Snake River and the City of Nome from Norton Sound. On January 11, 1977, the EPA published a list of ''Approved and Final Ocean Dumping Sites'' that established the Nome East and Nome West Sites as interim sites (42 FR 2461, January 11, 1977) The interim Sites were used by the USACE for disposal of dredged material as part of harbor maintenance. The EPA designated the Sites as final sites on June 1, 1989 (54 FR 23481).

The Nome East and Nome West Sites extend 1.75 nautical miles (2 statute miles) offshore of the coast east of the entrance to the Port of Nome (Please see map of Nome West and Nome East disposal Sites in the docket for this action). The Nome East Site covers an area of approximately 0.49 square miles (0.37 square nautical miles) and the Nome West Site covers an area of approximately 0.40 square miles (0.30 square nautical miles). Water depths at the Nome West Site ranges from 1–11 meters mean lower low water (MLLW). Water depths at the Nome East Site range from 1–12 meters MLLW. Prior to the harbor expansion, the Sites were situated in an open, dynamic ocean environment. The seafloor is characterized as relatively uniform and featureless with highly active shifting sands grading to shifting silts as it slopes along the southern boundary of the Sites into deeper water.

The Sites are trapezoidal with the following corner coordinates based upon the North American Datum of 1927:

Nome East Site:
64°29′54″ N, 165°24′41″ W
64°29′45″ N, 165°23′27″ W
64°28′57″ N, 165°23′29″ W
64°29′07″ N, 165°24′25″ W
Nome West Site:
64°30′04″ N, 165°25′52″ W
64°29′18″ N, 165°26′04″ W
64°29′13″ N, 165°25′22″ W
64°29′54″ N, 165°24′45″ W

Disposal at the Nome East Site was limited to dredged material from Nome, Alaska, and adjacent areas. Disposal at the Nome West Site was also limited to material dredged from Nome, Alaska, and adjacent areas with preference given to placement of materials in the inner third of the Site to compliment littoral drift patterns and prevent significant build-up or erosion of sediments. Coordination with the City of Nome prior to dredging was required for use of both Sites.

The Sites were used routinely for disposal of dredged material from USACE O&M dredging until the USACE opted to alter the location of the Nome harbor entrance. In 2005, the USACE began major adjustments to the harbor including re-routing the entrance to the Snake River. The old entrance was filled in and a 3,025-foot breakwater was added to the existing causeway along with a 270-foot spur. The Nome City dock was expanded, and the new harbor entrance was widened to 500 feet. As part of the harbor entrance project, the USACE also changed its method for managing dredged material. In 2009, the USACE used the dredged material for onshore placement east of the breakwater for beach nourishment. These major changes spatially overlapped with a portion of the Nome West Site, reducing the availability of the Site to receive dredged material while also altering the need for the use of the Nome East Site.

B. Relevant Recent Events

In 2020, the USACE released an Environmental Assessment and Finding of No Significant Impact (FONSI) for modification to the entrance to the Port of Nome.[1] In the 2019 FONSI, the USACE stated that they would continue to place dredged material onshore for beach nourishment, which has contributed to widening of the beach in front of the Nome seawall. The USACE does not plan to dispose of dredged material in the EPA-designated Nome East Site or Nome West Site. Based on the FONSI and communication with the USACE (email from Mr. Matthew Ferguson, October 31, 2023), the USACE does not use the Sites because they are no longer suitable for its needs.

V. Final Action

This action is an administrative procedure to formally remove the Nome

[1] US Army Corps of Engineers. March 2020. Integrated Feasibility Report and Final Environmental Assessment. Port of Nome Modification Feasibility Study Nome, Alaska.

East and Nome West Sites from regulation (40 CFR 228.15(n)(12) and (13) and EPA management. The withdrawal of the Sites is necessary to remove the oversight of these Sites from EPA management. The USACE has not used the Sites for disposal of dredged material since 2009 and has no foreseeable need to use the Sites as they are no longer suitable.

The two Sites proposed for withdrawal are trapezoidal with the following corner coordinates based upon the North American Datum of 1927:

Nome East Site:
64°29′54″ N, 165°24′41″ W
64°29′45″ N, 165°23′27″ W
64°28′57″ N, 165°23′29″ W
64°29′07″ N, 165°24′25″ W
Nome West Site:
64°30′04″ N, 165°25′52″ W
64°29′18″ N, 165°26′04″ W
64°29′13″ N, 165°25′22″ W
64°29′54″ N, 165°24′45″ W

If finalized, the Sites will not exist and will not be available for the disposal of dredged material under the MPRSA from any person or for any purpose. The USACE and EPA will coordinate, consistent with the MPRSA and EPA's Ocean Dumping regulations, should the USACE decide in the future that ocean disposal of dredged material is needed for dredged material from Nome, Alaska, and/or adjacent areas.

VI. Environmental Statutory Review

A. National Environmental Policy Act of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321) requires Federal agencies to prepare an Environmental Impact Statement for major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to this action because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, may be appropriate. The EPA has determined that no environmental review document is necessary for withdrawal of the Nome East and Nome West Sites.

B. Coastal Zone Management Act

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the maximum extent practicable with the enforceable policies of approved state programs. By operation of Alaska State law, the federally approved Alaska Coastal Management Program expired on July 1, 2011, resulting in a withdrawal from participation in the CZMA's National Coastal Management Program. The CZMA Federal consistency provision, Section 307, no longer applies in Alaska.

C. National Historic Preservation Act

The National Historic Preservation Act (NHPA), as amended, 16 U.S.C. 470 to 470a–2, requires Federal agencies to account for the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. Withdrawal of the Sites will not affect any historic properties.

VII. Statutory and Executive Order Review

This action complies with applicable Executive orders and statutory provisions as follows:

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735; October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, the EPA certifies that this action will not have a significant economic impact on small entities as they were formally used only by the USACE for dredged material removed from the Nome channel and harbor area. The USACE has not used the Sites since 2009 and has no foreseeable need to use the Sites as they are no longer suitable.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandates as described in the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, and does not significantly affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175, because the withdrawal of the Sites will not have a direct effect on 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. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA provided electronic notification of the proposed withdrawal, including a Fact Sheet about the Sites, to the Nome Eskimo Community and the Bering Straits Native Corporation in the development of this action. EPA received no comments as a result of the electronic notification.

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

This action is not subject to Executive Order 13045 because it is not ''economically significant'' as defined in Executive Order 12866 and does not concern an environmental health or safety risk that the EPA believes may disproportionately affect children.

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

This action is not subject to Executive Order 13211 because it is not a ''significant regulatory action'' under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rule does not involve technical standards.

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

Executive Order 12898 (59 FR 7629; February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with environmental justice concerns. Executive Order 14096 (88 FR 25251, April 21, 2023) supplements the foundational efforts of Executive Order 12898 to address environmental justice.

The EPA recognizes that the burdens of environmental pollution and climate change often fall disproportionately on communities with environmental justice concerns. Climate change will exacerbate the existing risks faced by communities with environmental justice concerns. However, the EPA does not believe that this action will have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629; February 16, 1994).

K. Congressional Review Act

This action is subject to the Congressional Review Act. The EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 1, 2024 unless the EPA receives adverse comment.

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

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 25, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set out in the preamble, the EPA amends 40 CFR part 228 as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

Section 228.15 [Amended]

■ 2. Section 228.15 is amended by removing and reserving paragraphs (n)(12) and (13).

[FR Doc. 2024–09694 Filed 5–2–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 75

RIN 0945–AA19

Health and Human Services Grants Regulation

AGENCY: Department of Health and Human Services (HHS); Office for Civil Rights (OCR) and the Office of the Assistant Secretary for Financial Resources (ASFR).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or the Department) is issuing this final rule to repromulgate and revise certain regulatory provisions of the HHS, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, previously set forth in a final rule published in the **Federal Register** on December 12, 2016 (2016 Rule).

DATES: This rule is effective on June 3, 2024.

FOR FURTHER INFORMATION CONTACT:

Office for Civil Rights: David Hyams, Supervisory Policy Advisor; Gabriela Weigel, Policy Advisor, HHS Office for Civil Rights at (202) 240–3110, or via email at *hhsocrgrants@hhs.gov.*

Office of the Assistant Secretary for Financial Resources: Johanna Nestor, Director for Grants Policy, Oversight, and Evaluation, Office of Grants at (202) 260–6118, or via email at *grantpolicyreq@hhs.gov.*

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the final rule. To schedule an appointment for this type of accommodation or auxiliary aid, please call (202) 795–7830 or (800) 537–7697 (TDD) for assistance or email *hhsocrgrants@hhs.gov.*

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also available from the **Federal Register** online database through *http://www.govinfo.gov,* a service of the U.S. Government Publishing Office.

Table of Contents

I. Background

A. Regulatory History

On December 26, 2013, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(UAR or uniform regulations) that ''set standard requirements for financial management of Federal awards across the entire federal government.'' *See* 78 FR 78590 (Dec. 26, 2013). On December 19, 2014, OMB and other Federal award-making agencies, including the Department, issued an interim final rule to implement the UAR. 79 FR 75867 (Dec. 19, 2014). On July 13, 2016, the Department issued a Notice of Proposed Rulemaking (2016 NPRM) proposing changes to its adoption of the 2014 UAR Interim Final Rule. *See* 81 FR 45270 (July 13, 2016). On December 12, 2016, the Department finalized the 2016 NPRM and the final rule went into effect on January 11, 2017 (2016 Rule). *See* 81 FR 89393.[1] On November 19, 2019, the Department issued a Notice of Nonenforcement, which stated that the Department would not enforce the regulatory provisions adopted or amended by the 2016 Rule. *See* 84 FR 63809 (Nov. 19, 2019). On the same day, the Department issued an NPRM proposing to ''repromulgate some of the provisions of the [2016] Final Rule, not to repromulgate others, and to replace or modify certain provisions that were included in the Final Rule with other provisions.'' 84 FR 63831 (2019 NPRM). On January 12, 2021, HHS repromulgated portions of and issued amendments to the 2016 Rule. 86 FR 2257 (2021 Rule) (Jan. 12, 2021). That rule was vacated in part and remanded back to the Department [2] after the Department noted in litigation that it had ''reviewed only a small fraction of the non-duplicative comments, did not employ a sampling methodology likely to produce an adequate sample of the comment received, and did not explain its use of sampling in the final rule.'' [3]

On July 13, 2023, the Department published the NPRM associated with this rulemaking (2023 NPRM or Proposed Rule). *See* 88 FR 44750 (July 13, 2023). The Department invited comment from all interested parties. The comment period for the Proposed Rule ended on September 11, 2023, and the Department received 8,294 comments. A wide range of individuals and organizations submitted comments, including private citizens, health care workers and institutions, faith-based organizations, patient advocacy groups, civil rights organizations, and professional associations. The comments covered a variety of issues and points of view responding to the Department's requests for comments, all of which the Department reviewed and analyzed. The overwhelming majority of comments were individual comments associated with form letter campaigns from various groups and individuals. Numerous commenters, including civil rights organizations, faith-based organizations, health organizations, legal associations, and individual commenters, supported the Proposed Rule as written. Numerous other commenters, including certain faith-based providers, legal associations, and individual commenters, expressed opposition to the Proposed Rule for a variety of reasons.

B. Overview of the Final Rule

This preamble is divided into multiple sections. Section II describes changes to the regulation and contains two subparts. Subpart A sets forth general comments the Department received regarding the Proposed Rule and the responses to our request for comment on the likely impact of the Proposed Rule as compared to the 2016 Rule. Subpart B sets forth the final rule's regulatory provisions and our responses to comments received. Subpart C discusses the Department's comments received in Response to E.O. 13175 Tribal Consultation. Section III sets forth the Department's compliance with Executive Order 12866 and related Executive Orders on regulatory review.

Based upon comments received, the Department has made some changes to the Proposed Rule.

The Department has revised § 75.300(e) to clarify that the provision is interpretive and does not impose any new substantive obligations on entities outside the Department.

The Department has revised § 75.300(f) to also apply to grant applicants. Section 75.300(f) also is revised to provide recipients, applicants, and the public with (1) a general timetable under which the Department will acknowledge and begin to evaluate requests for assurances of religious freedom and conscience exemptions; (2) a temporary exemption during the pendency of the Department's review of such requests; (3) a list of conscience laws that may be applied to the § 75.300(f) process; (4) information about how the Department will consider these requests under the legal standards of applicable Federal religious freedom or conscience laws; (5) notice that adjudications are to be made by both ASFR and OCR; and (6) details about the administrative appeal process for applicants and recipients that receive adverse determinations.

The Department is finalizing the other provisions of the rule as proposed.

II. Provisions of the Proposed Rule and Analysis and Responses to Public Comments

A. General Comments

In the 2023 NPRM, the Department sought comment on the likely impact of the Proposed Rule as compared to the 2016 Rule. The comments and our responses regarding our request, and other general comments regarding the rule, are set forth below.

Comment: A large city requested that HHS widely promote the protections set forth in the Proposed Rule such that grant recipients and those served by HHS programs and services are made aware that discrimination based on actual or perceived sexual orientation, gender identity, or gender expression will be prohibited. A State Department of Health expressed support for ''purposeful implementation'' of the rule's nondiscrimination protections and requested that they be diligently and efficiently enforced.

Response: The Department appreciates these commenters' suggestions on promotion and implementation. This final rule clarifies that, in the identified statutes that HHS administers that prohibit discrimination on the basis of sex, HHS interprets the prohibition against discrimination on the basis of sex to include discrimination on the basis of sexual orientation, gender identity, and sex characteristics. This interpretation is consistent with *Bostock* v. *Clayton County,* 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity.[4] And as OCR noted in the Proposed Rule, 88 FR 44753, *Bostock's* reasoning applies with equal force to claims alleging discrimination on the basis of sex characteristics, which is

[1] The 2016 Rule also made a technical change not set forth in the Proposed Rule, amending § 75.110(a) by removing ''75.355'' and adding, in its place, ''75.335.''

[2] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. June 29, 2022), ECF No. 44 (vacating ''those portions of the . . . regulation entitled Health and Human Services Grants Regulation, 86 FR 2,257 (Jan. 12, 2021), that amend 45 CFR 75.101(f), 75.300(c), and 75.300(d)'' and remanding to HHS). Because they were not subject to the order of vacatur, certain provisions previously adopted in the 2021 Rule remain in effect. These provisions are: 45 CFR 75.305, 75.365, 75.414, and 75.477.

[3] Mot. to Remand with Vacatur, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. June 17, 2022), ECF No. 41 (granted by Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. June 29,2022), ECF No. 44).

[4] *See, e.g., Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616–17 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied,* 976 F. 3d 399 (4th Cir. 2020), *cert. denied,* No. 20–1163 (June 28, 2021); *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grabowski* v. *Arizona Bd. of Regents,* 69 F.4th 1110, 1113 (9th Cir. 2023).

inherently sex-based. When the rule is finalized, HHS intends to provide grant recipients and the public at large information about the rule and raise awareness of the protections provided by the statutes addressed in the rule, for example, through stakeholder meetings, webinars, and other outreach.

Comment: Numerous commenters expressed overall support for the rule, including the Proposed Rule's reaffirmation of nondiscrimination protections and its effect on access to services and care. A coalition of 11 advocacy groups stated that, while grant programs are subject to generally applicable statutes that bar discrimination on the basis of race, color, national origin, disability, and age, the Proposed Rule would further prevent harms because of its protections against discrimination on the bases of religion and sex in grant programs. Another commenter lauded the Proposed Rule, specifically, the retention of language from the partially vacated 2021 Rule regarding Federal statutory prohibitions against discrimination and the application of Supreme Court decisions in award administration.

Numerous commenters expressed support for the rule because, in their view, it would positively impact access to Federal programs and services for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) people. Several commenters praised the Proposed Rule's focus on nondiscrimination protections and access to care, especially for LGBTQI+ community members amidst what commenters described as a rise in anti-LGBTQI+ discrimination and increasing barriers to health care. Some commenters stated that the Proposed Rule would help protect against discrimination based on sexual orientation and gender identity in HHS-funded health programs. Another commenter opined that the rule would help protect and support the needs of LGBTQI+ individuals by protecting them from harmful discrimination and barriers to accessing needed service.

Response: The Department appreciates the commenters' support. To be clear, the final rule clarifies the Department's interpretation of existing statutory provisions that prohibit discrimination based on sex within the enumerated statutes in § 75.300(e). The Department offers this prospective interpretation in the interest of transparency and good governance so that the public is aware of the Department's position. *See* Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947). The Department is committed to ensuring access to its programs and compliance with all applicable Federal laws, including laws related to nondiscrimination, religious freedom, and conscience.

Comment: Many commenters in support of the rule included research and studies relating to the LGBTQI+ community as well as referencing their experiences with health and human services programs. Several of these commenters outlined specific concerns, including, among other things, that: LGBTQI+ individuals report ''fair or poor'' general physical health; are more likely than their non-LGBTQI+ peers to experience symptoms of anxiety and depression; and that a substantial percentage of LGBTQI+ people experience serious health conditions, including those that are life-threatening.[5] Commenters and the studies they cited attributed these disparities to pervasive discrimination against LGBTQI+ people, lack of access to care, and lack of access to providers knowledgeable about providing services to LGBTQI+ individuals. Some commenters discussed additional barriers to quality care and supportive services. A few commenters reported that discrimination, or fear of such discrimination, is a prevalent barrier to seeking health care for members of the LGBTQI+ community.

Several commenters cited studies and reports about the experiences of transgender people specifically. They included studies about high rates of intimate partner violence and suicidality, disproportionately high rates of HIV+ diagnoses, and disparities in housing and rates of poverty among transgender people, which commenters and many of the studies attributed to pervasive stigma and discrimination against transgender people. One of these commenters stated that victims of violence who are LGBTQI+ should not have to experience discrimination in government-funded services.

Some commenters specifically addressed discrimination experienced by LGBTQI+ individuals participating in HHS programs. A coalition of 11 advocacy groups stated that LGBTQI+ people experience discrimination while accessing services under Title IV–B and IV–E of the Social Security Act (*e.g.,* family support and foster care/adoption services) and services provided to older adults under the Older Americans Act (*e.g.,* Meals on Wheels). One organization commented that state laws targeting the LGBTQI+ community have worsened disparities. A coalition of 65 advocacy groups stated that LGBTQI+ youth are often subjected to discriminatory behavior while in congregate care settings.

Response: The Department acknowledges that discrimination against LGBTQI+ individuals remains pervasive, especially for individuals who experience discrimination on multiple bases, such as gender identity and race.[6] The Department's interpretation set forth in § 75.300(e) of this rule is notably limited to the scope of HHS awards and grant programs related to the statutes set forth in that section.

We note that § 75.300(e) does not include the Title IV–E Foster Care Program, which, along with applicable laws and regulations, bars discrimination on the basis of race, color, national origin, disability, and age. The Administration for Children and Families (ACF) has published a Proposed Rule concerning Title IV and foster care, 88 FR 66752 (Sept. 28, 2023); the comment period closed on November 27, 2023.

Comment: A commenter stated that several of these statutes protect against discrimination on the basis of religion and asserted that HHS should add additional provisions to protect religious grantees, parents, and participants.

Response: The Department appreciates the commenter's suggestion but declines to add additional language to the final rule. The Department is committed to fully upholding federal laws that guarantee freedom of religion and freedom of conscience. Section 75.300(c) confirms that it is against public policy of the Department for otherwise eligible persons to be discriminated against in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by Federal statute. This includes laws that prohibit religious discrimination against beneficiaries, including provisions of the statutes listed in § 75.300(e) that prohibit discrimination on the basis of religion,[7]

[5] Some of studies cited by commenters did not address the whole LGBTQI+ population—for example, some studies referenced outcomes only for the ''LGBT'' or ''LGBTQ'' populations as opposed to the broader LGBTQI+ population.

[6] *See* the Department's proposed rule regarding Section 1557 of the Affordable Care Act (42 U.S.C. 18116), *Nondiscrimination in Health Programs and Activities,* 87 FR 47824, 47870 (Aug. 4, 2022).

[7] *See,* 8 U.S.C. 1522(a)(5), Authorization for programs for domestic resettlement of and assistance to refugees; 42 U.S.C. 290cc–33(a)(2), Projects for Assistance in Transition from Homelessness; 42 U.S.C. 290ff–1(e)(2), Children with Serious Emotional Disturbances; 42 U.S.C. 300w–7(a)(2), Preventive Health Services Block Grant; 42 U.S.C. 300x–57(a)(2), Substance Abuse

and other religious freedom and conscience laws.[8] In addition, § 75.300(f) addresses an applicant's or recipient's ability to avail itself of religious freedom and conscience protections, including a process by which any entity can notify the Department of its view that it is exempt from, or entitled to a modified application of, the nondiscrimination requirements of the 13 statutes listed in § 75.300(e) due to the application of Federal religious freedom or conscience law.

Comment: A coalition of 11 civil rights organizations, citing *Maddonna* v. *United States Department of Health & Human Services,* No. 6:19–CV–3551–JD, 2023 WL 7395911 (D.S.C. Sept. 29, 2023), expressed their concerns regarding religious discrimination in government-funded services. The coalition provided examples of individuals who alleged facing religious discrimination in health and human services programs, including an agency that refused to provide a Jewish family foster-parent training and home study approval allegedly because of their religious beliefs, and a nonreligious man whom a State agency committed to various religious facilities to treat substance-use disorder, whose complaints the Department allegedly declined to investigate.[9]

Response: The Department appreciates the comments. The Department appreciates the comments. In *Maddonna,* a plaintiff sued a foster care child placement agency, along with various federal and state defendants, alleging that they had been excluded from participation in South Carolina's foster care program on the basis of their religion. The court in *Madonna* ultimately dismissed the claims against the Department. The Department is committed to protecting access to health care and human services and preventing discrimination in accordance with the Constitution and applicable Federal laws, including those involving religious discrimination.

The Department is committed to protecting access to health care and human services and preventing discrimination in accordance with applicable Federal laws, including those involving religious discrimination. As discussed above, the Department's interpretation set forth in § 75.300(e) is limited to the scope of HHS awards authorized by the statutes listed, which prohibit discrimination on the basis of sex. This list does not include Title IV–E; however, ACF has separately published a Proposed Rule concerning Title IV and foster care. 88 FR 66752.

Comment: A religious policy organization stated their view that ''forcing'' an alternate definition of sex would result in certain organizations no longer seeking HHS grants either because of their belief they would not qualify due to their sincerely held convictions or because of concern they would be opening themselves up to a legal battle. As an example, the commenter observed that certain States sought waivers from enforcement of the nondiscrimination requirements of the 2016 Rule, which similarly interpreted ''sex'' to include ''sexual orientation'' and ''gender identity.'' This organization stated its view that the 2016 Rule had worse implications for faith-based organizations than the Proposed Rule, but that the Proposed Rule was still inadequate to address religious freedom and conscience concerns.

Response: The Department appreciates the comment and acknowledges that waivers of enforcement were granted in connection with the 2016 Rule. The Department disagrees, however, that it is ''forcing'' an alternative definition of ''sex.'' As the Supreme Court noted in *Bostock,* nothing in its approach turned on the definition of ''sex'' alone, including parties' debate over whether ''sex'' was limited to the notion that it only refers to distinctions between male and female. The Court therefore proceeded on the narrow assumption for argument's sake that ''sex'' signifies ''biological distinctions between male and female'' and still reached its conclusion. *Bostock,* 590 U.S. at 655.

The Department highlights as well that this final rule allows for a religious freedom and conscience exemption process which is outlined in § 75.300(f) for applicants and recipients that have religious or conscience concerns or objections.

Comment: A religious policy organization advocated that HHS and the Department of Education refrain from finalization of rules that aim to interpret and apply Title IX of the Education Amendments of 1972 until courts are able to resolve the outstanding challenges involving *Bostock* based on what they view as overlap of underlying provisions within these rulemakings.

Response: This rule does not interpret or apply Title IX, as it solely addresses the statutes referenced in § 75.300(e). To the extent the rules raise similar questions, or would benefit from consistency in certain areas, those concerns have been identified and addressed through interagency review processes prior to the rule's finalization.

Comment: A religious legal advocacy organization stated that HHS should disclose the process by which it reviewed comments, including the methodology and estimates used to review and respond to comments, in light of HHS's identified failure in 2020 to appropriately review comments and disclose the process used for that review, *citing* Motion for Remand with Vacatur, *Facing Foster Care in Alaska* v. *U.S. Health & Human Services,* No. 1:21–cv–00308 (D.D.C. June 17, 2022), ECF No. 41 (*granted by* Order, (D.D.C. June 29, 2022), ECF No. 44).

Response: The Department appreciates the commenter's suggestion. We received over 8,000 submissions during the public comment period. OCR has reviewed all non-duplicative comments it received. Under the relevant legal standards and the Administrative Procedure Act (APA), OCR has identified, considered, and responded to all the significant issues raised by commenters. OCR staff's ability to read, consider, and respond to comments on this rule were not hampered by time or funding constraints.

B. Comments Regarding Provisions of the Proposed Rule

1. Section 75.300(c)

In the 2023 NPRM, the Department proposed to repromulgate § 75.300(c) from the 2021 Rule with a slight edit to reference ''HHS programs, activities, projects, assistance, and services'' as opposed to just ''HHS programs and services.'' This edited provision reads: ''It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by federal statute.''

The comments and our responses regarding § 75.300(c) are set forth below.

Comment: Some commenters expressed general support for § 75.300(c). One commenter expressed support for the provision as explicitly aligning Federal regulations with the Supreme Court decisions in *United States* v. *Windsor,* 570 U.S. 744 (2013),

Treatment and Prevention Block Grant and Community Mental Health Services Block Grant; 42 U.S.C. 708(a)(2), Maternal and Child Health Block Grant; 42 U.S.C. 5151(a), Disaster relief; 42 U.S.C. 9849(a), Head Start; and 42 U.S.C. 10406(c)(2)(B)(i), Family Violence Prevention and Services.

[8] *See, e.g.,* U.S. Const. Amend. I; 42 U.S.C. 2000bb *et seq.* (RFRA); 45 CFR part 88.3 (listing statutes).

[9] The coalition cited to OCR Transaction Numbers DO–21–453070 and DO–21–430481.

Obergefell v. *Hodges,* 576 U.S. 644 (2015), and *Bostock,* 590 U.S. 644. Another commenter concluded that this section would help prevent what the commenter viewed as the harm caused by approaches similar to those allegedly caused by the 2019 waiver sent by ACF to South Carolina approving the state's waiver request from the nondiscrimination requirements in paragraph (c). *See* 88 FR 44750, 44752.[10]

Response: While this rule's text does not cite *Windsor* or *Obergefell,* the Department follows all Supreme Court precedent as noted in § 75.300(d) and appreciates the commenters' support for the section. HHS is committed to respecting all applicable Federal laws and relevant precedent.

Comment: A group of commenters proposed removing § 75.300(c) altogether since § 75.300(a) makes it unnecessary for HHS to declare something contrary to ''public policy'' if it already contravenes Federal statute. The commenter further stated that if the Department removes § 75.300(c), it can also remove § 75.101(f), which clarifies the inapplicability of § 75.300(c) to the Temporary Assistance for Needy Families Program (Title IV–A of the Social Security Act, 42 U.S.C. 601–619) (TANF).

Response: The Department thanks commenters for the suggestions but, other than not adding language from former § 75.101(f), declines to accept the recommendations. The Department maintains that the final rule language best articulates HHS's position, provides additional regulatory clarity to the public and regulated community, and furthers the efficient and equitable administration of HHS grants. The Proposed Rule stated that the Department is proposing not to reinstate former § 75.101(f). 88 FR 44753. This final rule likewise is not reinstating former § 75.101(f).

Comment: Some commenters recommended that HHS use additional statutory authorities to establish regulatory nondiscrimination requirements across key programs and clarify interactions with other civil rights laws.

Response: The Department declines to add additional statutory authorities as described. The Department acknowledges the importance of accounting for simultaneous discrimination on multiple or overlapping prohibited bases, and the regulation at § 75.300(c) includes a broad nondiscrimination prohibition that is grounded in the range of prohibitions provided by Federal statute.'' The Department is committed to ensuring consistent enforcement of these protections.

Summary of Regulatory Changes to § 75.300(c)

For the reasons set forth in the Proposed Rule and considering the comments received, we are finalizing § 75.300(c) as proposed, without modification.

2. Section 75.300(d)

In the 2023 NPRM, the Department proposed to repromulgate § 75.300(d) from the partially vacated 2021 Rule. It provided, ''HHS will follow all applicable Supreme Court decisions in administering its award programs.''

The comments and our responses regarding § 75.300(d) are set forth below.

Comment: Some commenters opposed § 75.300(d), reasoning that it would be ''unnecessary'' and ''pernicious'' to state that HHS must follow the decisions of the Supreme Court. The commenters recommended that HHS remove this section from the Proposed Rule and instead explain how it will apply past court decisions to new disputes with grant recipients raising different but related questions or apply Federal circuit court decisions.

Response: The Department appreciates the commenters' views, but declines their recommendation. The Department is required to comply with Supreme Court precedent; Section 75.300(d) reflects that.

Summary of Regulatory Changes to § 75.300(d)

For the reasons set forth in the Proposed Rule and considering the comments received, we are finalizing § 75.300(d) as proposed, without modification.

3. Section 75.300(e)

In the 2023 NPRM, the Department proposed to add § 75.300(e), which clarifies that, in the identified statutes that HHS administers that prohibit discrimination on the basis of sex, HHS interprets the prohibition against discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation is consistent with *Bostock* v. *Clayton County,* 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock*'s reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity.[11] Proposed § 75.300(e) referenced 13 statutes HHS administers that prohibit discrimination on the basis of sex.[12]

The Department also sought comment on: (1) whether the Department administers other statutes prohibiting sex discrimination that are not set forth in proposed § 75.300(e) or whether the Department should include language or guidance in § 75.300(e) to cover current or future laws that prohibit sex discrimination that are not set forth above; and (2) whether there is anything about any of the statutes referenced in proposed § 75.300(e), such as their language, legislative history, or purpose, that would provide a legal basis for distinguishing them from *Bostock*'s interpretation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), that sex discrimination includes discrimination on the basis of sexual orientation and gender identity.

The comments and our responses regarding § 75.300(e) are set forth below.

Comment: Many commenters expressed strong support for proposed § 75.300(e) because it highlights existing statutory nondiscrimination provisions and expressly codifies a critical interpretation of discrimination on the basis of sex. Many commenters opined that § 75.300(e) is both consistent with the Supreme Court's ruling in *Bostock* and an appropriate application of the decision. One legal institute that focuses on sexual orientation and gender identity issues expressed support for § 75.300(e), stating that it has been longstanding practice to look to Title VII case law to interpret analogous

[10] For the original correspondence, *See Letter from Joo Yeun Chang to Governor Henry McMaster* (Nov. 18, 2021), *https://www.acf.hhs.gov/sites/default/files/documents/withdrawal-of-exception-from-part-75.300-south-carolina-11-18-2021.pdf; Letter from Joo Yeun Chang to Governor Henry McMaster* (Nov. 18, 2021), *https://governor.sc.gov/sites/governor/files/Documents/newsroom/HHS%20Response%20Letter%20to%20McMaster.pdf.*

[11] *See, e.g., Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616–17 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied,* 976 F. 3d 399 (4th Cir. 2020), *cert. denied,* No. 20–1163 (June 28, 2021); *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grabowski* v. *Arizona Bd. of Regents,* 69 F.4th 1110, 1113 (9th Cir. 2023).

[12] The thirteen statutes are: 8 U.S.C. 1522. Authorization for programs for domestic resettlement of and assistance to refugees; 42 U.S.C. 290cc–33. Projects for Assistance in Transition from Homelessness; 42 U.S.C. 290ff–1. Children with Serious Emotional Disturbances; 42 U.S.C. 295m. Title VII Health Workforce Programs; 42 U.S.C. 296g. Nursing Workforce Development; 42 U.S.C. 300w–7. Preventive Health and Health Services Block Grant; 42 U.S.C. 300x–57. Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant; 42 U.S.C. 708. Maternal and Child Health Block grant; 42 U.S.C. 5151. Disaster relief; 42 U.S.C. 8625. Low Income Home Energy Assistance Program; 42 U.S.C. 9849. Head Start; 42 U.S.C. 9918. Community Services Block Grant Program; 42 U.S.C. 10406. Family Violence Prevention and Services.

provisions in other nondiscrimination laws, and that there is no language in any of the 13 statutes that suggests that HHS or the courts should not look to Title VII case law.

Response: The Department agrees that the final rule is consistent with *Bostock* and that Title VII case law is relevant to the analysis of the statutes listed in § 75.300(e).

Comment: Many commenters recommended that HHS expressly codify the prohibition of discrimination on the basis of sex characteristics, including intersex traits, in the regulatory text of § 75.300(e).

Response: As the Department explained in the NPRM, the Department agrees that sex discrimination covers discrimination on the basis of sex stereotypes, which can include stereotypes regarding sex characteristics and intersex traits, consistent with longstanding Supreme Court precedent. 88 FR 44750, n.11 (July 13, 2023) *see Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 251 (1989). Moreover, like gender identity and sexual orientation, intersex traits are ''inextricably bound up with'' sex, *Bostock,* 590 U.S. at 660–661, and ''cannot be stated without referencing sex,'' *Grimm* v. *Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 608 (4th Cir. 2020) (quoting *Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1051 (7th Cir. 2017)). Further, interpreting sex discrimination prohibitions to encompass discrimination based on sex characteristics is consistent with applicable statutory text and existing interpretations by HHS and other agencies.[13] The Department agrees that the final rule protects against discrimination based on sex characteristics, but does not believe it is necessary to specify this in regulatory text.

Comment: A commenter requested that HHS further expand § 75.300(e) to explicitly include ''gender expression'' and provided a revised version of the paragraph including language stating that discrimination is prohibited based on ''actual or perceived'' status.

Response: The final rule clarifies the Department's interpretation of nondiscrimination protections on the basis of sex in certain programs and is consistent with current law. The Department agrees that sex discrimination covers discrimination on the basis of sex stereotypes, which can include stereotypes regarding gender expression, as well as discrimination against an individual based on perceived status. The Department does not believe it is necessary to specify this in regulatory text.

Comment: A coalition of patient advocacy groups argued that the nondiscrimination requirements in the final rule should address both Department-wide and program-specific statutory prohibitions on sex discrimination, including references to health programs and activities covered by Section 1557 of the Affordable Care Act (42 U.S.C. 18116). A different coalition of advocacy groups urged HHS to exercise the general rulemaking authority under Section 1102(a) of the Social Security Act, 42 U.S.C. 1302(a), to promulgate nondiscrimination protections, including those that would address Titles IV–B and IV–E as well as the provision of child welfare services. The commenters reasoned that the broadest and most widely applicable nondiscrimination protections would minimize discrimination against vulnerable populations and other barriers to program access. One commenter recommended that HHS ensure all current and future statutes prohibiting sex discrimination are encompassed by the present rulemaking to ensure that the proposed rule's nondiscrimination requirements cover all HHS-funded programs and services.

Response: The Department appreciates commenters' request that this rule address Department-wide and program-specific statutory prohibitions on sex discrimination. However, as noted in the Proposed Rule, the Department identified the statutes listed in proposed § 75.300(e) because they contain specific prohibitions on sex discrimination included within program statutes, and none contain any indicia suggesting they should be construed differently than Title VII. 88 FR 44754. This was to ground the Proposed Rule's interpretation in existing statutory authority.

The Department has rulemaking authority under Section 1102(a) of the Social Security Act, 42 U.S.C. 1302(a), but declines at this time to add substantive provisions to what is otherwise an interpretive rule. In addition, the Department is unable to anticipate the way future statutes prohibiting sex discrimination may be drafted or edited, and therefore declines to include reference to such future statutes in this final rule. The Department therefore has determined at this time additional changes are not necessary.

Comment: Numerous commenters, including two separate coalitions of advocacy groups, requested that additional statutes be considered for inclusion in § 75.300(e). Specifically, these commenters asked that HHS consider four statutes in this rulemaking: (1) Title IX; (2) Section 1557; (3) Section 632 of the Community Economic Development Act of 1981, 42 U.S.C. 9821 (CEDA); and (4) the Violence Against Women Act, 34 U.S.C. 12291 (VAWA).

Response: The Department appreciates comments responding to our request regarding other statutes prohibiting sex discrimination that the Department administers. The Department is addressing Section 1557, which prohibits discrimination on the basis of sex in certain health programs and activities, under a separate rulemaking.[14] The Department also has a separate regulation that addresses the nondiscrimination provisions of Title IX.[15] The Department therefore declines to address those statutes' nondiscrimination provisions in this rule.

The Department agrees that CEDA could potentially warrant inclusion in § 75.300(e) because it authorizes Department programs and services, it prohibits sex discrimination,[16] and there is nothing in the text, history, or case law that suggests it should be interpreted differently than *Bostock.* However, the CED program has not been funded or active since 1998, as its funding stream authorization was repealed.[17] Accordingly, the Department will not add CEDA to the statutes listed in § 75.300(e) at this time.

As for VAWA, the statute itself expressly prohibits discrimination on the basis of sexual orientation and

[13] *See, e.g.,* Notice of Proposed Rulemaking, *Nondiscrimination in Health Programs and Activities,* 87 FR 47824 (August 4, 2022); Notice of Proposed Rulemaking, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,* 87 FR 41390 (July 12, 2022); U.S. Dept. of Justice, Title IX Legal Manual, *https://www.justice.gov/crt/title-ix#:~:text=The%20reasoning%20in,assigned%20at%20birth.%E2%80%9D.*

[14] 87 FR 47824 (Aug. 4, 2022).

[15] 45 CFR part 86.

[16] *See* CEDA, 42 U.S.C. 9821(a) (''The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of . . . sex . . . .'') and (b) (''No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter.'').

[17] *See* Community Opportunities, Accountability, and Training and Educational Services Act of 1998, Public Law 105–285, sec. 202(b)(1)) (''(1) SOURCE OF FUNDS.—Section 614 of the Community Economic Development Act of 1981 (42 U.S.C. 9803) is repealed.'').

gender identity.[18] Therefore, VAWA's protections based on sexual orientation and gender identity apply to all HHS VAWA programs and grants operated, and the statute's inclusion in this rule is unnecessary.

Comment: A national campaign of form comments expressed concern that the Proposed Rule's prohibition against grant recipients discriminating on the basis of sex ''sidesteps'' State legislatures.

Response: The final rule simply states how the Department will apply precedent and existing obligations and does not implicate federalism concerns. The statutes identified in § 75.300(e) have long contained prohibitions against discrimination on the basis of sex. And the Supreme Court's decision in *Bostock,* not this final rule, determined that Title VII's prohibition on sex discrimination necessarily included a prohibition on discrimination on the basis of sexual orientation and gender identity. This rule, in turn, applies *Bostock's* reasoning with respect to the statutes enumerated in § 75.300(e). As explained in the Proposed Rule, none of the 13 statutes referenced in § 75.300(e) contain any indicia—such as statute-specific definitions, or any other criteria—to suggest that the statutes' general prohibitions on sex discrimination should be construed differently than Title VII's sex discrimination prohibition. *See* 88 FR at 44754. This rule, therefore, makes clear that the Department interprets the identified statutes' prohibitions on sex discrimination to include prohibitions on sexual orientation and gender identity discrimination. The rule does not dictate, however, the outcomes in particular matters and it does not direct the outcome of any complaint of discrimination asserted under the identified statutes.

Comment: Some commenters opined that HHS lacks the authority to finalize the Proposed Rule under 5 U.S.C. 301, sometimes referred to as the ''Housekeeping Statute.'' One commenter stated that HHS should not insert ''significant changes'' into an ASFR regulation because the Housekeeping Statute authorizes the regulation of the operation of HHS—not actors outside the HHS Secretary's authority. Another commenter stated that the 2016 Rule was not constitutionally or statutorily authorized, and urged HHS to rescind the 2016 Rule, arguing that although the Housekeeping Statute authorizes the heads of agencies to regulate ''the government of [their] department'' and to ''regulate [their] own affairs,'' it does not mention protected classes or allow HHS to regulate externally.

Response: The Department recognizes that the Housekeeping Statute is ''a grant of authority to the agency to regulate its own affairs . . . authorizing what the [Administrative Procedure Act] terms 'rules of agency organization, procedure or practice' as opposed to 'substantive rules.' '' *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 309–10 (1979). The Department's clarification in this final rule with regard to the meaning of discrimination on the basis of sex is consistent with the Department's authority under 5 U.S.C. 301 to regulate its own affairs in how it interprets existing statutes that already contain such prohibitions and is consistent with Supreme Court jurisprudence. For the avoidance of doubt, the Department has added language to § 75.300(e) clarifying that the provision is interpretive and does not impose any substantive obligations on entities outside the Department. In other words, § 75.300(e) expresses the Department's current interpretation of the listed statutes; a member of the public will, upon proper request, be accorded a fair opportunity to seek modification, rescission, or waiver of § 75.300(e).

Comment: Several commenters asked HHS to remove § 75.300(e), asserting that the Department relied upon a misinterpretation of *Bostock* and that the Department otherwise does not have the authority to ''redefine'' the term ''sex.'' Relying on § 75.300(c)'s explanation that discrimination in HHS programs is prohibited ''to the extent doing so is prohibited by federal law,'' one commenter asserted that § 75.300(c) is inconsistent with the relevant statutes because the statutes and legislative history do not mention sexual orientation or gender identity. Some commenters expressed opposition to HHS's interpretation of *Bostock* in the Proposed Rule and suggested that *Bostock's* holding is actually about the specific meaning of the ''because of'' language of Title VII, specific to employment. In their view, that ''because of'' language is not contained in other statutes; accordingly, they argue, *Bostock* does not apply to those statutes and is limited to Title VII only.

Several commenters opined that the statutes listed in proposed § 75.300(e) lack a textual basis for HHS to ''redefine'' sex to include gender identity or sexual orientation. Prohibitions against sex discrimination, in the commenters' view, should refer to a ''binary, biological'' definition. Other commenters flagged examples of statutes that specifically refer to one sex including: the Refugee Resettlement Programs, 8 U.S.C. 1522(a)(1)(A); the Title VII Health Workforce Programs, 42 U.S.C. 295m(i); the definition in the Maternal and Child Health Block Grant statute of an eligible family, 42 U.S.C. 711(l)(2)(a); and the Head Start program. *See* 42 U.S.C. 9840(a)(5)(A)(iii) & (d)(3), 9840a(c)(1) & (i)(2)(G), 9852b(d)(2)(C). Commenters also argued that 42 U.S.C. 10406 of the Family Violence Prevention and Services Act (FVPSA) be removed from the list of programs in the final rule's § 75.300(e) because, in their view, the word ''sex'' in the context of that statute is used in the statute.''

Response: The Department appreciates the comments but disagrees with the commenters' views. *Bostock* and ensuing case law provide a compelling reason to interpret other similar statutory provisions which use the same or similar nondiscrimination language as Title VII's prohibition against sex discrimination to include discrimination based on sexual orientation and gender identity, absent indicia to the contrary.

Further, given the similarity in nondiscrimination language between Title VII and Title IX, many Federal courts that have addressed the issue have interpreted Title IX consistent with *Bostock's* reasoning.[19] Additionally, there is a significant amount of case law, pre-and post-*Bostock,* that affirms protections on the basis of either sexual orientation or gender identity, or both, pursuant to a variety of other statutes that prohibit discrimination on the basis of ''sex.'' [20] As noted in the Proposed

[18] 42 U.S.C. 12291(13)(a).

[19] *See e.g., Grabowski* v. *Arizona Bd. of Regents,* 69 F.4th 1110, 1116 (9th Cir. 2023); *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020); *cf. Adams* v. *School Bd. of St. Johns Cnty,* 57 F.4th 791, 811–15 (11th Cir. 2022) (en banc).

[20] *See, e.g., Whitaker By Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034 (7th Cir. 2017) (Title IX); *Smith* v. *Cty. of Salem, Ohio,* 378 F.3d 566 (6th Cir. 2004) (Title VII); *Rosa* v. *Park W. Bank & Trust Co.,* 214 F.3d 213 (1st Cir. 2000) (Equal Credit Opportunity Act); *Schroer* v. *Billington,* 577 F. Supp. 2d 293 (D.D.C. 2008) (Title VII); *Boyden* v. *Conlin,* 341 F. Supp. 3d 979 (W.D. Wis. 2018) (Section 1557 and Title VII); *Flack* v. *Wis. Dep't of Health Servs.,* 395 F. Supp. 3d 1001, 1014 (W.D. Wis. 2019) (Section 1557 and Equal Protection Clause); *Prescott* v. *Rady Children's Hosp. San Diego,* 265 F. Supp. 3d 1090, 1098–100 (S.D. Cal. 2017) (Section 1557); *Tovar* v. *Essential Health,* 342 F. Supp. 3d 947, 957 (D. Minn. 2018) (Section 1557). *See also Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied,* 141 S. Ct. 2878 (Mem) (2020); *Kadel* v. *Folwell,* No. 1:19–cv–00272, 2022 WL 2106270, at *28–*29 (M.D.N.C. June 10, 2022); *Scott* v. *St. Louis Univ. Hosp.,* No. 4:21–cv–01270–AGF, 2022 WL 1211092, at *6 (E.D. Mo. Apr. 25, 2022); C.P. by & through *Pritchard* v. *Blue Cross Blue Shield of Ill.,* No. 3:20–cv–06145–

Rule, none of the listed statutes in the rule contain any indicia—such as statute-specific definitions, case law, or any other criteria—to suggest that these prohibitions on sex discrimination should be construed differently than how the Supreme Court construed Title VII's sex discrimination prohibition in *Bostock.* The language prohibiting sex discrimination in statutes listed in § 75.300(e) is substantially similar to Title VII's sex discrimination prohibition, and so the Department interprets them similarly. In addition, while these laws may have exceptions or other provisions that affect how they apply to particular facts and circumstances, that does not change the fact that their general prohibition on ''sex discrimination'' should be understood consistent with the reasoning of *Bostock. See Bostock,* 590 U.S. at 681 (''Whether other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these.'').

Additionally, the Department disagrees that *Bostock's* holding was only about the term ''because of.'' Indeed, in *Bostock* itself, the Court used both ''on the basis of'' and ''because of'' throughout the decision to describe the unlawful discrimination at issue. *See, e.g., Bostock,* 590 U.S. at 654 (''on the basis of sex.''); *id.* at 658 (''because of sex''). As noted in the Proposed Rule, the 13 listed statutes contain minor variations in the language used to prohibit sex discrimination, sometimes within the same statute, but the Department does not believe any of the variations can be reasonably understood to distinguish the various statutes from *Bostock's* reasoning. *See* 88 FR 44754.[21]

With regard to the commenters' providing statutes that explicitly reference women and men to support the argument that sex should be limited to a ''binary, biological'' understanding, we find this unpersuasive. As the Supreme Court noted in *Bostock,* nothing in its approach turned on the parties' debate over whether ''sex'' was limited to the notion that it only refers to distinctions between male and female, and so the Court proceeded on the narrow assumption for argument's sake that ''sex'' signifies ''biological distinctions between male and female.'' *Bostock,* 590 U.S. at 655. Nonetheless the Court held that the plain language of the statute included discrimination based on sexual orientation and gender identity. Finally, with regard to the FVPSA, 42 U.S.C. 10406(c)(2)(B)(i) explains that entities may ''tak[e] into consideration that individual's sex in those certain instances'' such as ''bona fide occupational qualifications'' or ''programmatic factors.'' The Department will apply the FVPSA faithfully, including this provision.

Comment: A group of commenters expressed their view that the Proposed Rule constitutes a ''unilateral inflation'' of power by the Department that invokes the ''major questions doctrine'' and requires Congressional approval. *West Virginia* v. *Environmental Protection Agency,* 142 S. Ct. 2587 (2022) and *Biden* v. *Nebraska,* 143 S. Ct. 2355 (2023). The group expressed concerns about the scope of the types of providers the rule would impact. The group also asserted that the Department is claiming to interpret Title VII through the Proposed Rule, despite Title VII being enforced by the Equal Employment Opportunity Commission (EEOC). One commenter argued that HHS's responsibility to comply with Supreme Court decisions includes following the major questions doctrine and upholding universal religious freedom rights.

Response: The Department appreciates the commenters' concerns but disagrees that this rule is beyond the Department's authority or that it is interpreting Title VII in lieu of the EEOC. The Department recognizes that, under the major questions doctrine, explicit Congressional authorization is required in ''extraordinary cases'' when the ''history and breadth of the authority that [the agency] has asserted'' and the ''economic and political significance'' of that assertion provide a ''reason to hesitate before concluding that Congress'' meant to confer such authority. *W. Virginia* v. *Env't Prot. Agency,* 597 U.S. 697, 721 (2022) (quoting *Food & Drug Admin.* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159 (2000)). A majority of major-question cases apply to agency action that has not been clearly authorized by the text of the statute.

Here, § 75.300(e) is interpretive of the 13 statutes listed, each of which authorize programs administered by the Department. In *Bostock,* the Court interpreted language contained in—and at the heart of—the Title VII statute. 590 U.S. at 659 (observing that from ''the ordinary public meaning of the statute's language at the time of the law's adoption, a straightforward rule emerges: [a]n employer violates Title VII when it intentionally fires an individual employee based in part on sex''). The Court states that ''it is impossible to discriminate'' against a person based on sexual orientation or gender identity ''without discriminating against that individual based on sex.'' *Id.*

Because HHS is interpreting language nearly identical to that interpreted in *Bostock,* the major questions doctrine does not apply to HHS's interpretation of the statutes identified in this rule. The Department therefore disagrees with the commenters who opined that this rule represents agency action in violation of *Biden* v. *Nebraska,* 143 S. Ct. 2355 (2023) or *W. Virginia* v. *Env't Prot. Agency,* 597 U.S. 697 (2022). To the contrary, HHS is relying upon all relevant statutory text and applicable case law in this interpretive rule. However, for clarity, the Department has revised § 75.300(e) in this final rule to make clear that this provision is interpretive and does not impose substantive obligations on entities outside the Department.

Comment: A group of commenters argued that § 75.300(e) would compel faith-based organizations in receipt of HHS funding to violate their religious identity and tenets. Another group of commenters opined that if a program required a religious organization to provide referrals for care that violate the religious organization's ethical standards, it would discriminate against religious providers and would be inconsistent with *Trinity Lutheran Church of Columbia* v. *Comer,* 582 U.S. 449 (2017). A group of religious organizations recommended that, absent § 75.300(e)'s removal, § 75.300(f) should be altered to explicitly state that incidental harms to third parties cannot curtail a request for religious exemption if the government action at issue is a

RJB, 2021 WL 1758896, at *4 (W.D. Wash. May 4, 2021); *Koenke* v. *Saint Joseph's Univ.,* No. CV 19–4731, 2021 WL 75778, at *2 (E.D. Pa. Jan. 8, 2021); *Doe* v. *Univ. of Scranton,* No. 3:19–cv–01486, 2020 WL 5993766, at *11 n.61 (M.D. Pa. Oct. 9, 2020); *Maxon* v. *Seminary,* No. 2:19–cv–9969, 2020 WL 6305460 (C.D. Cal. Oct. 7, 2020*); B.P.J.* v. *W. Va. State Bd. of Educ.,* No. 2:21–cv–00316, 2021 WL 3081883, at *7 (S.D.W. Va. July 21, 2021); *Clark Cnty. Sch. Dist.* v. *Bryan,* 478 P.3d 344, 354 (Nev. 2020). At least one court has held that it would be a misapplication of *Bostock* to interpret the definition of ''sex discrimination'' under Section 1557 and Title IX to include gender identity and sexual orientation. *Neese* v. *Becerra,* No. 2:21–CV–163–Z, 2022 WL 16902425 (N.D. Tex. Nov. 10, 2022). The Department appealed that decision to the U.S. Court of Appeals for the Fifth Circuit and oral argument was held on January 8, 2024. The Department is not applying the challenged interpretation to members of the *Neese* class pending the appeal.

[21] Nevertheless, 42 U.S.C. 9849(a) actually uses the phrase ''because of.'' *See* 42 U.S.C. 9849(a) (''The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity *because of* race, creed, color, national origin, sex, political affiliation, or beliefs.'') (emphasis added).

burden on the claimant's religion. Two organizations stated that challenges could arise in shelters for unaccompanied migrant children (UC) and unaccompanied refugee minors (URMs) to accommodate gender-nonconforming individuals.

One commenter asserted that the Proposed Rule would require religious organizations to place UCs and URMs with same-sex couples as foster parents because that program is funded in part by grants issued under 8 U.S.C. 1522, 45 CFR part 400, authorization for programs for domestic resettlement of and assistance to refugees, and cited *Marouf* v. *Azar,* No. 18–cv–00378 (D.D.C. Jul. 7, 2023). More generally, several commenters argued that the rule would force faith-based providers to provide procedures with which they disagree due to religious beliefs, and raised constitutional issues, alleging that the Proposed Rule would result in disparate impact on religious entities in violation of the Equal Protection Clause.

Response: The Department disagrees that this rule discriminates against religious entities in violation of the Equal Protection Clause. Rather, this final rule clarifies HHS's interpretation of discrimination based on sex in the listed statutes, consistent with Federal law. Furthermore, § 75.300(f) provides a new administrative process not previously provided for in either the 2016 Rule or the partially vacated 2021 Rule.[22] Under § 75.300(f), the Department will address any request for an assurance of a religious freedom- or conscience-based exemption on a case-by-case basis. This new process is designed to ensure that protections are appropriately applied and that recipients have the opportunity to request assurance of exemptions consistent with their religious tenets. The process set forth in § 75.300(f) clarifies legal obligations, demonstrates the Department's concerted effort to approach its enforcement responsibilities under Federal antidiscrimination laws while respecting applicable Federal religious freedom and conscience laws, and maintains transparency about the Department's enforcement mechanisms.

With regard to the consideration of third-party harms [23] raised by commenters, the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.,* provides that the Federal government may not substantially burden a person's exercise of religion unless it can demonstrate that the ''application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'' 42 U.S.C. 2000bb–1(b). In determining whether the government action is the least restrictive means of furthering a compelling governmental interest, the Department will take into consideration any harms to third parties that may result from providing an exemption under RFRA.

In response to commenters' concerns regarding the application of this rule to religious providers in the context of UCs, URMs, and foster care because of this rule's application to 8 U.S.C. 1522 the Department notes that 8 U.S.C. 1522 applies only to URMs and not UCs or foster care. Additionally, the Department notes the process at § 75.300(f) is available to religious providers to request an assurance of an exemption from the application of the nondiscrimination requirements addressed in this rule to their programs under applicable Federal religious freedom and conscience laws.

Comment: Some commenters stated that, in their view, the Proposed Rule would affect women's access to services where an entity has been required, based on this rule, to expand its services to include a new population on top of the population they already serve. Some commenters discussed their belief that the rule would require specific programs to expand the services provided, alleging that programs like Head Start and the Community Mental Health and Maternal/Child Health Block Grants would be required to affirm LGBTQI+ children, which would require providing correspondingly affirming health care.

Response: The Department appreciates these comments, but they do not accurately characterize requirements related to women, children, and health care. The final rule clarifies HHS's interpretation of discrimination based on sex in the listed statutes, consistent with Federal law. The Department is not setting standards of care for the practice of medicine in this rule, nor is it requiring providers to provide any specific services.

Comment: Numerous commenters raised concerns that the Proposed Rule affects parental rights related to curricula taught to children and decisions about medical care.

Response: The Department appreciates the fundamental role that parents play in raising their children. The final rule clarifies HHS's interpretation of discrimination based on sex in the listed statutes, consistent with Federal law. The rule does not set standards for parental involvement and nothing in this rule derogates parental rights. The rule also does not opine on the authority of parents to choose when and how to educate their children about certain matters, or to choose when and what health care to provide their children.

Comment: A commenter expressed concern that the Proposed Rule does not clarify the extent of its nondiscrimination requirements, nor does it adequately establish what services recipients must provide or how they must operate under the Proposed Rule.

Response: The Department appreciates these comments. The Department is committed to working with recipients to ensure compliance with their particular programs' nondiscrimination requirements. The Department disagrees that the rule's approach would leave applicants with uncertainty about their antidiscrimination obligations. As discussed above, the concept that discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity is not new, and there exists a wide body of case law on its application in numerous circumstances. This rule memorializes the Department's interpretation as applied to 13 statutes. Indeed, many Federal courts have long interpreted Title VII's prohibition on sex-based discrimination to encompass discrimination based on gender identity.[24]

It is true, however, that the *Bostock* Court noted it did not address the issue of how ''doctrines protecting religious liberty interact with Title VII,'' leaving those questions ''for future cases . . .'' [25] The Department will apply the law on these issues as it develops.

Comment: A few commenters expressed concern that HHS grant recipients would now be required, in their view, to use participants' preferred

[22] The religious freedom and conscience exemption process here complements the exemption process set forth in Section 1557 (§ 92.301), and the Department's 2024 Conscience Rule, *Safeguarding the Rights of Conscience as Protected by Federal Statutes,* 89 FR 2078 (2024).

[23] *See Cutter* v. *Wilkinson,* 544 U.S. 709, 720 (2005) (In addressing religious accommodation requests, ''courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries.'').

[24] *See, e.g., Barnes* v. *City of Cincinnati,* 401 F.3d 729, 738 (6th Cir. 2005); *Schroer* v. *Billington,* 577 F. Supp. 2d 293, 308 (D.D.C. 2008); *Roberts* v. *Clark Cnty. Sch. Dist.,* 215 F. Supp. 3d 1001, 1014 (D. Nev. 2016).

[25] On this matter, the *Bostock* Court said that how doctrines protecting religious liberty—including Title VII's religious exemption, the First Amendment's religion clauses, and the Religious Freedom Restoration Act—interact with Title VII ''are questions for future cases. . . .'' 590 U.S. 644, 682 (2020).

pronouns or adopt, according to these commenters, a ''false'' view of sex with which individuals may disagree, potentially burdening their speech and expressive association.

Response: This rule does not require grant recipients to adopt any particular views, and neither requires nor authorizes the restriction of any rights protected by the First Amendment or any other Constitutional provision. To reiterate, § 75.300(e) does not impose any substantive requirements on entities outside the Department. Rather, the final rule clarifies HHS's interpretation of discrimination based on sex in the listed statutes and interprets those statutes' prohibitions consistent with Federal law. This regulation neither addresses specific conduct constituting discrimination under any particular statute nor dictates any of the outcomes of any claim of discrimination. Whether discrimination has occurred is a fact-specific inquiry.[26]

Comment: Several commenters discussed that at least five of the statutes referenced in § 75.300(e) prohibit sex discrimination by incorporating prohibitions in Title IX, which the commenters state provide for broad carveouts and exceptions for religious entities. 42 U.S.C. 290cc–33(a)(1), 300w–7(a)(1), 300x–57(a)(1), 708(a)(1), 10406(c)(2)(A).

Response: While each of the five statutes referenced by commenters mentions Title IX in a rule of construction, they also each contain a separate, standalone prohibition against discrimination on the basis of sex. 42 U.S.C. 290cc–33(a)(2), 300w–7(a)(2), 300x–57(a)(2), 708(a)(2), 10406(c)(2)(B)(i). These provisions are not reliant on Title IX. They are separate authorities that prohibit sex discrimination outright, and the Department disagrees that the statutory exemptions and exceptions from Title IX should be read into them.

The final rule has no effect on a covered entity's [27] or applicant's ability to maintain, seek, claim, or assert a religious exemption under Title IX. The Department remains committed to applying Title IX's religious exception for the education programs and activities of entities controlled by religious organizations under Title IX. And applicants or recipients that do not have an education program or activity that qualifies under the Title IX religious exception are able to claim assurances of a religious freedom exemption to the requirements of this regulation under this final rule's new administrative process outlined in § 75.300(f). Nothing in this rule invalidates or limits the existing rights, remedies, procedures, or legal standards available under Federal religious freedom and conscience laws.

Comment: Some organizations raised issues with compliance and the impact of instituting nondiscrimination requirements related to sexual orientation and gender identity in educational settings, particularly as applied to sex-segregated facilities or programs. Other commenters stated that the *Bostock* decision did not create a presumption that sex nondiscrimination statutes prohibit sexual orientation and gender identity discrimination in the context of single-sex spaces.

Response: The final rule clarifies HHS's interpretation of discrimination based on sex in the listed statutes, consistent with Federal law. To the extent warranted, the Department will provide guidance for grantees with questions about compliance with their nondiscrimination obligations. And if program recipients have a religious freedom or conscience objection to the nondiscrimination obligations addressed in this rule, the Department has set forth an administrative process at § 75.300(f). Accordingly, the Department declines to make additional revisions in response to these comments.

Comment: Two commenters asserted that the statutes in the Proposed Rule are exercises of Congress's Spending Clause authority and therefore are subject to the *Pennhurst* ''clear statement rule,'' which provides that Congress cannot impose conditions on the grant of Federal funding without providing a clear statement as to what these conditions would entail.

Response: In *Pennhurst State School and Hospital* v. *Halderman,* the Supreme Court held that ''if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously . . . , enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.'' 451 U.S. 1, 17 (1981). In *Bostock,* the Supreme Court relied on the plain meaning of Title VII to hold that discrimination because of sex includes discrimination because of sexual orientation and gender identity. HHS is relying on the same plain meaning of the 13 statutes listed in § 75.300(e). As noted in the Proposed Rule, the statutes listed in proposed § 75.300(e) were identified because they contain prohibitions on sex discrimination similar to that in Title VII; none contain any indicia suggesting they should be construed differently than Title VII; and the Department is unaware of any reported case law with regard to these statutes that requires a contrary construction. 88 FR 44754. Indeed, since *Bostock,* three Federal courts of appeal have held that the plain language of statutes such as Title IX's prohibition on sex discrimination must be read similarly to Title VII's prohibition.[28] Thus, like Title VII, these 13 statutes unambiguously prohibit recipients from discriminating on the basis of sexual orientation or gender identity. The Department's interpretation in this final rule therefore does not affect the States' knowing choice in accepting Federal funds here. Recipients of Federal funds in the relevant grant programs are clearly on notice that they must comply with the antidiscrimination provisions of the 13 listed statutes. Even if one accepted the argument that the ''application of [the condition] might be unclear in [some] contexts,'' that would not render the condition unenforceable under the Spending Clause. *Bennett* v. *Ky. Dep't of Educ.,* 470 U.S. 656, 665–66, 673 (1985). Unlike *Pennhurst,* in which the Federal law at issue was unclear as to whether the states incurred any obligations at all by accepting Federal funds, the 13 listed statutes clearly condition receipt of funds on complying with the statutes' prohibition on sex discrimination. *See* 8 U.S.C. 1522; 42 U.S.C. 290cc–33; 42 U.S.C. 290ff–1; 42 U.S.C. 295m; 42 U.S.C. 296g; 42 U.S.C. 300w–7; 42 U.S.C. 300x–57; 42 U.S.C. 708; 42 U.S.C. 5151; 42 U.S.C. 8625; 42 U.S.C. 9849; 42 U.S.C. 9918; 42 U.S.C. 10406.

Summary of Regulatory Changes to § 75.300(e)

For the reasons set forth in the Proposed Rule and considering the comments received, we are adding text to § 75.300(e) that states the provision is

[26] For example, according to guidance from the U.S. Equal Employment Opportunity Commission (EEOC), ''although accidental misuse of a transgender employee's name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.'' EEOC, *Sexual Orientation and Gender Identity (SOGI) Discrimination, https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination.*

[27] Here, as in the NPRM, *e.g.,* 88 FR 44758, ''covered entity'' is used interchangeably with ''recipient,'' and is distinct from any defined terms in other rules, including ''covered entity'' as defined in Section 1557.

[28] *See A.C. by M.C.* v. *Metro. Sch. Dist. of Martinsville,* 75 F.4th 760, 769 (7th Cir. 2023); *Grabowski* v. *Arizona Bd. of Regents,* 69 F.4th 1110, 1116–17 (9th Cir. 2023); *Doe* v. *Snyder,* 28 F.4th 103, 113–14 (9th Cir. 2022); *Grimm* v. *Gloucester Cnty. Sch. Bd.,* 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied,* 141 S. Ct. 2878 (Mem) (2020).

interpretive and does not impose any substantive obligations on entities outside the Department.

4. Section 75.300(f)

In the 2023 NPRM, the Department proposed to add § 75.300(f)(1), which provided that a recipient may, at any time, raise with the Department the recipient's belief that the application of a specific nondiscrimination provision or provisions addressed in this regulation as applied to the recipient would violate Federal religious freedom protections.

Section 75.300(f)(2) proposed that once the awarding agency, working jointly with ASFR or OCR (in the course of investigating a civil rights complaint or compliance review), receives a notification from a recipient seeking a religious exemption, the awarding agency, working jointly with either ASFR or OCR, would promptly consider the recipient's view that they are entitled to an exemption in responding to any complaints, or determining whether to proceed with any investigation or enforcement activity regarding that recipient's compliance with the relevant nondiscrimination provisions, or in responding to a claim raised by the recipient in the first instance, in legal consultation with the Office of the General Counsel. Any relevant ongoing investigation or enforcement activity regarding the recipient would be held in abeyance until a determination has been made.

Section 75.300(f)(3) proposed that, in determining whether a recipient is wholly or partially exempt from the application of the specific provision or provisions raised in its notification, the awarding agency, working jointly with ASFR or OCR, in consultation with the Office of the General Counsel, must assess whether there is a sufficient, concrete factual basis for making a determination and apply the applicable legal standards of the religious freedom statute at issue.

Section 75.300(f)(3) also proposed that, upon making a determination regarding whether a particular recipient is exempt from—or subject to a modified requirement under—a specific provision addressed in this part, the awarding agency, working with ASFR or OCR, will communicate that determination to the recipient in writing, noting that that determination does not otherwise limit the application of any other Federal law to the recipient.

Section 75.300(f)(4) proposed that the awarding agency, working jointly with ASFR and OCR, may determine at any time whether a recipient is wholly or partially exempt from certain provisions addressed in this part under Federal religious freedom laws, either after a complaint is made against the recipient or when the recipient seeks an exemption before any complaint is filed (provided the Department has a sufficient, concrete factual basis for determining whether the recipient is entitled to an exemption).

The comments and our responses regarding § 75.300(f) are set forth below.

Comment: A commenter expressed support for § 75.300(f) because it calls for written notification to a grantee explaining the ''scope, applicable issues, duration, and all other relevant terms of any [granted] exemption.'' The commenter reasoned that such a notification would minimize potential risks to LGBTQI+ individuals by restricting grantees from taking action beyond what a granted exemption allows. The commenter also asked, however, that the Department codify a requirement that this written notification be made available to the public as well as the grantee. One commenter said any determination letters from OCR granting an exemption should be made public within 10 days by posting on the Department's website.

Response: The Department thanks the commenters. The Department declines to revise § 75.300(f) to require publication of exemptions granted under this provision, consistent with Title IX regulations that do not impose a similar notification requirement for exemptions granted consistent with that statute or its implementing regulations.[29] The Department notes that nothing in this rule prevents applicants or recipients from independently disclosing any such exemptions they have received to the general public or individuals participating or seeking to participate in their programs, and we encourage applicants or recipients to do so. We recognize that individuals are not always aware that the recipients of Federal funding that administer the programs in which they participate may have religious freedom- or conscience-based exemptions, and the Department remains committed to working with recipients, applicants, and the public to improve transparency, clarity, and access to HHS funded programs and activities through implementation of this rule. HHS is also subject to FOIA, and information may be released to a requestor or made available for public inspection consistent with the agency's obligations under that statute and its implementing regulations.

Comment: A commenter expressed concern with the notification procedure in proposed § 75.300(f), because the process, in their view, would not function as a substitute for automatic exemptions authorized under the Constitution, RFRA, Title IX, and other statutes. Some commenters expressed concern that § 75.300(f) offers recipients no assurance in the form of either substance or process. Some commenters said that the exemption process in § 75.300(f) may discourage otherwise eligible entities from applying for or receiving certain Federal grant funds because the process is unclear, unpredictable, and unreliable. One commenter opined that the existence of § 75.300(f) demonstrates that the rule is rewriting the underlying terms of grants in a way that will have substantial impacts on recipients.

A commenter expressed concern that the Department's view is that RFRA requires no affirmative agency compliance or enforcement beyond what a court orders. The commenter cited to a November 2021 **Federal Register** notice that withdrew a prior Delegation of Authority, which had centralized authority for implementation and compliance of RFRA within the Department with OCR. *See* 86 FR 67067 (Nov. 24, 2021) (withdrawing 83 FR 2804 (Jan. 19, 2018). The commenter continued that with this understanding, the Proposed Rule would result in religious providers having to undergo extensive enforcement proceedings and litigation to resolve their religious freedom concerns.

A commenter asked that the Department establish some objective criteria for a religious safe harbor because proposed § 75.300(f) provides little guidance on how Federal religious freedom laws would be applied. Another commenter similarly stated that additional clarity is needed because at least three of the 13 statutes in the Proposed Rule require applicants to make affirmative representations about their compliance with the relevant law's nondiscrimination provisions, namely 42 U.S.C. 295m; 42 U.S.C. 296g; and 42 U.S.C. 9849.

Response: The Department disagrees with commenters that it views RFRA as requiring no agency compliance. The new § 75.300(f) administrative process demonstrates the Department's concerted effort to balance its enforcement responsibilities under Federal antidiscrimination laws while respecting applicable Federal religious freedom and conscience laws, including

[29] *See e.g.,* 45 CFR 86.12; *see also* 85 FR 59916, 59951–2 (September 23, 2020) (Dep't of Educ. rulemaking).

RFRA. Section 75.300(f) provides an administrative process, not provided for in either the 2016 Rule or the partially vacated 2021 Rule, under which grant applicants and recipients may either rely on the protections of Federal religious freedom or conscience law or seek assurance of an exemption directly from the Department under such laws.

Section 75.300(f) sets forth a detailed administrative process to submit exemption assurance requests, and the standards governing the relevant Federal religious freedom and conscience laws speak for themselves. To provide added predictability to grant applicants and recipients, they are afforded an automatic, temporary exemption under § 75.300(f)(2) until the Department adjudicates their request. For additional clarity, the Department is adding the following clause to § 75.300(f)(2), which states that a temporary exemption will take effect upon the submission of the request. The exemption shall be limited to the particular application of the specific provision(s) identified in the notification to the Department. The exemption includes conduct that occurred during the pendency of any administrative investigation and enforcement that is covered by the temporary exemption.

Finally, the Department disagrees that the inclusion of § 75.300(f) indicates any grant terms are being rewritten. The Department's inclusion of § 75.300(f) ensures that the Department consistently applies both *Bostock* and other relevant case law and complies with its obligations under applicable Federal religious freedom and conscience law.

Comment: Some comments raised concerns regarding privacy protections for organizations seeking an exemption under § 75.300(f), and others cited the need for more privacy protections for such organizations. A commenter speculated that, without such protections, such religious organizations may become targets of individuals with anti-religious animus.

Response: The Department will apply all applicable privacy laws in handling the information it receives from entities regarding requests for exemptions, will not target or retaliate against an entity that seeks an exemption under § 75.300(f), and will handle according to the applicable provisions of the of the Privacy Act of 1974. As noted above, the Department does not require publication of exemptions granted to applicants or recipients under this provision, though applicants or recipients may independently and voluntarily disclose any such exemptions they have received the public and participating or seeking to participate in their programs. As noted above, HHS is subject to the FOIA; thus, information may be requested pursuant to that statute.

Comment: Some commenters stated that § 75.300(f) does not explain what happens if a request for an exemption is submitted, but the factual record is not fully developed when the Department makes its assessment per § 75.300(f)(3). These commenters also expressed concern that § 75.300(f)(3) does not explain what facts would assist in HHS's assessment.

A group of commenters opined that § 75.300(f) should be clarified by citing the proposition that, under RFRA, the Government must show ''application of the burden to the person is in furtherance of a compelling governmental interest.''

Another group of commenters requested that the Department include in the text of the regulation a requirement that it conduct an Establishment Clause analysis of any proposed exemptions. They stated that such an analysis is a constitutionally required step that previous Administrations have omitted and that the Establishment Clause commands that ''an accommodation must be measured so that it does not override other significant interests,'' ''impose unjustified burdens on other[s],'' or have a ''detrimental effect on any third party.'' *Cutter* v. *Wilkinson,* 544 U.S. 709, 720, 722, 726 (2005); *see also Thornton* v. *Caldor,* 472 U.S. 703, 709–10 (1985); *Burwell* v. *Hobby Lobby Stores,* 573 U.S. 682 (2014); *Texas Monthly* v. *Bullock,* 489 U.S. 1, 18 n.8 (1989) (Brennan, J., plurality op.).).

A coalition of legal advocacy groups and religious groups recommended that the Department expressly adopt a case-by-case approach to granting exemptions under the final rule, reasoning that issuance of blanket exemptions or exemptions for hypothetical burdens should be minimized.

Response: As stated above, the Department will follow all relevant legal authorities, including Supreme Court precedent, in administering § 75.300(f) and the final rule. The Department affirms, consistent with the preamble of the Proposed Rule, that it will evaluate each situation on a case-by-case basis to determine whether a recipient—or, as of this final rule, applicant—is wholly exempt from the application of, or entitled to a modification of the application of, certain provisions addressed in this part, under an applicable Federal religious freedom or conscience law. When HHS makes a case-by-case determination, this refers to the evaluation of the exemption request as a whole—which may be requesting assurance of an exemption from a category of services. An entity will not be required to submit an exemption assurance request for each time it seeks to offer a service if an exemption already applies. Such a case-by-case analysis also mitigates concerns that the Department will always evaluate the facts in a particular direction and negatively affect third parties as raised in the comment. In making such determinations, the Department will faithfully apply the legal standards set forth in the particular Federal religious freedom or conscience law at issue. The Department declines the commenter's recommendation to articulate the legal standards in RFRA in the regulatory text of § 75.300(f) as unnecessary.

However, to address commenters' concerns, the Department has revised § 75.300(f)(1) to state that a recipient or applicant may rely on applicable Federal religious freedom and conscience protections. In other words, a recipient or applicant is not required to seek an exemption assurance from the Department, although it may do so if it wishes. Revised § 75.300(f)(1) also states that, where such protections apply, the application of a particular provision(s) of the statute at issue to the specific contexts, procedures, or services at hand shall not be required. When a recipient acts based upon its good faith reliance that it is exempt from providing a particular service due to the application of relevant religious freedom and conscience protections (*e.g.,* RFRA), even if the recipient had not affirmatively sought a written exemption assurance under § 75.300(f)(2), HHS will not seek backward-looking relief against that recipient. But if the Department determines, after an investigation, that the recipient does not satisfy the legal requirements for an exception, it will seek forward-looking relief as appropriate under the facts.

If the applicant or recipient wishes to receive an assurance from the Department regarding an exemption under any applicable religious freedom and conscience laws, it may do so under § 75.300(f)(2) either prior to, or during the course of, an investigation.

It is important to note that Federal religious freedom and conscience laws often differ in significant ways, and the facts that would assist the Department in its assessment of such claims would be consistent with the applicable legal authorities set forth in this revision to § 75.300(f)(2). For example conscience

laws frequently are tied to federal funding, while RFRA provides that the Federal government may not substantially burden a person's exercise of religion unless it can demonstrate that the ''application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.'' 42 U.S.C. 2000bb–1(b). In determining whether the government action is the least restrictive means of furthering a compelling governmental interest, the Department will take into consideration any harms to third parties that may result from providing an exemption under RFRA. The Department will apply the RFRA standard in determining whether and to what extent an applicant or recipient is exempt from the application of any provision addressed in this final rule under that law. The Department will consider the harms that an applicant or recipient's request for an assurance of an exemption may have on third parties if and when that harm is relevant when considering whether to grant an assurance under a particular Federal religious freedom or conscience law.

Given this framework for addressing third party harms, the Department notes that it remains committed to fully complying with the First Amendment, including the Free Exercise and Establishment Clause, but declines to add language relating to third party harms to the final rule.

However, for the sake of additional clarity, the Department is revising proposed § 75.300(f)(1), now § 75.300(f)(2), to explain that at any time, a grant applicant or recipient may notify the HHS awarding agency, ASFR, or OCR that it views itself as exempt from, or requires modified application of, certain provisions addressed in this rule because of the application of the Church, Coats-Snowe, and Weldon Amendments, the generally applicable requirements of the RFRA, the First Amendment, and other applicable Federal laws.

Comment: A coalition of legal advocacy groups and religious groups requested that HHS require that an awarding agency work with both ASFR and OCR in reviewing, considering, and deciding whether to grant a religious exemption or modification to the provisions of the relevant statute.

Response: The Department thanks commenters for the request and agrees that the awarding agency should work with both ASFR and OCR in reviewing, considering, and deciding requests for assurances of exemption. Accordingly, the Department is revising § 75.300(f) to replace ''or'' with ''and'' as the conjunction between ASFR and OCR where relevant in § 75.300(f).

Comment: Several commenters stated that the Department should explicitly state that the notification procedure in § 75.300(f) is optional and clarify that a recipient will not be prejudiced if they do not seek an exemption under this provision.

Additionally, a couple of commenters requested that the Department clarify in § 75.300(f) who will make the final determination on religious freedom- or conscience-based exemption requests and clarify on what basis the determination is to be made.

Response: The Department appreciates the commenters' concerns and suggestions. To start, when a recipient acts based upon its good faith reliance that it is exempt from providing a particular service due to the application of relevant religious freedom and conscience protections (*e.g.,* RFRA), even if the recipient had not affirmatively sought a written exemption under § 75.300(f)(2), the Department will not seek backward-looking relief against that recipient. Nothing in § 75.300(f) *requires* a grant applicant or recipient to seek an exemption under this process prior to an investigation, though they *may* do so if they so choose. Nor will an applicant or recipient be prejudiced if they do not seek an exemption under this provision; recipients may make exemption requests during an investigation or administrative enforcement proceedings as well.

In addition, the Department is adding § 75.300(f)(5) to the final rule to state that if an applicant or recipient receives an adverse determination of its exemption request, the entity may appeal the Department's determination under 45 CFR part 81. Section 75.300(f)(5) also provides the temporary exemption provided to the applicant or recipient expires upon a final decision under 45 CFR part 81. The Department is also adding § 75.300(f)(6) to the final rule, which explains that a determination of an exemption is not final for purposes of judicial review until after a final determination under 45 CFR part 81. This mirrors the process for appeals in the Section 1557 Final Rule.[30]

Finally, it is the awarding agency, working jointly with ASFR and OCR, in legal consultation with the Office of the General Counsel, that will make the final determination on whether to grant the request, and will do so consistent with applicable Federal law. Applicants or recipients who have been denied an exemption under § 75.300(f) may raise their request before an administrative hearing examiner from the Department, as provided for under 45 CFR part 81. The temporary exemption would run through consideration of the administrative appeal.

Comment: A group of commenters suggested that § 75.300(f) expressly mention the ''church autonomy doctrine'' as a basis for an exemption.

Response: Section 75.300(f) provides for exemptions based on applicable Federal religious freedom and conscience laws, including the First Amendment. Given that the church autonomy doctrine is rooted in the religion clauses of the First Amendment,[31] its inclusion here is implied and it need not be explicitly mentioned in the regulatory text.

Comment: A couple of commenters expressed concern that the Proposed Rule's religious exemption provisions at § 75.300(f) would be duplicative of the provisions put forth in HHS's recent rulemaking on Section 1557 of the Affordable Care Act.

Response: The Department appreciates the comment and views the similarities in the processes in both this rule and the Proposed Rule with the Section 1557 rulemaking [32] as appropriate to the extent that RFRA and the other Federal religious freedom and conscience statutes would function similarly in this context as in Section 1557. However, the entities that receive grants from the Department may or may not be subject to Section 1557 by virtue of not being or operating health programs or activities, and thus, it is necessary for both rules to contain religious exemption provisions.

Comment: A group of commenters stated that the financial exemption provided by 45 CFR 75.102(b) should also apply to those with religious objections to the operation of proposed § 75.300(e). The commenters asserted that the Proposed Rule acknowledged the secular exemption in 45 CFR 75.102 but sought to discourage its application based on historical use. 88 FR 44755 n.26. The commenters stated that it would violate the Free Exercise Clause to make exemptions available for secular reasons under 45 CFR 75.102(b)

[30] *See FINAL* 1557 CITE § 92.302(g).

[31] *See, e.g., Belya* v. *Kapral,* 45 F. 4th 621, 628 (2d Cir. 2022) (''We use the term 'church autonomy doctrine' to refer generally to the First Amendment's prohibition of civil court interference in religious disputes.''); *see also Our Lady of Guadalupe Sch.* v. *Morrissey-Berru,* 140 S. Ct. 2049, 2061 (2020) (describing ''the general principle of church autonomy'' as religious organizations' ''independence in matters of faith and doctrine and in closely linked matters of internal government'').

[32] 87 FR 47824 (Aug. 4, 2022).

but not have similar exemptions available for religious reasons unless strict scrutiny is satisfied, citing both *Fulton* v. *Philadelphia,* 141 S. Ct. 1868 (2021),) and *Tandon* v. *Newsom,* 141 S. Ct. 1294 (2021) (per curiam), for this proposition.

Response: The Department disagrees with commenters' claim. Unlike the government regulations at issue in *Fulton* and *Tandon,* under § 75.300(f), entities have numerous avenues to seek religious exemptions, including an assurance of exemption under the Church, Coats-Snowe, and Weldon Amendments, the generally applicable requirements of the RFRA, the First Amendment, and other applicable Federal laws. The Department therefore declines to apply 45 CFR 75.102(b), which has historically been used to address requests for financial and administrative exemptions, to provide exemptions. Instead, the Department directs recipients and applicants with religious objections to the process laid out under § 75.300(f).

Comment: A group of commenters stated that they approved of the fact that § 75.300(f) could be invoked even if there is no active complaint pending against the recipient. The group further stated that the Department should also provide prospective recipients of grants from the Department a procedure whereby they could seek a preclearance exemption. Relatedly, the commenter urged the Department to ensure that nothing in the electronic grant application process would require a religious applicant to affirm nondiscriminatory conduct in a manner that would be at odds with RFRA or the First Amendment.

Response: As we stated in the NPRM, the Department is fully committed to respecting religious freedom laws, including RFRA and the First Amendment, when applying the nondiscrimination requirements addressed in this rule. The final rule allows for a religious exemption process in § 75.300(f). Further, because the nondiscrimination provisions being interpreted by this rule to apply based on receipt of certain Federal funds, we decline to allow for a general preclearance process, not associated with a specific funding application, from prospective grantees. However, an applicant may submit a request for assurance of an exemption concurrently with its grant proposal, which will be reviewed on a case-by-case basis. Neither the submission nor adjudication of a grant applicant's or recipient's request for assurance of a religious exemption will have any bearing on the awarding agency's determination of award unless the organization has made clear that the exemption is necessary to its participation and HHS has determined that it would deny the request.

Summary of Regulatory Changes to § 75.300(f)

For the reasons set forth in the Proposed Rule and considering the comments received, we are finalizing the provisions as proposed in § 75.300(f), with the following modifications.

We are adding a new § 75.300(f)(1) to provide notice that an applicant or recipient may rely on Federal protections for religious freedom and conscience. We are revising proposed § 75.300(f)(1), now § 75.300(f)(2), to state that applicants, in addition to recipients, are allowed to submit requests for assurances of exemption, to provide a non-exhaustive list of conscience laws that may be applied to the § 75.300(f) process, and to notify recipients, applicants, and the public about the type of information the notification must include. We are also revising proposed § 75.300(f)(2), now § 75.300(f)(3), to provide a temporary exemption during the pendency of the Department's review of the request and a general timetable under which the Department will acknowledge and begin to evaluate requests for assurances of exemption; proposed § 75.300(f)(3), now § 75.300(f)(4), to provide that the awarding agency, ASFR, or OCR will inform the applicant or recipient in writing of the determination regarding the assurance of exemption request and that any such determination does not otherwise limit the application of any other provision of the relevant statute to the applicant or recipient or to other contexts, procedures, or services; and proposed § 75.300(f)(4), now § 75.300(f)(5), to provide details about the administrative appeal process for recipients and applicants receiving adverse determinations. Finally, in a new subparagraph § 75.300(f)(6), the Department notes that for purposes of judicial review, determinations made under § 75.300(f) are not final until after a final decision under 45 CFR part 81.

5. Section 75.300(g)

Comment: One commenter stated that, in their view, the proposed severability clause in § 75.300(g) makes clear that HHS will not apply any RFRA ruling beyond the parties protected in a case to similarly situated entities. The commenter viewed the proposed rule as therefore forcing objecting religious providers to each undergo years of enforcement proceedings followed by years of litigation.

Response: Section 75.300(g) ensures that, even if a court were to strike down some provision of this final rule, other portions of this rule not found to be unlawful would remain in effect. Contrary to the comment, § 75.300(g) states that any provision held to be invalid or unenforceable as applied to any person or circumstance, will not affect the application of the provision to other persons *not* similarly situated or to other, *dissimilar* circumstances. The language of § 75.300(g) is standard in severability clauses and indicates here that the provisions of this rule are able to operate independently of each other.

Summary of Regulatory Changes to § 75.300(g)

For the reasons set forth in the Proposed Rule and considering the comments received, we are finalizing the provision as proposed in § 75.300(g).

C. Comments Received in Response to E.O. 13175 Tribal Consultation

The Department conducted a Tribal Consultation on December 19, 2023, with 27 participants. The Department received 10 comments from tribal entities following the consultation.

Comment: Several Federally recognized Indian Tribes asked the Department to clarify that Tribal health programs exclusively benefiting American Indian and Alaska Native (AI/AN) people do not violate the discrimination provisions in the proposed § 75.300(c). The tribes said that § 75.300(c) should include an exemption modeled after Title VI's implementing regulation at 45 CFR 80.3(d), which states that for Indian Health and Cuban Refugee Services, it will not be considered discrimination if an individual is excluded from benefits because those benefits are limited by Federal law to individuals of a particular race, color, or national origin.

Response: The Department recognizes the unique relationship between the United States and Federally recognized tribal entities.[33] The regulation at 45 CFR 80.3(d) provides that an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law—such as the Indian Health Service—to individuals of a different race, color, or national origin. Because of the unique relationship between the United States and Federally recognized tribal entities, Federal government

[33] Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 8 FR 2112 (Jan. 12, 2023).

preferences based on an individual's membership or eligibility in a Federally recognized tribal entity are political classifications and are not race-based.[34] Preferences based upon the unique relationship between the United States and Federally recognized tribal entities are distinct from the forms of discrimination prohibited by Federal civil rights laws, which aim to protect all individuals on the basis of race, color, or national origin (including AI/AN individuals, regardless of political affiliation).[35] The Department respects this unique relationship and the resulting benefits that are conferred by the Federal government on the basis of political classification, which remain distinct from racial classification and therefore distinct from race nondiscrimination prohibitions referenced in § 75.300(c). It is unnecessary, however, to change the regulatory text of § 75.300(c) to reflect that ongoing commitment, and the Department declines to do so here.

Comment: One commenter from a Federally recognized Indian tribe requested clarity on whether the rule impacts Indian Health Service (IHS) Compact funding and if the IHS Compact funding stream is included in the list of statutes under § 75.300(e).

Response: The IHS Compact funding stream under Title IV of the Indian Self-Determination Education Assistance Act (ISDEAA) (25 U.S.C. 5381 *et seq.;* 42 CFR 137 *et seq.*) is not included in the list of 13 statutes in § 75.300(e). Regarding grants related to the 13 statutes listed in § 75.300(e), the Department notes that Tribes and Tribal organizations that compact with IHS to assume full funding and control over IHS Programs, Services, Functions and Activities (PSFA) can ''add'' statutorily mandated grants to their funding agreement once those grants have been awarded. *See* 42 CFR 137.60. However, the statutes listed in § 75.300(e) are not grants that can be added to a Tribe's ISDEAA funding agreement with IHS.

III. Executive Order 12866 and Related Executive Orders on Regulatory Review

A. Executive Order 12866 Determination

The Department has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Small Business Regulatory Enforcement Fairness Act of 1995 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The final rule states that: (1) grant recipients may not discriminate to the extent prohibited by Federal statute; and (2) HHS complies with applicable Supreme Court decisions. The rule likewise clarifies the Department's interpretation of nondiscrimination protections on the basis of sex in 13 statutes consistent with Supreme Court precedent. This rulemaking has been determined to be significant for the purposes of E.O. 12866 as amended by E.O. 14094 and, therefore, has been accordingly reviewed by the OMB. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), OMB's Office of Information and Regulatory Affairs has determined that this final rule does not meet the criteria set forth in 5 U.S.C. 804(2). The UMRA (section 202(a)) requires HHS to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. The final rule would not result in an expenditure in any year that meets or exceeds this amount.

1. Public Comments

The Department requested comment on the analysis of the impact of the Proposed Rule on small entities, and the assumptions that underlie that analysis. The Department received public comments on the likely impacts of the Proposed Rule, including its likely impacts as compared to the 2016 Rule. Below is a summary of the comments received and our response:

Comment: HHS received comments discussing the need for additional economic analysis of the effect of the Proposed Rule in addition to Information Collection Requests (ICRs) and other information gathering methods before the rule is enacted, including requests for information, regional roundtables, task forces, regulatory reviews of each grant statute, or a survey of all the relevant populations.

A number of commenters expressed concerns that familiarization costs and the effects on religious entities were not adequately captured and requested that these costs be considered as well as the impact overall it would have on the health care system.

Another commenter urged HHS to perform a family policy assessment in addition to stating its policy of reading and responding to comments.

Response: For the analysis of the final rule, HHS has included legal and other familiarization costs and has expanded the RIA to include costs specifically associated with assurance of religious freedom and conscience exemptions requests. Taking those into consideration, the Department concludes that the final rule would result in annualized costs over a five-year time horizon of approximately $4.0 million or $3.8 million annualized, discounted at 7 percent and 3 percent respectively.

Through the analysis, the Department has determined that the additional costs associated with the final rule will not have a significant impact on organizations' ability to administer the grants they receive, and therefore will not put additional strain on their ability to operate effectively.

The Department received no additional evidence or data from commenters about changes in the number or composition of grantees since the 2016 Rule.

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS maintains that it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) for this rule, because it will not have a negative impact on the autonomy or integrity of the family as an institution, or family well-being within the meaning of the legislation.

The Department considers the opportunity for grant recipients and applicants to raise recipient-specific and applicant-specific concerns to be a benefit of the final rule. For the

[34] *See Morton* v. *Mancari,* 417 U.S. 535, 553 & n.24 (1974).

[35] *See Morton* v. *Mancari,* 417 U.S. 535, 550 (1974) (''[a] provision aimed at furthering Indian self-government by according an employment preference within the [Bureau of Indian Affairs] for qualified members of the governed group can readily co-exist with a general rule prohibiting employment discrimination on the basis of race.'').

purposes of the RIA, we do not attribute any litigation costs to the final rule.

2. Summary of Costs and Benefits

This analysis quantifies several categories of costs to covered entities and to the Department under the final rule. Specifically, the Department quantifies costs associated with covered entities becoming familiar with the rule provisions and making a determination of applicability as well as costs associated with drafting and submitting assurance of exemption requests. HHS also quantifies the anticipated costs to adjudicate the assurance of exemption requests from covered entities. Our analysis addresses the uncertainty in quantifying the number of entities that will submit exemption requests. For the primary estimate, the Department reports cost estimates of approximately $16.47 million using a 7 percent discount rate, and a cost estimate of approximately $17.41 million using a 3 percent discount rate. All cost estimates are in 2022 dollars. The Department concludes that the final rule would result in annualized costs over a five-year time horizon of approximately $4.0 million or $3.8 million, discounted at 7 percent and 3 percent respectively. In addition to these quantified cost estimates, the main analysis includes a discussion of the potential unquantified benefits associated with the rule. Table 1 below shows the estimated annualized costs of the final rule.

TABLE 1—ANNUALIZED COSTS OF THE FINAL RULE

[$Millions, 2022 dollars]

Primary estimate	Low estimate	High estimate	Year dollars	Discount rate (percent)	Period covered
$4.02	$2.91	$5.67	2022	7	2024–2028
3.80	2.75	5.34	2022	3	2024–2028

3. Baseline

To quantify the costs associated with this rule, the Department has attempted to estimate whether the number and composition of recipients changed in response to the prior two rulemakings and how those costs will impact this rule. The 2016 Rule has never been enforced; the Department issued the Notice of Nonenforcement in 2019; and the 2021 Rule never went into effect. Because of this, HHS does not have any data with regard to whether the number and composition of recipients changed in response to prior rulemakings, as there was no change in the enforcement of these rules which would impact those grants. However, the Department understands that its recipients generally fall into one of the following three categories in how they have been impacted by the prior two rulemakings.

The first category includes recipients that adopted the nondiscrimination practices prior to the 2016 Rule, whether voluntarily or as a result of State and/or local law. Their observance of nondiscrimination requirements is not the result of the 2016 Rule and thus, these recipients are not impacted by this rule. The second category includes recipients that had not adopted nondiscrimination practices prior to the 2016 Rule, but that complied since the 2016 Rule, including after the 2019 Notice of Nonenforcement was issued and until now. However, because the 2016 Rule did not contain any procedural enforcement mechanisms such as an assurance of compliance or adoption of a grievance process, it is difficult to quantity the costs, if any, incurred by this second category of recipients. These recipients would likely continue to follow such nondiscrimination practices voluntarily or because of new or newly enforced State and/or local laws, given that they could have declined to comply with the 2016 Rule requirements after the 2019 Notice of Nonenforcement issued, and yet have continued to comply with those requirements notwithstanding that notice. Thus, these recipients are similarly situated to the first category of recipients insofar as they are not impacted by whether or not the 2016 Rule is in effect. The third category includes recipients that had not followed, and continue to not follow, the 2016 Rule. However, their practice was likely not impacted by the 2016 Rule, as the rule was not enforced. In 2019, the Department issued the Notice of Nonenforcement which applied to all recipients covered by the 2016 Rule, which is still in effect to date. As such, these recipients could not have relied upon the relevant provisions of the 2021 Rule, either, since that rule was partially vacated and never went into effect. Since this final rule removes the 2016 Rule's requirements, and adds a religious and conscience exemption process, the Department expects that these grantees will continue their current practice.

4. Covered Entities

The final rule specifically addresses the application of Federal religious freedom and conscience protections for grant applicants and recipients and states that an applicant or recipient may raise with the Department their belief that the application of a specific provision or provisions of the grants' requirements as explained in Section 75.300 as applied to the applicant or recipient violate Federal religious freedom or conscience protections. The final rule also states that an applicant or recipient may seek an assurance of exemption based upon the application of a Federal religious freedom or conscience law and the Department would assess whether there is a significant concrete factual basis prior to making any determination. To estimate the population of covered entities, the Department uses historical information on the number of grantees for HHS programs as well as data on the number of religious hospitals. Based on information in the Department's Tracking Accountability in Government Grant Spending (TAGGS) system, the Department estimates that there was a total of 144,817 grantees in 2023.[36] The Department acknowledges that it issues many grants on an annual basis, and many recipients receive multiple grants. There were an estimated 707 active religious hospitals as of 2020.[37]

The Department does not have information on the number of grantees that will seek an assurance of exemption; therefore, it acknowledges the uncertainty with the number of grantees that will submit requests for assurance of exemption under the block grant programs. Because of the uncertainty, the Department estimates a range of covered entities will be

[36] U.S. Dep't of Health and Human Servs. Tracking Accountability in Gov't Grants Sys. (TAGGS), *Grants by Recipient Class, https://taggs.hhs.gov/ReportsGrants/GrantsByRecipClass.*

[37] Total Catholic (577) + Non-Profit Church (130), Table 5: Short-Term Acute Care Hospitals by Category: 2001–2020; Tess Solomon et al., *Bigger and Bigger The Growth of Catholic Health Systems, https://www.communitycatalyst.org/wp-content/uploads/2022/11/2020-Cath-Hosp-Report-2020-31.pdf.*

impacted by the final rule. For the low population estimate, the Department assumes all 707 religious hospitals will request assurances of religious exemptions and receive funding under the block grants. This is likely an overestimate, as most hospitals do not receive funding under the 13 statutes at issue. Nevertheless, for the primary estimate, the Department assumes that 2% of the total population of TAGGS grantees, including religious freedom requests and those made on the basis of conscience, along with all 707 religious hospitals will request exemptions. For the high population estimate, the Department assumes 5% of the total population of TAGGS grantees along with all 707 religious hospitals will request exemption requests. To estimate the number of grantees in future years of the analysis, the final rule estimates the growth rate for the population of grantees by calculating a compound annual growth rate of 6.10% for the decade from 2013 to 2023.[38] The grantee annual growth rate is then applied to the total number of existing grantees each year during the five-year period of analysis, beginning in 2023. To account for costs to covered entities after the final rule is promulgated, the Department assumes only new entities will incur costs associated with the rule after the first year of implementation. After the first year, new entities are considered the source of associated costs, and the same percentage of religious exemptions (2%) is applied for new entities each year. Table 2 below shows the estimated population of grantees based on the annual growth rate (6.10%), and the estimated number of new grantees per year.

TABLE 2—COVERED ENTITIES

Year	Entities + growth $a = n * (1 + 6.10\%) \wedge (a_{yn} - a_{yn-1})$	New entities $b_{y1}\ a_{y1}\ b_{yn}\ a_{yn} - a_{yn-1}$	Annual entities (2%) $c = b * 2\%$	Annual entities (5%) $d = b * 5\%$
2024	153,647	153,647	3,780	8,389
2025	163,016	9,369	187	468
2026	172,956	9,940	199	497
2027	183,503	10,546	211	527
2028	194,692	11,189	224	559

Note: Values may not multiply due to rounding.

B. Costs of the Final Rule

In this section, the Department discusses the incremental costs of the final rule, which excludes ongoing costs attributable to prior rulemaking. The Department identifies potential costs associated with grantees becoming familiar with this rule along with submitting exemption requests, and follows the analytic approach contained in its analysis. The Department considered additional potential sources of costs that would be attributable to the final rule and found that Parts (c)–(e) of the rule clarify for all covered grants what is already required by law; and therefore, do not constitute incremental costs associated with this final rule. Below are descriptions of the quantified costs associated with the final rule.

1. Familiarization

The Department anticipates that all covered entities will incur costs to familiarize themselves with the final rule. Depending on the grantee, the task of familiarization could potentially fall to the following occupation categories: (1) lawyers (23–1011), with a $65.26 median hourly wage; (2) general and operations managers (11–1021), with a $47.16 median hourly wage; (3) grantee social and community service managers (11–9151), with a $35.69 median hourly wage; (4) medical and health services managers (11–9111), with a $50.40 median hourly wage; or (5) compliance officers (13–1041), with a $34.47 median hourly wage. Across all grantees, the Department adopts a pre-tax hourly wage that is the average across the median hourly wage rates for these 5 categories, or $46.60 per hour.[39] To compute the value of time for on-the-job-activities, the Department adopts a fully loaded wage rate that accounts for wages, benefits, and other indirect costs of labor that is equal to 200% of the pre-tax wage rate, or $93.20 per hour.[40] Accordingly, the Department estimates that it would take a typical grantee approximately 0.68 hours to become familiar with the proposed provisions.[41] In Year 1, there are an estimated total of 153,647 grantees.[42]

In Year 2 through Year 5, the Department also assumes that new grantees will incur a similar familiarization cost in the year they enter the market. To calculate the cost to covered entities to familiarize themselves with the final rule, the Department multiplies the total number of grantees per year (see Table 3) by the estimated familiarization hour burden (0.68 hours) and by the average loaded wage for the grantee's accountable individual responsible for rule familiarization ($93.20). In Year 1, the Department estimates the cost associated with grantee rule familiarization to be approximately $9,686,014. Over the five-year period of analysis, the total cost to covered entities associated with rule familiarization is estimated to be $12,273,485.

[38] The compound annual growth rate (CAGR) uses the number of grantees between 2013–2023 and is calculated as ((144,817 ÷ 80,124) ^ (1 ÷ 10)) − 1 = 6.10%. Grantee data is collected from HHS's Tracking and Accountability in Government Grants System (TAGGS). U.S. Dep't of Health and Human Servs. Tracking Accountability in Gov't Grants Sys. (TAGGS) *supra* note 36.

[39] The average hourly wage is calculated as ($65.26 + $47.16 + $35.69 + $50.40 + $34.47) ÷ 5 = $46.60.

[40] Jennifer R. Baxter et al., *Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices,* (June 2017), *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//176806/VOT.pdf.*

[41] According to the Department, reviewers read at the average speed of approximately 200 to 250 words per minute. (source: Lisa A. Robinson et al., *Guidelines for Regulatory Impact Analysis,* (2016), at 26 Table 4.1, *https://aspe.hhs.gov/sites/default/files/private/pdf/242926/HHS_RIAGuidance.pdf.*) For this analysis the Department estimates the hour burden associated with rule familiarization by dividing the length of the NPRM (9,659 words) by an average reading rate (238 words per minute). The familiarization hour burden is calculated as 9,659 ÷ 238 ÷ 60 = 0.68 hours. (Source: Marc Brysbaert, *How many words do we read per minute?,* (2019), *https://osf.io/preprints/psyarxiv/xynwg/.*)

[42] Year 1 grantee population is estimated as the 2023 TAGGS grantee population, plus the annual grantee growth. The Department calculates the estimated Year 1 grantee population as 144,817 * (1 + 6,10%) = 153,647. Values may not multiply due to rounding. TAGGS accessed in: October 2023.

TABLE 3—FAMILIARIZATION COSTS

[2022 dollars]

Year	New entities a	Hour burden b	Wage c	Total cost d = a × b × c
2024	153,647	0.68	93.20	$9,686,014
2025	9,369			590,618
2026	9,940			626,631
2027	10,546			664,841
2028	11,189			705,380
Total				12,273,485

Note: Values may not multiply due to rounding.

2. Exemption Assurance Requests

The final rule describes a process for applicants and recipients notifying an awarding agency that they are seeking assurance of a religious freedom- or conscience-based exemption, and for HHS to promptly consider the applicant's or recipient's views that they are entitled to an exemption. The Department has identified costs related to covered entities submitting a request for assurance of an exemption based on Federal religious freedom and conscience laws. The Department estimates this potential cost associated with such requests as the opportunity cost of time spent by covered entities to (a) assess the need for an exemption; (b) write the exemption assurance request; and (c) submit the request. To estimate the opportunity cost of time spent drafting and submitting such requests, the Department assumes that one (1) employee will spend two (2) hours assessing the need for an exemption and three (3) hours writing and submitting the exemption assurance request for a total of five (5) hours.[43] The Department further assumes that legal personnel, including lawyers and legal assistants, would perform these functions. The mean hourly wage for these occupations is $65.26 per hour for each employee, which the Department doubles to account for overhead and other costs.[44] To compute the value of time for on-the-job activities, the Department adopts a fully loaded wage rate that accounts for wages benefits and other indirect costs of labor that is equal to 200% of the pre-tax wage rate or a fully loaded wage of $130.52.[45] The Department calculates the cost per exemption assurance request for covered entities as the hour burden to determine applicability as well as drafting and submitting the exemption assurance request (5 hours) multiplied by the loaded wage for legal personnel involved in the request process ($130.52). The total cost per covered entity to draft and submit such a request is estimated to be $652.60.[46]

Our cost estimate reflects a wide range of uncertainty in the number of exemption assurance requests the Department will receive. In the primary scenario, OCR adopts a central estimate of the number of such requests of 2 percent of all covered entities plus all 707 religious hospitals, which is estimated to be 3,780 requests in Year 1, covering all areas addressed under the statute and regulations.[47] In Year 1, the primary estimate of the total number of anticipated grantees seeking exemption assurance requests (3,780) is multiplied by the cost per request ($652.60) for a total cost of $2,466,794, with the range of estimates between $461,388 and $5,474,903 using the low and high population estimates respectively. In Years 2 through 5, the Department assumes that 2 percent of all new grantees will submit an exemption assurance request in the year they enter the market. Over the five-year period of analysis, the Department estimates that the primary estimate of total costs associated with covered entities drafting and submitting such requests to be $3,002,508, with the range of estimates between $461,388 and $6,814,187 using the low and high population estimates respectively.

In conjunction with covered entities drafting and submitting exemption assurance requests, the Department will incur costs associated with adjudicating such requests received from covered entities. The awarding agency, working jointly with ASFR and OCR, and in legal consultation with the Office of the General Counsel, will be responsible for reviewing the request and making a determination of applicability as well as suitability for the exemption. The Department assumes that personnel involved in adjudicating these requests received from covered entities will be a single (1) Step 1 GS–14 employee with a loaded wage of $126.86 per hour.[48] The Department also assumes it takes five hours to complete the review and adjudicate exemption assurance requests.[49] To calculate the costs associated with the adjudication of such requests, the Department multiplies the estimated number of requests received per year by the hour burden to adjudicate the request (5 hours) and by the loaded wage for the reviewer ($126.86). In Year 1, the primary estimate of costs associated with adjudicating exemption assurance requests is estimated to be $2,397,621, with a range of estimates between $448,450 and $5,321,378 using the low and high population estimates respectively. In Years 2 through 5, the Department anticipates it will receive exemption assurance requests from new covered entities that will require the same adjudication process. Over the five-year period of analysis, the primary estimate of total costs to HHS associated with adjudicating such requests received from covered entities is estimated to be $2,918,312, with a range of estimates between $448,450 and $6,623,105 using the low and high population estimates respectively.

To estimate the total cost of the exemption assurance request provision, the Department sums the estimated total

[43] Based on internal OCR estimates.

[44] U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2022, 23–1011 Lawyers. https://www.bls.gov/oes/current/oes231011.htm.*

[45] Jennifer R. Baxter et al., *Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices,* (June 2017), *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//176806/VOT.pdf.*

[46] Total costs per exemption request are calculated as $130.52 × 5 hours = $652.60 per exemption request.

[47] Total exemption requests calculated as 707 + (153,647 × .02) = 3,780 exemption requests.

[48] U.S. Off. of Pers. Mgmt., *Salary Table 2023–DCB, For the Locality Pay Area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA,* (Jan. 2023), *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf.* The loaded wage for GS–14 Step 1 personnel is calculated as $63.43 × 200% = $126.86.

[49] Based on internal OCR estimates.

costs for covered entities to draft and submit such a request with the estimated total costs to adjudicate it. In Year 1, the primary estimate of total costs associated with exemption assurance requests are estimated to be $4,864,415, with a range of estimates between $909,838 and $10,796,281 using the low and high population estimates respectively. Over the five-year period of analysis, the primary estimate of total costs associated with such requests are estimated to be $5,920,820, with a range of estimates between $909,838 and $13,437,292 using the low and high population estimates respectively.

Table 4 below shows the estimated total costs associated with exemption assurance requests using the low, primary, and high population range.

TABLE 4—EXEMPTION ASSURANCE REQUESTS WITH POPULATION SENSITIVITY

[2022 dollars]

Year	Low		Primary		High	
	Entities	Total cost	Entities	Total cost	Entities	Total cost
2024	707	$909,838	3,780	$4,864,415	8,389	$10,796,281
2025	0	0	187	241,136	468	602,839
2026	0	0	199	255,839	497	639,598
2027	0	0	211	271,439	527	678,598
2028	0	0	224	287,991	559	719,977
Total	707	909,838	4,601	5,920,820	10,442	13,437,292

3. Total Quantified Costs

In the first year under the final rule for the primary population estimate, these costs include $9.69 million in familiarization and $4.86 million for covered entities to submit and review exemption assurance requests and HHS to adjudicate the requests for a total cost of $14.55 million. Both familiarization and these requests have costs associated with the number of new grantees in the market and submitting the requests. Total costs for the final rule are estimated to be $18.19 undiscounted and $17.41 or $16.47 when discounting at the 3 percent and 7 percent respectively. Table 5 below presents the total annual costs anticipated under the final rule for which cost estimates have been developed.

TABLE 5—ESTIMATE OF TOTAL ANNUAL COSTS

[$ Millions, 2022 dollars]

Year	Familiarization	Exemption requests	Undiscounted total costs	3% Discounted costs	7% Discounted costs
2024	$9.69	$4.86	$14.55	$14.13	$13.60
2025	0.59	0.24	0.83	0.78	0.73
2026	0.63	0.26	0.88	0.81	0.72
2027	0.66	0.27	0.94	0.83	0.71
2028	0.71	0.29	0.99	0.86	0.71
Total Cost	12.27	5.92	18.19	17. 41	16.47
Annualized				3.80	4.02

4. Discussion of Benefits

The benefits of the rule help ensure that HHS grants programs will be administered fairly and consistently with Supreme Court precedent. Section 75.300(c) makes compliance simpler and more predictable for Federal grant recipients. Likewise, § 75.300(d) notes that HHS will comply with Supreme Court decisions, which also simplifies compliance for Federal grant recipients. Section 75.300(e) clarifies that the Department interprets the prohibition of discrimination on the basis of sex in 13 listed statutes to include discrimination based on sexual orientation and gender identity, consistent with *Bostock* v. *Clayton County,* 590 U.S. 644 (2020), which provides additional clarity to the public regarding the Department's interpretation and helps facilitate the efficient and equitable administration of HHS grants. Finally, § 75.300(f) states that the Department will comply with all Federal religious freedom and conscience laws, including RFRA and the First Amendment, which will assist the Department in fulfilling that commitment by providing the opportunity for recipients and applicants to raise concerns with HHS and for those concerns to be evaluated on a case-by-case basis. The Department notes that there are other non-quantifiable benefits associated with this rule, such as protecting conscience rights; the free exercise of religion and moral convictions; allowing for more diverse and inclusive health care and service providers and professionals; improving provider-patient/recipient-beneficiary relationships that facilitate improved quality of care and services; and increased equity, fairness, nondiscrimination, and access to care and services. These benefits for the fair and nondiscriminatory enforcement of the programs covered by this rule are not quantified.

5. Comparison of Costs and Benefits

In summary, the Department expects the benefits of clarity will simplify compliance and ensure fair and nondiscriminatory administration of covered programs under this rule. Costs associated with implementing this administrative change include costs for some covered entities who may seek an exemption.

C. Analysis of Regulatory Alternatives to the Final Rule

The Department carefully considered several alternatives but rejected them for the reasons explained below. Total undiscounted costs associated with the final rule are estimated to be $18.2 million. The first alternative considered assumes HHS takes no action and makes no change from the 2016 rule; therefore, when compared to the final rule, it results in a total cost savings of $17.4 million or $16.5 million when using the three percent and seven percent discount rates, respectively. HHS concluded that this first alternative would potentially lead to legal challenges, in part over the scope of the Department's authority under 5 U.S.C. 301.

The second alternative considered maintains the text of the 2016 Rule, but also promulgates a regulatory exemption for faith-based organizations as provided under proposed § 75.300(f). This alternative could address the religious exemption issues raised by the 2016 Rule's application to certain faith-based organizations that participate in, or seek to participate in, Department-funded programs or activities. As discussed earlier, total undiscounted costs for the familiarization provision are estimated to be $12.3 million. When compared to the final rule, the second alternative results in a cost savings of $11.7 million or $11.1 million when using the three percent and seven percent discount rates respectively; however, the provisions of the 2016 Rule would be subject to the same legal challenges under 5 U.S.C. 301.

The third alternative considered enumerates the Department's interpretation of applicable nondiscrimination provisions and the programs as well as recipients/subrecipients to which the nondiscrimination provisions would apply, as set forth in § 75.300(e), without including a religious freedom and conscience exemption process. This results in total costs of $12.3 million associated with only including familiarization costs, or a cost savings when compared to the preferred alternative by $5.76 million or $5.4 million using the three percent and seven percent discount rates, respectively. However, given the applicability of Federal religious freedom and conscience laws, a process by which such applicants and recipients can submit requests for assurance of a religious freedom- or conscience-based exemption that are evaluated on a case-by-case basis helps ensure that the Department complies with its legal obligations.

The Department has not quantified the potential benefits associated with the various policy alternatives. Table 6 reports the present value of total costs as well as annualized costs of these policy alternatives, adopting a three percent and seven percent discount rate. Table *7* reports the difference between the total cost of the alternatives compared to the provisions of the final rule, using the same accounting methods and discount rates.

TABLE 6—TOTAL COST OF POLICY ALTERNATIVES CONSIDERED

	Present Value		Annualized	
Accounting method discount rate	3%	7%	3%	7%
Final Rule	$17.4	$16.5	$3.8	$4.0
Alternative 1: No change from 2016 Rule	$0	$0	$0	$0
Alternative 2: 2016 Rule with religious exemption	$5.7	$5.4	$1.2	$1.3
Alternative 3: New nondiscrimination provisions without religious exemption	$11.7	$11.1	$2.6	$2.7

TABLE 7—COMPARISON OF ALTERNATIVES TO FINAL RULE

	Present Value		Annualized	
Accounting method discount rate	3%	7%	3%	7%
Alternative 1: No change from 2016 Rule	−$17.4	−$16.5	−$3.8	−$4.0
Alternative 2: 2016 Rule with religious exemption	−$11.7	−$11.1	−$2.6	−$2.7
Alternative 3: New nondiscrimination provisions without religious exemption	−$5.7	−$5.4	−$1.2	−$1.3

D. Regulatory Flexibility Act—Final Small Entity Analysis

The Department has examined the economic implications of this final rule as required by the Regulatory Flexibility Act, 5 U.S.C. 601–612 (RFA). The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis unless the agency expects that the Proposed Rule will not have a significant impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a), 605(b). If an agency must provide a final regulatory flexibility analysis, this analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. HHS generally considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities. As discussed, the final rule would:

- Explain applicable Federal statutory nondiscrimination provisions.
- Provide that HHS complies with applicable Supreme Court decisions in administering its grant programs.

Affected small entities include all small entities which may apply for HHS grants; these small entities operate in a wide range of sections involved in the delivery of health and human services. Grant recipients are required to comply with applicable Federal statutory nondiscrimination provisions by operation of such laws and pursuant to 45 CFR 75.300(a); HHS is required to comply with applicable Supreme Court decisions. Thus, there would be no additional economic impact associated with §§ 75.300(c)–(e). The Department anticipates that this rulemaking would primarily serve to provide information to the public. The Department anticipates that this information will allow affected entities to better deploy resources in line with established requirements for HHS grant recipients. As a result, HHS has determined, and the Secretary proposes to certify, that this final rule, will not have a

significant impact on the operations of a substantial number of small entities.

E. Executive Order 13132 on Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has Federalism implications. The Department has determined that this rule does not impose such costs or have any Federalism implications.

F. Executive Order 12250 on Leadership and Coordination of Nondiscrimination

Pursuant to Executive Order 12250, the Department of Justice has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes that prohibit discrimination in programs and activities that receive Federal financial assistance ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' Exec. Order 12250 (reprinted at 45 Fed. Reg 72995 (Nov. 5, 1990); 28 CFR 0.51.The Department of Justice has reviewed and approved this final rule.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Department has reviewed this rule and has determined that there are no new collections of information contained therein.

List of Subjects in 45 CFR Part 75

Administrative practice and procedure, Civil Rights, Cost principles, Grant programs, Grant programs—health, Grant programs—social programs, Grants Administration, Hospitals, Nonprofit Organizations reporting and recordkeeping requirements, and State and local governments.

Dated: April 22, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, the Department revises 45 CFR part 75 to read as follows:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

■ 1. The authority citation for 45 CFR part 75 continues to read as follows:

Authority: 5 U.S.C. 301, 2 CFR part 200.

■ 2. Amend § 75.300 by revising paragraphs (c) and (d), and adding paragraphs (e), (f), and (g) to read as follows:

§ 75.300 Statutory and national policy requirements.

* * * * *

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by Federal statute.

(d) HHS will follow all applicable Supreme Court decisions in administering its award programs.

(e) In the statutes listed in paragraphs (e)(1) through (13) of this section that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock* v. *Clayton County,* 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock's* reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. This provision is interpretive and does not impose any substantive obligations on entities outside the Department. This paragraph (e) interprets the following HHS authorities that prohibit discrimination on the basis of sex:

(1) 8 U.S.C. 1522. Authorization for programs for domestic resettlement of and assistance to refugees.

(2) 42 U.S.C. 290cc–33. Projects for Assistance in Transition from Homelessness.

(3) 42 U.S.C. 290ff–1. Children with Serious Emotional Disturbances.

(4) 42 U.S.C. 295m. Title VII Health Workforce Programs.

(5) 42 U.S.C. 296g. Nursing Workforce Development.

(6) 42 U.S.C. 300w–7. Preventive Health Services Block Grant.

(7) 42 U.S.C. 300x–57. Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant.

(8) 42 U.S.C. 708. Maternal and Child Health Block Grant.

(9) 42 U.S.C. 5151. Disaster relief.

(10) 42 U.S.C. 8625. Low Income Home Energy Assistance Program.

(11) 42 U.S.C. 9849. Head Start.

(12) 42 U.S.C. 9918. Community Services Block Grant Program.

(13) 42 U.S.C. 10406. Family Violence Prevention and Services.

(f)(1) A grant applicant or recipient may rely on applicable Federal protections for religious freedom and conscience, and application of a particular provision(s) of this section to specific contexts, procedures, or services shall not be required where such protections apply.

(2) A grant applicant or recipient that seeks assurance consistent with paragraph (f)(1) of this section regarding the application of particular provision(s) of this part to specific contexts, procedures, or services may do so by submitting a notification in writing to the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR). Notification may be provided by the grant applicant or recipient at any time, including before an investigation is initiated or during the pendency of an investigation. The notification must include:

(i) The particular provision(s) of this section from which the applicant or recipient asserts they are exempt under Federal religious freedom or conscience protections;

(ii) The legal basis supporting the applicant's or recipient's exemption should include the standards governing the applicable Federal religious freedom and conscience protections, such as the provisions in the relevant statute from which the applicant or recipient is requesting an exemption; the Church, Coats-Snowe, and Weldon Amendments; the generally applicable requirements of the Religious Freedom Restoration Act (RFRA); and

(iii) The factual basis supporting the applicant's or recipient's exemption, including identification of the conflict between the applicant's or recipient's religious or conscience beliefs and the requirements of this section, which may include the specific contexts, procedures, or services that the applicant or recipient asserts will violate their religious or conscience beliefs overall or based on an individual matter related to a particular grant.

(3) A temporary exemption from administrative investigation and enforcement will take effect upon the applicant's or recipient's submission of the notification—regardless of whether the assurance is sought before or during an investigation. The temporary exemption is limited to the application of the particular provision(s) of the relevant statute as applied to the specific contexts, procedures, or services identified in the notification to the HHS awarding agency, ASFR, or OCR.

(i) If the notification is received before an investigation is initiated, within 30

days of receiving the notification, OCR, ASFR, or the HHS awarding agency must provide the applicant or recipient with email confirmation acknowledging receipt of the notification. The HHS awarding agency, working jointly with ASFR and OCR, will then work expeditiously to reach a determination of applicant's or recipient's notification request.

(ii) If the notification is received during the pendency of an investigation, the temporary exemption will exempt conduct as applied to the specific contexts, procedures, or services identified in the notification during the pendency of the HHS awarding agency's review and determination, working jointly with ASFR and OCR, regarding the notification request. The notification shall further serve as a defense to the relevant investigation or enforcement activity regarding the applicant or recipient until the final determination of the applicant's or recipient's exemption assurance request or the conclusion of the investigation.

(4) If the HHS awarding agency, working jointly with ASFR and OCR, makes a determination to provide assurance of the applicant's or recipient's exemption from the application of the relevant statutory provision(s) or that modified application of certain provision(s) is required, the HHS awarding agency, ASFR, or OCR, will provide the applicant or recipient the determination in writing, and if granted, the applicant or recipient will be considered exempt from OCR's administrative investigation and enforcement with regard to the application of that provision(s) as applied to the specific contexts, procedures, or services provided. The determination does not otherwise limit the application of any other provision of the relevant statute to the applicant or recipient or to other contexts, procedures, or services.

(5) An applicant or recipient subject to an adverse determination of its request for an exemption assurance may appeal the Department's determination under the administrative procedures set forth at 45 CFR part 81. The temporary exemption provided for in paragraph (f)(3) of this section will expire upon a final decision under 45 CFR part 81.

(6) A determination under paragraph (f) of this section is not final for purposes of judicial review until after a final decision under 45 CFR part 81.

(g) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

[FR Doc. 2024–08880 Filed 4–30–24; 4:15 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 98–204; FCC 24–18; FR ID 216196]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopted a Fourth Report and Order and Order on Reconsideration that reinstitutes the collection of workforce composition data for television and radio broadcasters on FCC Form 395–B, as statutorily required.

DATES: This rule is effective June 3, 2024.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Radhika Karmarkar of the Media Bureau, Industry Analysis Division, *Radhika.karmarkar@fcc.gov,* (202) 418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order and Order on Reconsideration (''*Fourth Report and Order*'' and ''*Order on Reconsideration*''), FCC 24–18, in MB Docket No. 98–204, adopted on February 7, 2024, and released on February 22, 2024. The complete text of this document is available electronically via the search function on the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-24-18A1.pdf.*

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* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. By this *Fourth Report and Order* and *Order on Reconsideration,* we reinstate the collection of workforce composition data for television and radio broadcasters on FCC Form 395–B as statutorily required by the Communications Act of 1934, as amended (Act). The Commission suspended its requirement that broadcast licensees file Form 395–B, which collects race, ethnicity, and gender information about a broadcaster's employees within specified job categories, more than two decades ago. After a long period of inactivity, the Commission published in the **Federal Register** on August 31, 2021, at 86 FR 48610, a Further Notice of Proposed Rulemaking(MB Docket No. 98–204, FCC 21–88, 36 FCC Rcd 12055) (*FNPRM*), seeking to refresh the public record regarding the manner in which the Form 395–B data should be collected and maintained. After careful consideration of the record, we reaffirm the Commission's authority to collect this critical information and conclude that broadcasters should resume filing Form 395–B on an annual basis. Section 73.3612 of the Commission's rules provides that ''[e]ach licensee or permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more full-time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395–B.'' We note that the filing requirements of § 73.3612 do not apply to Low Power FM Stations. Given the importance of this workforce information and Congress's expectation that such information would be collected and available, we reinstate this collection in a manner available to the public consistent with the Commission's previous, long-standing method of collecting this data.

2. Our ability to collect and access Form 395–B data is critical because it will allow for analysis and understanding of the broadcast industry workforce, as well as the preparation of reports to Congress about the same. Collection, analysis, and availability of this information will support greater understanding of this important industry. We agree with broadcasters and other stakeholders that workforce diversity is critical to the ability of broadcast stations both to compete with one another and to effectively serve local communities across the country. Without objective and industry-wide data, it is impossible to assess changes, trends, or progress in the industry. Consistent with how these data have been collected historically, we will make broadcasters' Form 395–B filings available to the public because we

conclude that doing so will ensure maximum accuracy of the submitted data, is consistent with Congress's goal to maximize the utility of the data an agency collects for the benefit of the public, allows us to produce the most useful reports possible for the benefit of Congress and the public, and allows for third-party testing of the accuracy of our data analyses. Thus, with today's action, we restore the process of giving broadcasters, Congress, and ourselves the data needed to better understand the workforce composition in the broadcast sector. We find further that continuing to collect this information in a transparent manner is consistent with a broader shift towards greater openness regarding diversity, equity, and inclusion across both corporate America and government. Large media companies have begun to make publicly available copies of their EEO–1 forms, which are filed with the Equal Employment and Opportunity Commission, or variations thereof. There is also movement towards more open access to data collected by federal agencies, as shown in the Foundations for Evidence Based Policymaking Act, which directs agencies to account for their data collections and to make such data available in readable formats to support government transparency and evidence-based rulemaking. We also address a pending petition for reconsideration from 2004 regarding our use of Form 395–B data.

Background

3. For more than 50 years, the Commission has administered regulations governing the EEO responsibilities of broadcast licensees. At their core, the Commission's EEO rules prohibit employment discrimination on the basis of race, color, religion, national origin, or sex, and require broadcasters to provide equal employment opportunities. In addition to broadly prohibiting employment discrimination, the Commission's rules also require that all but the smallest of broadcast licensees develop and maintain an EEO program. Specifically, the Commission requires each broadcast station that is part of an employment unit of five or more full-time employees to establish, maintain, and carry out a positive continuing program to ensure equal opportunity and nondiscrimination in employment policies and practices. In addition, the Commission historically collected workforce employment data from broadcasters through the annual submission of Form 395–B.

4. Between 1970 and 1992, the Commission, pursuant to its public interest authority, required broadcasters to submit annual employment reports listing the composition of the broadcasters' workforce in terms of race, ethnicity, and gender. In 1992, after finding that, among other things, ''increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media,'' Congress amended the Act, affirming the Commission's authority in this area. Specifically, Congress added a new section 334, which required the Commission to maintain its existing EEO regulations and forms as applied to television stations. The forms included the Commission's collection of workforce diversity information from broadcasters on Form 395–B. Submission of Form 395–B, however, was subsequently suspended in 2001 following two decisions by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating certain aspects of the Commission's EEO rules.

5. With its decision in 1998, the D.C. Circuit in *Lutheran Church-Missouri Synod* v. *FCC* (*Lutheran Church*) reversed and remanded a Commission action finding that a broadcast licensee had failed to make adequate efforts to recruit minorities. The court found the Commission's EEO outreach rules, which required comparison of the race and sex of a station's full-time employees with the overall availability of minorities and women in the relevant labor force, to be unconstitutional. Specifically, the court concluded that the use of broadcaster employee data to assess EEO compliance in the context of a license renewal pressured broadcasters to engage in race-conscious hiring in violation of the equal protection component of the Due Process Clause of the Fifth Amendment of the Constitution. The court applied strict constitutional scrutiny in reaching its decision, finding that standard of review was applicable to racial classifications imposed by the federal government. And pursuant to that standard, it determined that the Commission's stated purpose of furthering programming diversity was not compelling, nor were its EEO rules narrowly tailored to further that interest. The court made clear, however, that ''[i]f the regulations merely required stations to implement racially neutral recruiting and hiring programs, the equal protection guarantee would not be implicated.'' In reaching its decision, the court referenced the Form 395–B only tangentially in its analysis.

6. On remand, in the First Report and Order (MM Docket Nos. 98–204, 96–16, FCC 00–20, 15 FCC Rcd 2329) (*First Report and Order*) the Commission crafted new EEO rules requiring that broadcast licensees undertake an outreach program to foster equal employment opportunities in the broadcasting industry. The Commission also reinstated the requirement that broadcasters annually file employment data on Form 395–B with the Commission, which it had suspended after *Lutheran Church.* In adopting these revised rules and reinstating the information collection, the Commission vowed to no longer use workforce composition data when reviewing license renewal applications or assessing compliance with EEO program requirements. Rather, the Commission stated in the 2000 Reconsideration Order (MM Docket Nos. 98–204, 96–16, FCC 00–338, 15 FCC Rcd 22548) (*2000 Reconsideration Order*) that going forward it would only use this information ''to monitor industry employment trends and report to Congress,'' and not to assess any aspect of the individual broadcast licensee's compliance with the Equal Employment Opportunity requirements of § 73.2080 of the Commission's rules. The Commission codified that position in the governing regulations contained in § 73.3612.

7. Following adoption of the new EEO outreach rules, which offered licensees two ''Options'' for establishing an EEO program, several state broadcaster associations challenged the revised EEO rules. Upon review, the D.C. Circuit in *MD/DC/DE Broadcasters Associations* v. *FCC* (*MD/DC/DE Broadcasters*) found that one element of the new rule, namely Option B, which allowed broadcasters to design their own outreach programs but required reporting of the race and sex of each *applicant,* was constitutionally invalid. The court determined that Option B violated the equal protection component of the Due Process Clause of the Fifth Amendment because, by examining the number of applicants and investigating any broadcasters with ''few or no'' minority applicants, the Commission ''pressured'' broadcasters to focus resources on recruiting minorities. Because the court found that Option B was not severable from Option A of the rule, it vacated the entire EEO outreach rule.

8. Although the D.C. Circuit in *MD/DC/DE Broadcasters* vacated and remanded the Commission's revised EEO outreach rules, it did not rule on

the validity or constitutionality of Form 395–B. Nor did the court specifically identify Form 395–B or the collection of workforce diversity data as a core part of the rule at issue in its analysis. The court's only mention of the collection of workforce data was in the Background section of its decision. Thus, notably, in neither *Lutheran Church* nor *MD/DC/DE Broadcasters* did the D.C. Circuit find the collection of workforce composition data itself to be invalid on constitutional or any other grounds. After the decision, the Commission suspended its EEO rules in 2001, including Form 395–B, in order to analyze the effects of *MD/DC/DE Broadcasters* on the Commission's rules.

9. On November 20, 2002, the Commission released its Second Report and Order and Third NPRM (MM Docket No. 98–204, FCC 02–303, 17 FCC Rcd 24018) (*Second Report and Order and Third NPRM*), establishing new race-neutral EEO rules, eliminating the Option B rule previously invalidated by the court. The Commission's new EEO rules, which remain in place today, were divorced from any data concerning the composition of a broadcaster's workforce or applicant pool. The Commission explained that the annual employment report is ''unrelated to the implementation and enforcement of our EEO program'' and ''data concerning the entity's workforce is no longer pertinent to the administration of our EEO outreach requirements.'' The Commission, however, deferred action on issues relating to the annual employment report form, in part because it needed to incorporate new standards for classifying data on race and ethnicity adopted by the Office of Management and Budget (OMB) in 1997. The Commission's decision in January 2001 to suspend the filing of Form 395–B remained in effect at the time of the *Second Report and Order and Third NPRM.*

10. On June 4, 2004, the Commission released its Third Report and Order and Fourth NPRM (MM Docket No. 98–204, FCC 04–103, 19 FCC Rcd 9973) (*Third Report and Order and Fourth NPRM*) readopting the requirement that broadcasters file Form 395–B. In addition, the Commission readopted the Note to § 73.3612 of its rules that it had previously adopted in 2000, stating that the data collected would be used exclusively for the purpose of compiling industry employment trends and making reports to Congress, and not to assess any aspect of a broadcaster's compliance with the EEO rules. The Commission stated that it did not ''believe that the filing of annual employment reports will unconstitutionally pressure entities to adopt racial or gender preferences in hiring,'' but it acknowledged the concerns raised by broadcasters and sought comment on whether data reported on the Form 395–B should be kept confidential. Accordingly, while the Commission acted at that time to adopt revised regulations regarding the filing of Form 395–B and updated the form, the requirement that broadcasters once again submit the form to the Commission remained suspended until the agency further explored the issue of whether employment data could, or should, remain confidential. Although the requirement to file the forms on an annual basis remained suspended after 2004, the Commission regularly sought approval from OMB for the collection of information on Form 395–B. OMB most recently approved the information collection for Form 395–B through August 31, 2026, pending the Commission's resolution of whether the data will be confidential.

11. Given the passage of time since the *Third Report and Order and Fourth NPRM,* the Commission released a *FNPRM* on July 26, 2021, seeking to refresh the 2004 record with regard to Form 395–B. The *FNPRM* asked for additional input on relevant developments in the law relating to public disclosure of employment data, as well as the practical and technical limitations associated with implementing a system that could afford varying degrees of station-level anonymity. Interested parties filed comments, including public interest organizations and representatives of the broadcast industry. Their arguments range from asking that Form 395–B data be made publicly available to contending that reinstating the form would amount to an unconstitutional violation of race-based protections. Many of these assertions largely reiterate arguments addressed in the Commission's earlier orders, including whether the filing requirement constitutes unconstitutional pressure, the ramifications of the D.C. Circuit rulings, the directives of section 334, and the potential substitutability of the Equal Employment Opportunity Commission's (EEOC) EEO–1 form.

Discussion

12. Consistent with the Commission's authority pursuant to section 334, as well as the public interest provisions of the Act, we reinstate the collection of FCC Form 395–B. In doing so, we affirm the Commission's prior determination that the earlier court decisions in no way invalidated our authority to collect this data, which remains critical for analyzing industry trends and making reports to Congress. Further, we find that reinstatement of this information collection on a publicly available basis is consistent with the protections afforded to broadcasters by the Constitution and relevant case law, as detailed further below. The clear separation of this information collection from the Commission's long-standing EEO program requirements mitigates any concerns that might be raised by the broadcasters as to the collection of this workforce data. In addition, the Commission's unequivocal statement that it will not use station-specific employment data for the purpose of assessing a licensee's compliance with the EEO regulations and the codification of that same stricture further underscore the dissociation between the EEO requirements and the form's data.

B. Reinstatement of the Form 395–B Collection

13. The Commission has a public interest in collecting Form 395–B in order to report on and analyze employment trends in the broadcast sector and also to compare trends across other sectors regulated by the Commission. In taking this action today, we note that Congress has long authorized the Commission to collect this data and that the Commission is uniquely positioned to undertake such a collection. While commenters have evinced an interest in improving the level of diversity in the broadcasting industry workforce, the lack of industry-wide employment data over the last 22 years makes it difficult to measure the extent of any such progress. While we do not anticipate that this more than two-decade long gap in data can ever be filled, with the reinstatement of this information collection the Commission can ensure that the lack of data persists no further, thereby providing it, the industry, Congress, and the public with a better understanding of, or insight into, the full scope of the broadcast industry workforce. Accordingly, in this Order, we reinstate collection of Form 395–B in the manner described below and require the form to be submitted in an electronic format. Once submitted, the form will be accessible to the public via the Commission's website.

14. Reinstating the collection of the Form 395–B data in a publicly available format, as they were collected prior to 2001, remains the best approach for achieving our ultimate goal of preparing meaningful and accurate analyses of workforce trends in the broadcast industry. First, public disclosure will increase the likelihood that erroneous data will be discovered and corrected,

and it will incentivize stations to file accurate data to avoid third-party claims that submitted data is incorrect. Whether intentionally or inadvertently, a station might misreport its data or misidentify the racial, ethnic, or gender group for particular employees. Individuals or entities with a connection to the station will be in a position to correct such errors if the data are made public. Second, making the Form 395–B data publicly available is consistent with Congress's goal to maximize the utility of the data an agency collects for the benefit of the public. Third, making the data public bolsters our ability to conduct analyses of trends across different communications sectors, within individual sectors, and by region or market, without being unnecessarily hampered by concerns about inadvertent disclosures of identifiable information. We believe the utility of our reports is greatly enhanced by our ability to ''slice, dice, and display'' granular data about the broadcast sector. Our ability to produce the most meaningful reports possible for Congress rests, in turn, on the ability to produce the most granular reports possible (*e.g.,* the number of employees in a particular demographic group in a specific job category among a certain class of stations [AM, FM, TV, etc.] in a specific geographic area). If we were required, however, to keep confidential the underlying station-specific data, we would feel compelled to report our findings at a more general, and thus less useful, level to avoid the risk of inadvertently facilitating any reverse engineering of station-specific information. This problem would be especially acute in smaller markets, where the identity of stations could be discerned more easily.

15. In addition, allowing public access to datasets allows others to review the accuracy of an agency's data analyses and to question its methods for data collection with the benefit of actual datasets. We find this level of transparency to be consistent with the overall trend toward making government data more accessible, and we note that many government agencies collect and publish demographic data as part of their analysis of markets, trends, and other factors. The *FNPRM* sought comment on the logistics associated with collecting and maintaining the Form 395–B data completely anonymously, or where station specific information is available to the Commission, but not to the public. Only one commenter addressed this issue by stating that the Commission's Licensing and Management System (LMS) enables the shielding of certain exhibits attached forms. Irrespective of whether LMS can shield station-attributable data, we conclude for the reasons stated above that maintaining this data in a publicly available format is the most appropriate policy.

16. While broadcasters have expressed concerns with how the form's data might be used if publicly disclosed, such concerns have been addressed by the Commission's repeated statements on the appropriate use of such data and its amendment of the rules to prohibit use of the data to assess a broadcaster's compliance with Commission EEO rules. Notwithstanding the Commission's statements and actions, broadcasters were troubled in 2004 by comments made at that time positing that public disclosure of employment data would enable ''citizens . . . to work closely with their local broadcaster to ensure that stations are meeting their needs and to resolve any problems with the companies in their communities.'' Broadcasters pointed to those comments as evidence that third parties would misuse Form 395–B data to pressure stations to engage in preferential hiring practices. As an initial matter, as the Commission has committed to previously and we reiterate here again, we will quickly and summarily dismiss any petition, complaint, or other filing submitted by a third party to the Commission based on Form 395–B employment data. We also note that any attempt by a non-governmental third party to use the publicly available Form 395–B data to pressure stations in a non-governmental forum would not implicate any constitutional rights of the station. In any event, we find such concerns to be speculative. Despite the public availability of Form 395–B data for more than 20 years prior to 2001, the record contains no evidence of use of such data in this manner. Nonetheless, we encourage broadcasters to bring to the Commission's attention any evidence that a third party has misused or attempted to misuse Form 395–B employment data. If evidence of such misuse of the data emerges, the Commission can reconsider its approach to collection of the Form 395–B data. Based on the record before us, we find no basis to conclude that the demographic data on a station's annual Form 395–B filing would lead to undue public pressure. We find broadcasters' concerns with the public collection and availability of this workforce data to be overstated, outweighed by the promotion of data accuracy and other benefits of public disclosure noted above, and therefore not an impediment to our reinstatement of this collection.

17. Consistent with the limitations placed on our use of the Form 395–B data, we reject the commenter recommendation that the Enforcement Bureau use the data as evidence when investigating a discrimination claim against a station. We find that such use does not comport with the Commission's public interest goal behind collection of this data. The Commission has stated previously in the *2000 Reconsideration Order,* and we reiterate here, that ''we will summarily dismiss any petition filed by a third party based on Form 395–B employment data'' and ''will not use this data as a basis for conducting audits or inquiries.''

18. Some commenters have raised a concern that the Commission could decide at a later date to waive its rule regarding how the Form 395–B data can be used. We believe that the combination of the Commission's consistent position over two decades about how this data may be used, the established principle that ''an agency is bound by its own regulations,'' our rejection of a proposed contrary use, and our determination in the attached *Order on Reconsideration* should assuage concerns on this point. We will not further delay reinstatement of the form based on unfounded conjecture about what the Commission may or may not do in the future.

19. Further, we reject the argument that we should retain Form 395–B data on a confidential basis given the EEOC's confidential treatment of similar employment data collected on its EEO–1 form. Unlike the Commission, the EEOC's authorizing statute specifically limits its ability to make its collected data publicly available. In the Civil Rights Act of 1964, which created the EEOC, Congress included a provision making it unlawful for an EEOC officer or employee to disclose such information. However, when Congress adopted section 334 in 1984, despite the fact that in the preceding 20 years Congress had not lifted the prohibition on public disclosure by the EEOC, Congress imposed no such limitation on publishing the broadcast workforce data collected by the Commission. Indeed, when Congress adopted section 334 in 1984, the Commission had been collecting broadcast workforce data and making it available publicly for decades, a practice Congress endorsed in passing section 334 without any limitation on public disclosure. In addition, the manner in which the two agencies may use their data differs significantly. The

EEOC may use its EEO–1 data for investigatory and enforcement purposes, but by contrast, we will not use Form 395–B data for enforcement purposes.

20. Some commenters assert that the Commission should rely on other data sources, including the EEO–1 form, in lieu of Form 395–B. Yet, section 334(a) of the Act states that ''except as specifically provided in this section, the Commission shall not revise . . . the forms used by [television broadcast station] licensees and permittees to report pertinent employment data to the Commission.'' Pursuant to section 334 of the Act, we may change the form's provisions only ''to make nonsubstantive technical or clerical revisions . . . as necessary to reflect changes in technology, terminology, or Commission organization.'' As we discuss further below, the alternative data sources suggested by commenters would both violate the section 334 prohibition on changes to the form and impede our general public interest goal of providing useful reports about employment in the broadcast sector.

21. In particular, we continue to reject the proposal, initially made nearly two decades ago and dismissed by the Commission at that time as being inadequate, to rely on the EEOC's EEO–1 form in lieu of Form 395–B. We reaffirm the Commission's prior conclusion that the EEO–1 form is not an appropriate substitute for Form 395–B, as the two forms differ greatly in the data they collect. First, unlike the EEO–1, Form 395–B distinguishes between full and part-time employees, consistent with our other employment data collections, providing a more comprehensive picture of the broadcast industry workforce. Second, and more importantly, reliance on the EEO–1 form would significantly reduce the amount of employment data available to the Commission as the vast majority of broadcast licensees do not file an EEO–1 form. While the Form 395–B collection applies to *all* broadcast station employment units with five or more full-time employees, the submission of an EEO–1 form is required only for entities with 100 or more employees. In 2004, in response to the same proposal to substitute the EEO–1 form for Form 395–B, the Commission calculated that the EEOC data ''would not include 6,592 employment units (79%) out of a total of 8,395 units and would exclude 136,993 full-time employees (84%) out of the 163,868 full-time employees in broadcasting working at employment units employing five or more full-time employees.'' Consequently, we determine that replacing Form 395–B either partly or wholly with the EEO–1 form does not constitute a permitted non-substantive modification of the form itself under section 334. Nor would such a substitution meet our public interest goal of providing a comprehensive report of employment in the broadcast sector and comparing employment trends across our regulatees. For the reasons provided above, we conclude that the EEO–1 form is an unsatisfactory replacement for Form 395–B. So as to reduce filing burdens, we also reaffirm the procedural practice of permitting broadcasters to file only one Form 395–B for all commonly-owned stations in the same market that share at least one employee.

22. Similarly, we find to be inapposite the suggestion to use the Radio Television Digital News Association (RTDNA) diversity survey as a substitute for the Form 395–B collection. As an initial matter, the RTDNA data pertains only to TV and radio newsrooms and not to the full spectrum of the broadcast industry workforce covered by Form 395–B. Moreover, the RTDNA survey ultimately is based on valid responses from those broadcasters that *choose* to participate in the survey, and, hence, the pool of participants is essentially a self-selected one. By contrast, *all* broadcast station employment units with five or more full-time employees must file the Form 395–B. Consequently, substituting Form 395–B with the RTDNA survey would be inconsistent with the section 334 prohibition on changes and would provide a less complete view of the broadcast sector.

23. Since we have determined that the benefits of making these reports public outweigh the speculative harm from doing so in light of the clear policy of the Commission about how they may and may not be used, we see no reason to afford them confidentiality. We note, however, that there is a question whether they would in fact warrant confidential treatment under the Freedom of Information Act (FOIA) or whether the Commission could satisfy the requirements of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). The *FNPRM* sought comment on the potential applicability of the CIPSEA or the FOIA exemptions to the Form 395–B data collection. As discussed below, the record and our own analysis demonstrate that CIPSEA is ill-suited for an agency such as the Commission. Similarly, the Form 395–B data does not fit neatly within FOIA Exemption 4, and in any event Exemption 4 does not prevent the Commission from disclosing information after an appropriate balancing of the interests. Accordingly, for the reasons discussed below, we find neither CIPSEA nor FOIA affords an appropriate basis to collect Form 395–B information in a confidential manner.

1. CIPSEA Is Ill-Suited to the Commission's Collection of the Form 395–B Data

24. The Commission sought comment on CIPSEA in 2004 and again in 2021, in particular, seeking to explore whether the confidentiality afforded by CIPSEA to government-collected data could apply to the Form 395–B data. Commenters responding in 2004 disagreed regarding CIPSEA's applicability. Some commenters argued that CIPSEA authorizes the Commission to collect Form 395–B filings on a confidential basis and that doing so would be good public policy. Other commenters contended that neither CIPSEA nor the Communications Act permits the use of CIPSEA for Form 395–B filings. They further argued that confidential treatment would not serve CIPSEA's purpose of promoting public confidence in an agency's pledge of confidentiality, given that the Commission never made such a pledge with respect to Form 395–B, nor would it serve important policy objectives, such as ensuring the accuracy of Form 395–B data. When the Commission initially sought comment in 2004, the CIPSEA statute was barely two years old and relatively untested. Given the passage of time and the desire to obtain as complete a record as possible, the Commission sought comment anew on CIPSEA in 2021. The *FNPRM* sought input regarding the potential avenues under CIPSEA to collect and maintain data on a confidential basis, but the two comments in 2021 addressing CIPSEA provide insufficient discussion or analysis. As discussed further below, we find that CIPSEA is not an appropriate fit for the Commission's Form 395–B data collection.

25. A commenter suggests that the Commission could utilize any one of CIPSEA's three approaches for confidential collection and retention of the Form 395–B data: (1) have the Commission's Office of Economics and Analytics (OEA) seek recognition as a ''Federal statistical agency or unit'' pursuant to CIPSEA and have OEA alone collect and analyze the Form 395–B data, which would then be released in conformance with the CIPSEA confidentiality protections; (2) have the Commission collect this data independently as a ''nonstatistical agency'' or ''unit;'' or (3) as a nonstatistical agency or unit, enter into an agreement with an already

recognized ''Federal statistical agency or unit'' and have that agency collect the data on behalf of the Commission. While the commenter asserts that these approaches are ''reasonable mechanism[s]'' for safeguarding Form 395–B data, it does not specify how its proposals could be satisfied under the requirements established in OMB's 2007 Guidance. For example, the commenter does not discuss how the Commission, or even a subpart of the Commission, could qualify as a ''statistical agency or unit'' given that OMB accords that designation only when the *predominant* activities of the agency or unit are the use of information for statistical purposes. The Commission plainly does not fit that description. Furthermore, the commenter does not address the costs and burdens involved with applying for and obtaining from OMB the designation needed for CIPSEA protection. Nor does it address the cost and burdens associated with adherence to CIPSEA and whether the benefit of retaining the Form 395–B data in conformance with CIPSEA outweighs these costs and burdens. Below, we address these points.

26. Contrary to the commenter's suggestion, our detailed review of CIPSEA, OMB's 2007 Guidance, and examples of other agencies that have obtained designation as a ''statistical agency or unit'' demonstrates that neither the Commission nor OEA would qualify for such a designation. An agency, or agency unit, seeking such a designation must demonstrate to the OMB Chief Statistician that its activities are ''*predominantly* the collection, compilation, processing, or analysis of information for statistical purposes.'' Although OEA conducts significant data analyses, its activities do not meet the ''predominantly'' standard laid out by OMB. Rather, OEA's regular work also includes administrative, regulatory, and adjudicative functions, as well as the administration of the Commission's various spectrum auctions. For these reasons, we determine OEA could not satisfy the requirements for ''statistical agencies or units'' and, therefore, this approach is not a viable option.

27. The commenter next suggests that the Commission could collect the Form 395–B data as a ''nonstatistical agency'' pursuant to CIPSEA, provided it complied with CIPSEA's restriction preventing nonstatistical agencies from using ''agents,'' including contractors, to collect or use the protected information, and if it ensured that only internal agency staff had access to the protected information. The commenter identifies no agency that has successfully invoked this provision of CIPSEA in the more than 20 years since the passage of the act. Nor have we been able to identify one. As discussed in the *FNPRM,* the Commission relies extensively on information technology (IT) contractors to develop and maintain electronic filing systems, assist filers with questions, and compile reports and other information based on data in Commission forms. The Commission has outsourced these tasks for decades consistent with a broader federal government initiative to ensure that those jobs that can be conducted in a more economically efficient manner by the private sector through competitive bidding. Moreover, the Commission currently relies on multiple IT contracts to maintain and operate its systems. Therefore, it would be extremely complex and burdensome from an administrative perspective to bring functions in-house solely for one form. For these reasons, we find that collecting Form 395–B data as a nonstatistical agency under CIPSEA is not a viable option.

28. We similarly find that the final approach under CIPSEA, namely that the Commission, acting as a ''nonstatistical agency,'' partner with a ''statistical agency,'' which would collect the Form 395–B data on the Commission's behalf, is not a realistic—or even workable—one. Our detailed review of CIPSEA and OMB's 2007 Guidance shows that this is a complex process involving various logistical steps, as well as significant additional burdens and costs. Partnering with a ''statistical agency'' involves identifying a possible partner agency, engaging in negotiations with that agency to establish an agreement for the collection of the data, negotiating and drafting an agreement stipulating the terms associated with collection, processing, and sharing of the Form 395–B data. Any such agreement would have to comport with OMB's requirements and might also necessitate OMB review. The Commission would also have to compensate any such partner agency for the costs of collecting and storing the data, educate the partner agency about the broadcast sector, and ensure that the information is collected in an appropriate manner. Under this approach, the Commission also would have to designate specific staff who would have permission to access the data and potentially restrict access to just those individuals. Moreover, broadcasters would have the additional burden of familiarizing themselves with a different agency's document filing system. As OMB has not yet issued guidance on such a partnership approach, however, the potential logistical problems going forward are not even fully known. In addition, pursuing the approach of partnering with a ''statistical agency'' would lead to further delay in reinstituting this collection, which has already lagged for far too long, while also unduly increasing the complexity and cost of the collection. Going forward, such an approach would lend complexity to the process and potentially hamper the Commission's ability to review, analyze, and report on the underlying data on an ongoing basis. Consequently, we conclude that the significant time, complexity, and cost associated with formulating a partnership with a statistical agency outweigh any speculative harm that might arise from public availability of this data.

2. Even if FOIA Exemption 4 Applies, the Strong Public Interest in Disclosure Outweighs Any Private Interest In Confidential Treatment

29. The *FNPRM* sought comment on whether any Freedom of Information Act (FOIA) exemptions might apply to our collection of Form 395–B data. Commenters assert that Form 395–B data reported by broadcasters should not be publicly disclosed because doing so would reveal trade secrets and commercial information to competitors. While FOIA Exemption 4 protects trade secrets and confidential commercial information from mandatory public disclosure by the Commission, its applicability to the information collected on Form 395–B is questionable. Further, even if we were to find FOIA Exemption 4 applicable, the Commission is not compelled to keep data covered by Exemption 4 confidential. The Commission has authority to make records that fall within Exemption 4 public if it determines that the public interest in disclosure outweighs the private interests in preserving the data's confidentiality.

30. FOIA Exemption 4 protects from mandatory disclosure information that is ''obtained from a person,'' as we recognize would be the case here, and that is both (1) ''commercial or financial'' in character and (2) ''privileged or confidential.'' Commenters assert that Form 395–B demographic data are ''commercial information.'' The case law, however, is not definitive on this question. Courts have sometimes defined commercial information broadly to include information submitted to an agency in which the submitter has a commercial interest, or to encompass information that has intrinsic commercial value, the

disclosure of which would jeopardize a submitter's commercial interests or ongoing operations. Those definitions might arguably apply to the demographic information of employees. However, in a recent case very closely on point, *Center for Investigative Reporting* v. *U.S. Department of Labor* (*Center for Investigative Reporting* v. *DOL*), the U.S. District Court for the Northern District of California held that the federal government failed to prove that EEO–1 Consolidated Report (Type 2) employee demographic data were ''commercial.'' Similar to Form 395–B data, the EEO–1 Type 2 Reports do not include ''salary information, sales figures, departmental staffing levels, or other identifying information.'' Although the Type 2 Reports ''require companies [that do business at two or more physical addresses] to report the total number of employees across all their establishments,'' whereas the Form 395–B breaks down this information by station employment units, neither form links job categories to specific departments; rather, both require information aggregated by type of job across all departments. Furthermore, the EEO–1 reports utilize the same job title, gender, and ethnicity categories as the information to be provided in Form 395–B. Given these similarities between the EEO–1 reports and information to be provided in Form 395–B, *Center for Investigative Reporting* suggests that the Form 395–B data is at least arguably not correctly considered to involve commercial information.

31. It is likewise not entirely clear whether the data at issue here would be properly considered ''privileged or confidential.'' Information is confidential within the meaning of Exemption 4 ''whenever it is customarily kept private, or at least closely held, by the person imparting it.'' What matters is ''how [a] particular party customarily treats the information, not how the industry as a whole treats [it].'' Here, a commenter acknowledges that ''many employers choose to publicly disclose workforce demographic data'' in ''a variety of forms.'' And although the commenter distinguishes between Form 395–B data and the EEO–1 data that companies often elect to disclose, we see similarities between the two data sets, as discussed above.

32. In addition, as discussed further below, we note that commenters have failed to show that competitive harm would result from the collection and public release of the information provided in Form 395–B. While the Supreme Court held in *Food Marketing Institute* that a showing of competitive harm is not required to protect information from disclosure under Exemption 4, some courts have since declined to allow agencies to withhold information covered by Exemption 4 without showing an articulable harm from disclosure. These decisions rest on the theory that under the FOIA Improvement Act of 2016—which did not apply to the *Food Marketing Institute* case because it had not yet become effective at the time that case was filed—agencies must produce information otherwise covered by a FOIA exemption unless it is reasonably foreseeable that disclosure would harm an interest protected by the exemption (or disclosure is prohibited by law). However, the FOIA Improvement Act has alternatively been interpreted in the Exemption 4 context to require no demonstration of harm beyond the loss of confidentiality itself, and therefore the relevance of competitive harm to the Exemption 4 analysis remains an unsettled issue.

33. Ultimately, however, we need not decide whether Exemption 4 covers the information collected on Form 395–B or assess the relevance of the FOIA Improvement Act. The Commission has well-established authority under section 4(j) of the Act to publicly disclose even trade secrets or confidential business information if, after balancing the public and private interests at stake, we determine that it is in the public interest to do so.

34. In assessing the respective interests in the disclosure or non-disclosure of Form 395–B data, we determine that the public interest in disclosing Form 395–B data outweighs broadcasters' claims that such disclosure might cause unspecified harm. As outlined above, there are significant public interest benefits from public disclosure of Form 395–B data. Public disclosure of Form 395–B data promotes a more accurate collection and recordation process. It increases the likelihood that incomplete or inaccurate filings will be discovered and corrected, and it will incentivize stations to file accurate data to avoid third-party claims that submitted data are incorrect. It is also consistent with Congress's goal to maximize the utility of the data an agency collects for the benefit of the public. Public disclosure also allows us to produce the most granular reports possible for the benefit of Congress and the public, without being unnecessarily hampered by concerns about inadvertent disclosures of identifiable information. And public disclosure allows others to review the accuracy of our data analyses and to question our methods for data collection with the benefit of actual datasets.

35. In contrast to these significant public benefits, commenters have failed to demonstrate that availability of the Form 395–B data would cause meaningful competitive harm. For example, a commenter asserts that if Form 395–B data were disclosed, a broadcaster's competitors could exploit such information to gain competitive insights into the broadcaster's business practices. Nothing in the record, however, realistically demonstrates how the public release of Form 395–B data might afford a competitor tangible insights into another broadcaster's business practices that would lead to competitive harm. Commenters have not provided any actual instances of harm related to the Commission's previous collection and public disclosure of demographic data, but rather largely project a speculative, worst-case scenario. A commenter posits that competitors would be able to draw more detailed insights by comparing published data over a stretch of years; however, we fail to understand how any such result would have a negative commercial impact on broadcasters. Moreover, the fact that a number of broadcasters have begun to disclose workforce demographic data, albeit not at the level of detail as would be reported on Form 395–B, also calls into question the extent of the competitive harm that would result if that information were to be publicly released. Further, guided in part by the court's analysis in *Center for Investigative Reporting* v. *United States Department of Labor,* we remain unconvinced that knowing the number of employees assigned to a particular job title or category in a company without knowing other details—for example, the duties of the employees, the structure of the company, salary information—can provide any significant information to a competitor that results in reasonably foreseeable or substantial competitive harm. As noted by various commenters in the instant proceeding, Form 395–B uses the same reporting methodology in terms of job categories as the EEO–1, rather than reporting ''demographic information by division, department, or 'segment.' ''

36. We conclude that the public benefits of releasing the information contained in Form 395–B are significant, while the harms would be slight. Thus, balancing the public interests in disclosure against the private interests at stake here, we find that there are strong public interests in favor of disclosure and that, accordingly, section 4(j) authorizes the

Commission to publicly disclose Form 395–B data.

37. *Timing of Form Submission.* As directed by § 73.3612 of the Commission's rules, broadcasters will be required to file Form 395–B annually on or before September 30 of each year, after the Order becomes effective. Authority is delegated to the Media Bureau to announce and provide filing instructions before the first window opens. The Commission established the September 30 deadline to align with the deadline for EEO–1 filings to enable licensees and permittees that also file similar data with the EEOC to conserve resources by using the same pay period record information for both filings. Broadcasters may report employment figures from any payroll period in July, August, or September of the relevant year, but that same payroll period must be used in each subsequent year's report by the licensee. Consistent with previous practice, the Form 395–B will be due on or before September 30 of each calendar year. To provide broadcasters adequate notice regarding the details of the electronic filing process, the Media Bureau will issue a Public Notice with instructions about how to submit the filings, prior to the first filing after the Order becomes effective. This Public Notice will provide broadcasters ample time to put into place whatever data collection processes they require, including, for example, the development of employee surveys and instructions for employees regarding which job classification to report. It also will afford the Commission time to create and test an electronic version of Form 395–B.

38. *Identification of Non-Binary Gender Categories.* Finally, in reinstating the collection of Form 395–B, some commenters urge us to incorporate into the form a mechanism that will enable identification of non-binary gender categories. While the EEOC has incorporated a comment box on the EEO–1 form allowing for submission of gender non-binary information, both the EEOC and the Commission traditionally track the definitions and standards on race, ethnicity and gender set forth by OMB and used widely by the federal government. To date, OMB has not prescribed conclusive classifications to capture non-binary gender data. Federal guidance, however, recognizes the ''need to be flexible and adapt over time'' in developing measures to collect such data. Consistent with that guidance and our record, we believe it is appropriate that the Form 395–B include a mechanism to provide further specificity about broadcaster employees' gender identities.

39. We find that such an update fits within the latitude granted to the Commission pursuant to section 334(c) of the Act to revise the forms ''to reflect changes in . . . terminology.'' We also find that the *FNPRM* provided sufficient public notice and opportunity for comment to allow us to incorporate this change to the form. The *FNPRM* encouraged commenters ''to provide any new, innovative, and different suggestions for collecting and handling employment information on Form 395–B'' and asked if there were ''any other issues or developments that [the Commission] should consider.'' We conclude that the suggestion to include within the Form 395–B a mechanism to account for those who identify as gender non-binary is a logical outgrowth from the *FNPRM's* requests for comment. Accordingly, and after receiving only support for and no opposition to the idea, we will include such a mechanism in the reinstituted Form 395–B. We delegate to the Media Bureau the authority to implement this change to the Form.

C. Constitutional Issues

40. Reinstatement of the Form 395–B data collection in a publicly available manner is wholly consistent with the equal protection guarantee contained in the Fifth Amendment of the Constitution. As discussed below, collection of workforce data from broadcast licensees on Form 395–B is race- and gender-neutral, and no race- or gender-based government action flows from collection of the data or its public availability. Accordingly, collection and publication of Form 395–B data need only be rationally related to a legitimate governmental interest to pass constitutional muster. Since the Commission has a legitimate public interest in collecting Form 395–B data and doing so on a transparent basis is rationally related to this interest, reinstatement of Form 395–B as we propose is constitutionally permissible. Finally, we find that the limitations the Commission has placed on its own use of the data obviate the concerns raised in the record about the potential for undue pressure being placed on, or ''raised eyebrow'' regulation of, broadcasters.

41. As the court in *Lutheran Church* acknowledged, the Constitution's equal protection guarantee is not implicated if the regulation at issue is neutral with respect to protected categories. This standard is satisfied here, because both on its face and in application, the collection of workforce data from broadcast licensees on Form 395–B is race- and gender-neutral. Regardless of the demographic makeup of a particular broadcast station employment unit, all units with five or more full-time employees are required to file their workforce data with the Commission. At no point does the Commission use race and gender categories to direct units on whether they must file the form; the number of employees within a given unit is the sole criterion. Further reflecting the neutrality of the application of the form, all units required to file with the Commission use an identical Form 395–B to report their respective demographic and job category data. By using employment size as the exclusive factor to direct units to file broadcast workforce data, the completion of the form in this regard is a neutral activity, ''devoid of ultimate preferences'' for hiring on the basis of race or gender.

42. Furthermore, there is no race- or gender-based government action that flows from collection of the data or its public availability. Unlike the collection of this data 20 years ago, there is no connection between the Form 395–B collection at issue here and the EEO program requirements applicable to broadcasters. The court's finding in *Lutheran Church* that the Commission's rules impermissibly pressured broadcasters to engage in race-conscious hiring decisions stemmed from the set of criteria that the Commission had created in 1980 to determine whether its review of a station's license renewal application should include a closer examination of the station's EEO program. Under those 1980 screening guidelines, the Commission would review the adequacy of a station's EEO program if minorities and/or women employed by the station were underrepresented as compared to the available workforce. That requirement to compare the racial composition of a station's workforce with that of the local population, and not the requirement to report employment data that we reinstate today, was the trigger for the court's strict scrutiny in that case.

43. While the Commission revised the EEO program requirements after the *Lutheran Church* ruling, the *use* of race, ethnicity, and gender information (albeit not Form 395–B data) was still linked to the Commission's EEO program. The new EEO program allowed stations to choose between two options for their recruiting programs. In *MD/DC/DE Broadcasters,* the D.C. Circuit struck down the Commission's revised, two-option EEO program because it found that broadcasters proceeding under Option B of the program were pressured

to engage in race-conscious recruiting practices, given that Option B required annual reporting of race, ethnicity, and gender information for each job applicant. The court found that such pressure would lead to outreach programs targeted at minority groups, to the potential disadvantage of non-minority groups, and thus constituted a racial classification that triggered strict scrutiny. Following the court's decision, the Commission suspended both its EEO outreach requirements and its Form 395–B filing requirement.

44. When the Commission later adopted new EEO program requirements in the *Second Report and Order and Third NPRM,* it deferred action on requiring the collection of workforce data, and the Form 395–B data collection has been on hold ever since. Thus, these EEO program requirements have existed independently of Form 395–B for the past 20 years. That the Commission's EEO program continued to operate even as the Form 395–B collection was held in abeyance highlights the separation of these two requirements. And we reiterate that going forward, these two requirements—the filing of annual workforce data and compliance with an EEO program—will continue to be divorced from one another. As the Commission has recognized consistently for more than 20 years, the *Lutheran Church* and *MD/DC/DE Broadcasters* decisions do not prohibit the collection of employment data for the purpose of analyzing industry trends. The Commission concluded more than two decades ago in the *2000 Reconsideration Order* that collecting employment data solely for monitoring purposes would not violate *Lutheran Church,* and we affirm that conclusion. The D.C. Circuit never took issue with the Commission's collection of station-specific employment data from broadcasters and making this data publicly available. We continue to find the collection of this information to be consistent with the Constitution and the public interest. The Commission has stated unequivocally and emphatically that it will not use the Form 395–B for assessing a licensee's compliance with EEO program requirements. The agency even went so far as to codify that policy in the Code of Federal Regulations, amending § 73.3612 of its rules in 2004 to prohibit explicitly the use of the Form 395–B data for EEO compliance purposes. We reaffirm the Commission's previous determination that workforce data collected on Form 395–B will be used only for purposes of analyzing industry trends and reports by the Commission, and that the use of such data to assess an individual broadcast licensee's compliance with our EEO requirements will be prohibited. Moreover, in the attached *Order on Reconsideration,* we grant a previous request filed by the State Associations asking that we modify the prohibition on our use of the form's data to explicitly bar the Commission from employing this data to assess compliance with the nondiscrimination requirement contained in § 73.2080 of our rules. Our granting of the State Associations' request further demonstrates our commitment to use this data only for industry analysis and reporting.

45. We disagree with commenters' assertion that collection or publication of the data on a licensee- or station-attributable basis will still somehow result in unconstitutional ''*sub silentio*'' pressures or ''raised-eyebrow'' regulation. We have stated repeatedly and unequivocally, and codified the proposition in our rules, that we will not use Form 395–B data for any purpose other than for analyzing and reporting trends in the broadcast industry. Nonetheless, commenters attempt to employ dicta from the D.C. Circuit in *MD/DC/DE Broadcasters* and *Lutheran Church* about implicit pressures by claiming that, despite the limitations the Commission has placed on its own use of the data, third parties may use the data to place improper pressure on a licensee to engage in preferential hiring practices to avoid having frivolous complaints filed against it with the Commission. As an example, one commenter claims that some loan agreements would require broadcasters to disclose even frivolous petitions to their lenders, thereby adding an element of risk to funding acquisitions. To address this concern, we will make every effort to dismiss as quickly as possible any petitions, complaints, or other filings that rely on a station's Form 395–B filing as the basis of the petition, complaint, or other filing. Moreover, broadcasters in that situation may apprise lenders of our intent to dismiss such complaints and point to our rule disallowing the use of the data for compliance purposes.

46. Broadcaster groups mistakenly assert that reinstating a public collection of Form 395–B violates D.C. Circuit precedent, which the commenters argue effectively invalidated the use of the Form 395–B for all purposes. In arguing that the *Lutheran Church* decision invalidated Form 395–B, however, the commenters erroneously treat all the EEO requirements in effect at the time of *Lutheran Church* as one inseparable rule that the D.C. Circuit vacated. The commenters are incorrect in asserting that the court's finding of unconstitutional pressure when the collection was combined with the then-existing EEO program somehow invalidated the Form 395–B itself for any and all other purposes. In fact, as noted above, what the *Lutheran Church* court found to be problematic was the requirement to compare the racial composition of a station's workforce with that of the local population, and not the requirement to report employment data to the Commission. The court's finding of unconstitutionality did not reach the Commission's use of the form to gather data purely for statistical purposes and without regard to a station's EEO compliance. Indeed, the court did not even speak to the form's use in collecting employment data for the purpose of analyzing industry trends, let alone invalidate it for that purpose.

47. Furthermore, we reject the suggestion that the finding in the *MD/DC/DE Broadcasters* case somehow casts doubt on the legitimate use of Form 395–B data for industry trend reporting, given that the Form 395–B was not even at issue in that case. The Form 395–B was only mentioned in the background section of that decision, as the collection of the *employee* diversity data was irrelevant to the data at issue in that case (*i.e., applicant* data). Rather, the court found the Commission's revised EEO program problematic because it determined that broadcasters proceeding under one aspect of the program (Option B) could feel pressured to engage in race-conscious recruiting practices, given that Option B required an annual reporting of the race, ethnicity, and gender information for each job applicant.

48. Therefore, unlike applicant data required under Option B of the former EEO program, the Form 395–B workforce data played no role in assessing a broadcaster's compliance with the recruiting rules at issue in *MD/DC/DE Broadcasters.* In the current situation no unconstitutional use of racial or gender classifications arises from the Commission's collection of annual employee data because we will not use the collection of Form 395–B demographic data for purposes of assessing or enforcing a broadcaster's compliance with our EEO rules. Further, we find the commenter argument that the court in *MD/DC/DE Broadcasters* disparaged the use of ''outputs'' to measure ''inputs'' to be misplaced. First, as noted above, the court was referring to *applicant* data—*i.e.,* those applying to open job positions at the station—as the output in that case, which was being

used to evaluate a broadcaster's outreach efforts and the success of its EEO program in recruiting potential job applicants. Employee data—*i.e.,* the composition of the station's workforce, which is captured by the Form 395–B—was not the ''output'' of concern. Second, to the extent that employee data might be considered an output, the Commission now explicitly prohibits the use of such data as a tool to measure a broadcaster's ''inputs'' to its EEO program. Furthermore, the court in *MD/DC/DE Broadcasters* never suggested that the collection of employee data for statistical purposes factored into its analysis regarding the unconstitutionality of the outreach rules.

49. Based on the above, we conclude that reinstating collection of Form 395–B in a public manner, where the form's data can only be used for reporting and analyzing industry trends, is fully consistent with the determinations in *Lutheran Church* and *MD/DC/DE Broadcasters.* The proposed action is race- and gender-neutral and crucial to Congress's and the Commission's interest in understanding broadcast employment trends. Because the Commission is the only entity with the resources and expertise to expeditiously collect and compile this data, it is vital that the agency restart this collection. With current data, the Commission, Congress, and the general public can better understand developments in the broadcast sector.

50. Although no commenter raised a First Amendment issue, we clarify that requiring stations to publicly disclose their workforce composition data does not constitute ''compelled speech'' on matters of race and gender, in violation of the First Amendment. A requirement to report information to the government fundamentally differs from the typical compelled speech case, which generally involves situations where ''the complaining speaker's own message [is] affected by the speech it [is] forced to accommodate.'' Conversely, the Form 395–B report requires reporting of factual information to the Commission—the station's own employment figures—to allow the Commission to analyze trends. There is no message being forced by the government.

51. Even assuming, *arguendo,* that broadcaster's speech rights are implicated, our Form 395–B requirement is consistent with the First Amendment, as it entails disclosure of ''purely factual and uncontroversial'' information in a commercial context. The D.C. Circuit has ruled that government interests in addition to correcting deception can be invoked to sustain a mandate for disclosure of purely factual information in the commercial context. The *Zauderer* test is satisfied here because disclosure of workforce data is reasonably related to a substantial governmental interest (ensuring maximum accuracy and utility of the data on which the government relies for analysis and reporting purposes), which outweighs the ''minimal'' interest in not disclosing purely factual, uncontroversial information. In the alternative, even assuming, *arguendo,* that our requirement is subject to heightened First Amendment review, we find that our disclosure requirement satisfies even this higher standard. The government has a substantial interest in analyzing broadcast industry workforce information to support greater understanding of the broadcast industry and to report to Congress about the same. Collecting this data and making broadcasters' Form 395–B filings publicly available directly advance this governmental interest because without the data it would be impossible to assess changes, trends, or progress in the industry and making the information public ensures maximum accuracy of the submitted data by increasing the likelihood that erroneous data will be discovered and corrected and incentivizing stations to file accurate data and thereby maximizes the utility of the data. Moreover, the requirement is not more extensive than is necessary to serve that interest, because the data will be collected in a manner consistent with the Commission's previous, long-standing method of collecting the data and because, as this order has made clear, the data collected will be used exclusively for the purpose of compiling industry employment trends and making reports to Congress, and not to assess any aspect of a broadcaster's compliance with the EEO rules.

D. The Commission Has Broad Authority To Collect Form 395–B

52. We find sufficient authority to reinstate the collection of Form 395–B, both pursuant to the public interest provisions of the Act and section 334. The Commission's adoption of Form 395–B preceded Congress's passage of section 334 by more than two decades. As discussed above in Section II, the form and the Commission's EEO rules were rooted firmly in the Commission's public interest mandate under sections 4(i), 303, 307, 308, 309, and 310 the Communications Act. By codifying the Commission's then existing EEO requirements, as well as the collection of Form 395–B, Congress, in 1992, ratified the Commission's pre-existing authority to adopt such rules and forms through congressional acquiescence in a long-standing agency policy. As the Commission discussed extensively in the *Second Report and Order and Third NPRM* in this proceeding, the limitation imposed by section 334 regarding changes to the Commission's then-existing EEO rules and forms evidenced Congress's approval of the Commission's EEO approach (including the information collection) and its desire to ensure its continuance. Lawmakers' express endorsement of the rules 30 years ago did not in any way undermine the Commission's pre-existing public interest authority. Moreover, the Commission also has broad authority under the Communications Act to collect information and prepare reports.

53. Despite this settled law, commenters challenge our authority to reinstate the form's collection, reviving arguments that the Commission rejected 20 years ago in the *Second Report and Order and Third NPRM.* First, they assert that, rather than a grant of EEO authority, section 334 is a limitation on the Commission's authority to revise its EEO regulations and forms. They suggest that the Commission is constrained from reinstating Form 395–B because, in setting forth the permissible exceptions to its restriction on EEO changes, Congress did not include, or later add, the situation where some provisions of the EEO rules are deemed unenforceable, as occurred in *Lutheran Church* and *MD/DC/DE Broadcasters.* Second, commenters posit that the Commission is taking inconsistent positions on the current force of section 334. They argue that, if section 334 is still in force and dictates reinstatement of Form 395–B, then the Commission's current EEO outreach rules violate the statutory provision because those rules have undergone substantial revision. The commenters assert that the Commission ''cannot have it both ways'' by rejecting the constraints of section 334 when it previously revised its EEO rules, but now invoking the same provision to reinstate Form 395–B.

54. We find commenters' assertions unsound as a matter of law and logic. They disregard the Commission's public interest authority under the Act, which was the underpinning of the Commission's EEO rules and Form 395–B long before the passage of section 334. Further, the commenters also misconstrue the impact of the court decisions on our section 334 authority. While the *Lutheran Church* court invalidated elements of the EEO

program requirements in effect in 1992, thereby terminating their enforceability, it did not address the constitutionality of section 334 itself. Moreover, the subsequent decision in *MD/DC/DE Broadcasters* did not imply that the unconstitutionality of the previous regulations rendered section 334 inoperative.

55. We therefore continue to reject the commenters' false premise that section 334 was somehow ''neutered'' by the D.C. Circuit decisions. Section 334 continues to provide authority for reinstating Form 395–B. Moreover, as discussed above, we find ample legal authority separate from section 334 to reinstate collection of the form.

Order on Reconsideration

56. In 2004, the State Associations filed a petition seeking reconsideration of the *Third Report and Order and Fourth NPRM.* The petition asks the Commission: (1) to amend the Note to § 73.3612 of the Commission's rules to, in their view, clarify and strengthen the Commission's pledge to refrain from using Form 395–B data for compliance or enforcement purposes; (2) to address the issue of confidential treatment for Form 395–B; and (3) to issue a Fourth Report and Order resolving issues raised in the *Third Report and Order and Fourth NPRM* and in petitions for reconsideration filed in response to the *Second Report and Order and Third NPRM.* Numerous parties jointly filed an opposition to the petition. We hereby grant the State Associations' petition in part, deny it in part, dismiss it in part, and defer it in part.

57. The State Associations seek an expansion of the Commission's pledge to not use Form 395–B data to assess an individual broadcast licensee's compliance with the EEO rules to read as follows, with their proposed changes shown in italics:

> *Note to § 73.3612:* Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's *or permittee's* compliance with the *nondiscrimination or* equal employment opportunity requirements of § 73.2080. *Accordingly, the Commission will not entertain any allegation or showing that a broadcast licensee or permittee has violated any aspect of § 73.2080 on the basis that the station's workforce does not reflect a certain number of persons of a particular gender, race or ethnicity either overall or in any one or more job categories.*

58. Based on the record stemming from the State Associations' 2004 petition for reconsideration and the determinations made in the *Fourth Report and Order* above, we find it appropriate to make certain changes to the language of § 73.3612 of our rules. With regard to the first of the State Associations' proposed changes, the opposing parties do not object to adding the phrase ''or permittee's,'' and we agree to make that change because permittees also are required to file Form 395–B. We also find that explicitly stating in the rule itself that we will not use Form 395–B data to assess compliance with both the equal employment opportunity requirements *and nondiscrimination* requirements of § 73.2080 of our rules is consistent with our statements in the *Fourth Report and Order* above and with statements made by the Commission over the past two decades.

59. While the opponents to this change argue that we should not categorically limit our discretion to use EEO data as one of many factors in assessing a complaint of discrimination, these same opponents also acknowledge that the ''Note itself, along with the text of [the] *3rd R&O,* make it plain that the FCC will *not* use annual employment data to assess compliance with the EEO rules of any individual broadcast licensee.'' Hence, codifying the limitation is nothing more than memorializing in another form a prohibition that the Commission has had in place for more than 20 years. This approach minimizes confusion about our position. We do not, however, see any need to include the final sentence suggested by the State Associations, as we find that it is essentially a repetition of the preceding sentence now that we have added ''nondiscrimination or'' to the preceding sentence. Finally, to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register, we will now incorporate what currently appears as a Note to § 73.3612 into the rule itself.

60. With regard to the State Associations' petition on the issue of confidential treatment of the Form 395–B data, we respond by adopting the *Fourth Report and Order* above, which reinstates the Form 395–B data collection in a public manner. Most of the remaining issues raised in State Associations' petition for reconsideration of the *Second Report and Order and Third NPRM* are unrelated to the Form 395–B filing requirement and, hence, we defer action on them here because they are beyond the scope of this *Order on Reconsideration.* We dismiss as moot two specific issues raised in the petition: (1) the ability to recruit via the internet, which the Commission addressed in the intervening time period, and (2) a modification to the effective date of the then new rules.

Procedural Matters

61. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of rule and policy changes adopted in the *Fourth Report and Order* on small entities. Additionally, we have prepared a Final Regulatory Flexibility Certification (FRFC) certifying that the rule and policy changes contained in the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

62. *Paperwork Reduction* Act. Final Paperwork Reduction Act Analysis for Fourth Report and Order and Order on Reconsideration in MB Docket No. 98–204. This *Fourth Report and Order* and *Order on Reconsideration* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such changes 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. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of reinstating the collection of information on Form 395–B from broadcasters with five or more full-time employees and adding language to our rules clarifying that restrictions regarding the Commission's use of the collected data protect broadcast permittees as well as licensees. We find that, with respect to businesses with fewer than 25 employees, the paperwork burden associated with the completion and submission of Form 395–B will be minimal and the collection is necessary

to serve the purpose of obtaining complete information on employment trends in the broadcast industry. As it is customary for companies to routinely maintain employee information for various purposes, including payroll, broadcasters should not have to engage in extensive research to complete and submit their Form 395–B.

63. *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 *Fourth Report and Order* and *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Act Analysis (Report & Order)

64. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2021 Further Notice of Proposed Rulemaking (*FNPRM*) to this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *FNPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

65. This *Fourth Report and Order* reinstates the Commission's annual collection of broadcast workforce composition data by race and gender on FCC Form 395–B. We will use the collected data to analyze industry trends and make reports to Congress. Before the form's prolonged suspension beginning in 2001, the Commission made the collected workforce data publicly available. As stated in the *Fourth Report and Order,* we will continue with the public collection and dissemination of the data, which is in alignment with the public interest. Other than the inclusion of a mechanism allowing broadcasters to account in the Form 395–B for those employees who identify as gender non-binary, the reinstated collection does not change the form's reporting requirements. The inclusion of this mechanism, which will allow for accurate data gathering, will incur only a minimal economic impact on a substantial number of small entities.

66. The reinstatement arrives after a significant period of delay in collection, which created a material gap in workforce composition data to be collected and analyzed by the Commission. Without the data, the Commission is prevented from analyzing important industry trends and reporting to Congress its analyses on the broadcast sector. A reinstituted collection of Form 395–B will allow us to carry out the public interest authority of this agency, and to implement section 334 of the Act, which instructs the Commission to collect broadcast workforce data.

B. Legal Basis

67. The *Fourth Report and Order* is authorized under sections 1, 4(i), 4(k), 303(r), 307, 308, 309, 310, 334, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 303(r), 307, 308, 309, 310, 334, and 403.

C. Summary of Significant Issues Raised by Public Comments in Response to IFRA

68. There were no comments in response to IRFA notice.

D. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

69. 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 *FNPRM* in this proceeding.

E. Description and Estimate of the Number of Small Entities to Which the Rules Apply

70. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will 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 government 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

F. Description and Estimate of the Number of Small Entities to Which the Rules Apply

71. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will 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 government 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

72. Television Broadcasting. This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

73. As of September 30, 2023, there were 1,377 licensed commercial television stations. Of this total, 1,258 stations (or 91.4%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates

as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

74. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

75. The Commission estimates that as of September 30, 2023, there were 4,452 licensed commercial AM radio stations and 6,670 licensed commercial FM radio stations, for a combined total of 11,122 commercial radio stations. Of this total, 11,120 stations (or 99.98%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of September 30, 2023, there were 4,263 licensed noncommercial (NCE) FM radio stations. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

76. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

77. In this section, we identify the reporting, recordkeeping and other compliance requirements contained in the *Fourth Report and Order* and consider whether small entities are affected disproportionately by any such requirements. By this *Fourth Report and Order,* broadcasters are required to resume filing Form 395–B, which will be available to the public. The annual filing of Form 395–B will require employment units to upload the form onto the Commission's website. As recognized by the Office of Management and Budget (OMB), the Commission has estimated in the instructions to Form 395–B that the form's paperwork burden is minimal, taking each response, or form, approximately one hour to complete. This estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response. Because this *Fourth Report and Order* contains no new reporting or recordkeeping requirements, other than the incorporation of a mechanism to enable identification of gender non-binary categories, and only resumes the filing of an existing form, the reporting, recordkeeping and other compliance requirements of small entities will be no greater than under the current rules. Additionally, broadcast employment units with less than five full-time employees are exempt from filing statistical data. Because of this minimal reporting burden and due to the fact that smaller station employment units are exempt, we conclude that small entities will not be disproportionately affected by the *Fourth Report and Order.*

H. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

78. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

79. This *Fourth Report and Order* reinstates the collection of broadcaster employment data on Form 395–B. Collection of the Form 395–B was suspended in 2001 following two decisions by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating certain aspects of the Commission's equal employment opportunity rules. This suspension had no relation to the impact of the collection on small entities. As noted above, the filing requirement of Form 395–B importantly does not apply to broadcast employment units with less than five full-time employees, thereby exempting a large group of smaller entities from the filing requirements. The *Fourth Report and Order* only leads to a resumption of data collection efforts and imposes no new requirements for which the Commission can find alternatives that would minimize the economic burden on small entities.

I. Report to Congress

80. 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 & Order and Order on Reconsideration to Congress

and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Certification Analysis (Order on Reconsideration)

81. For the reasons described below, we now certify that the policies and rules adopted in the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. 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.

82. In this *Order on Reconsideration,* we make certain changes to the language of § 73.3612 to clarify our collection and use of Form 395–B data. We add language to the rule confirming that the collection of Form 395–B data, and restrictions on the use of the data, also applies to broadcast permittees. The *Order on Reconsideration* adds an explicit statement to its rules that it will not use Form 395–B data to assess compliance with both the equal employment opportunity requirements and nondiscrimination requirements of § 73.2080. We find that this statement is consistent with our statements in the *Fourth Report and Order* and other previous statements made by the Commission over the past two decades.

83. The changes from the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities because such changes do not alter the type or extent of information collected under Form 395–B. Rather, the *Order on Reconsideration* does nothing more than memorialize in another form a prohibition that the Commission has had in place for more than 20 years. Therefore, we certify that the changes provided in the *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *Order on Reconsideration,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Fairness Act of 1996.

Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(k), 303(r), 307, 308, 309, 310, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 303(r), 307, 308, 309, 310, 334, 403, and 554, this *Fourth Report and Order* and *Order on Reconsideration is adopted.*

85. *It is further ordered* that this *Fourth Report and Order* and *Order on Reconsideration shall be effective* 30 days after publication in the **Federal Register**. Compliance with § 73.3612 of the Commission's rules, 47 CFR 73.3612, which may contain new or modified information collection requirements, will not be required until the Office of Management and Budget completes review of any information collection requirements that the Office of Management and Budget determines is required under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the compliance date for the *Fourth Report and Order* and *Order on Reconsideration* by subsequent Public Notice.

86. *It is further ordered* that the Joint Petition of the State Broadcasters Associations for Reconsideration and/or Clarification of the Third Report and Order and Fourth NPRM, MM Docket No. 98–204 (filed July 23, 2004), is *granted in part, denied in part, dismissed in part*, and *deferred in part.*

87. *It is further ordered* that the Media Bureau is hereby directed to make the necessary changes to Form 395–B to provide for inclusion of gender non-binary information.

88. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Fourth Report and Order* and *Order on Reconsideration,* including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

89. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this *Fourth Report and Order* and *Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Marlene Dortch,

Secretary.

Final Rules

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

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Revise § 73.3612 to read as follows:

§ 73.3612 Annual employment report.

Each licensee or permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more full-time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395–B. Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's or permittee's compliance with the nondiscrimination or equal employment opportunity requirements of § 73.2080. Compliance with this section will not be required until this sentence is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of any information collection requirements pursuant to the Paperwork Reduction Act or until after the Office of Management and Budget determines that such review is not required.

[FR Doc. 2024–09468 Filed 5–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–380; RM–11968; DA 24–381; FR ID 216242]

Television Broadcasting Services Missoula, Montana.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by Sinclair Media Licensee, LLC (Petitioner or Sinclair), the licensee of KECI–TV (Station or KECI–TV), channel 13, Missoula, Montana (Missoula). The Station is currently operating on channel 13, and in 2021, the Bureau granted Sinclair's request to substitute UHF channel 20 for VHF channel 13 at Missoula in the Table of TV Allotments (Table). Sinclair currently holds a construction permit to modify its facility to operate on channel 20 and has petitioned for the substitution of channel 21 for channel 20 at Missoula in the Table. Sinclair filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its present intention to apply for a construction permit to build the Station's facilities on channel 21 and to promptly construct such facilities.

DATES: Effective May 3, 2024.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov,* or Mark Colombo, Media Bureau, at (202) 418–7611 or *Mark.Colombo@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 80256 on November 17, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 21. No other comments were filed.

The Bureau believes the public interest would be served by substituting channel 21 for channel 20 at Missoula. As explained in the Petition, at the same time Sinclair requested and was granted the substitution of channel 20 for channel 13 at Missoula, it also requested and was granted the substitution of UHF channel 20 for VHF channel 6 for co-owned station KTVM–TV, Butte, Montana (Butte). As a result, both KTVM–TV and KECI–TV would operate on a co-channel basis, and Sinclair had determined that predicted interference from both stations operating on channel 20 would affect less than 1 percent of the populations within the noise limited service contours (NLSC) of each station. When the Bureau granted the substitution of channel 20 for channel 13 at Missoula, it also found that the proposed channel 20 facility had a predicted service population of 227,295 persons, a net gain of potential viewers over the existing KECI–TV channel 13 facility. Sinclair now explains, however, that in preparing to construct the new facilities on channel 20 for both stations, its local engineering staff determined that despite the predictions, the actual interference consequences of both stations operating on channel 20 at Missoula and Butte would result in a more significant number of persons receiving interference, and that the interference would not be localized but spread throughout large portions of the KTVM–TV and KECI–TV service areas. An analysis provided by the Petitioner indicates that operation of KECI–TV on channel 21 instead of channel 13 would result in a net gain in persons within the Station's NLSC receiving interference-free service, as well as an increase in the population that would receive interference-free service if the Station were to remain on the currently-allotted channel 20.

We also find that the proposal complies with all relevant technical requirements for amendment of the Table of TV Allotments, including the interference protection requirements of § 73.622(a) of the rules, and further demonstrates that the proposed channel 21 facility will provide full principal community coverage to Missoula as required by § 73.618 of the rules. Moreover, the proposed channel substitution would not cause any additional loss of service, which we have already found to be *de minimis,* will increase the population within both KECI–TV's and KTVM–TV's NLSCs that will receive interference-free service, and resolve co-channel interference issues caused by the stations' approved co-channel operation.

As proposed, channel 21 can be substituted for channel 20 at Missoula in compliance with the principal community coverage requirements of § 73.618(a) of the rules, at coordinates 47–01′–04.0″ N and 114–00′–50.0″ W. The proposed facility is located within the Canadian coordination zone and concurrence from the Canadian government has been obtained for this allotment.

In addition, we find that this channel change meets the technical requirements set forth in § 73.622(a) of the rules.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 23–380; RM–11968; DA 24–381, adopted April 23, 2024, and released April 23, 2024. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

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

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICE

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

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

■ 2. In § 73.622, in paragraph (j), amend the Table of TV Allotments, under Montana, by revising the entry for Missoula to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Montana	
* * * * *	
Missoula	*11, 21, 23, 25
* * * * *	

[FR Doc. 2024–09658 Filed 5–2–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 87
Friday, May 3, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM–2024–0010]

RIN 3206–AO67

Prevailing Rate Systems; Redefinition of the Arapahoe-Denver, Colorado, Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to remove Denver County, CO, from the Arapahoe-Denver, CO, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. In addition, OPM proposes to change the name of the Arapahoe-Denver NAF FWS wage area to Arapahoe. These changes are necessary because no NAF FWS employment has been reported in Denver County since 2018.

DATES: Send comments on or before June 3, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *paypolicy@opm.gov.*

SUPPLEMENTARY INFORMATION: Under 5 CFR 532.219, OPM may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, a local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Arapahoe-Denver, CO, NAF wage area is presently composed of two survey area counties, Arapahoe and Denver Counties, CO, and one area of application county, Mesa County, CO. The Department of Defense (DOD) notified OPM that the Defense Finance Cafeteria that was located in Denver County closed in 2010 and the Denver Outpatient Clinic moved to Arapahoe County in 2018. This leaves no NAF FWS employment in Denver County. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, Denver County should not be defined as part of an NAF wage area.

With the removal of Denver County, the renamed Arapahoe wage area would consist of one survey county, Arapahoe County, CO, and one area of application county, Mesa County, CO. DOD indicates that there are about 65 NAF FWS employees working in the survey area, and the area has a local activity, Buckley Space Force Base, capable of hosting the wage survey. There are also 4 NAF FWS employees in Mesa County.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Expected Impact of This Proposed Rule

Under 5 U.S.C. 5343, OPM has the authority and responsibility to define the boundaries of NAF FWS wage areas. Any changes in wage area definitions can have the long-term effect of increasing pay for Federal employees in affected locations. OPM expects this proposed rule will have no impact on approximately 69 NAF FWS employees. OPM does not anticipate this proposed rule will substantially impact local economies or have a large impact in local labor markets. However, OPM is requesting comment in this proposed rule regarding the impact. As this and future wage area changes may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets, OPM will continue to study the implications of such impacts in this or future rules as needed.

Regulatory Review

OPM has examined the impact of this rulemaking as required by Executive Orders 12866, 13563, and 14094, which 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). OMB has determined that this rulemaking is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rulemaking in accordance with Executive Order 13132, Federalism, and has determined that this proposed rule will not have any negative impact on the rights, roles and responsibilities of state, local, or tribal governments.

Civil Justice Reform

This rulemaking meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rulemaking 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 year, 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.

Paperwork Reduction Act of 1995

This rulemaking does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office Of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listing for the State of Colorado to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS

* * * * *

COLORADO

Arapahoe

Survey Area

Colorado:

Arapahoe

Area of Application. Survey area plus:

Colorado:

Mesa

El Paso

Survey Area

Colorado:

El Paso

Area of Application. Survey area plus:

Colorado:

Bent

Otero

Pueblo

* * * * *

[FR Doc. 2024–09669 Filed 5–2–24; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE TREASURY

United States Mint

31 CFR Part 100

Exchange of Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of proposed rule.

SUMMARY: The United States Mint proposes to remove its regulations relating to the exchange of bent and partial coin. The proposed removal will end the exchange program for bent and partial coin. This document also withdraws the notice of proposed rulemaking relating to these same regulations that was published in the **Federal Register** for May 5, 2021.

DATES:

Comment due date: July 2, 2024.

Withdrawal: As of May 3, 2024 the proposed rule published May 5, 2021, at 86 FR 23877 is withdrawn.

ADDRESSES: The United States Mint invites comments on all aspects of this proposed revision. You may send comments by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for sending comments.
- *Mail:* Submit all written comments to Mutilated Coin Redemption Program; Manufacturing Directorate; United States Mint; 801 9th Street NW; Washington, DC 20220.
- *Hand Delivery/Courier:* Same as mail address.

Instructions: All submissions received must include the agency name for this rulemaking. All comments received will be posted without change to regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Apryl Whitaker, Senior Legal Counsel, Office of the Chief Counsel, United States Mint, at (202) 354–7938 or *rulemaking@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Treasury regulations appearing at 31 CFR 100.11, are promulgated under 31 U.S.C. 5120, and relate to the exchange of bent and partial coin. The last amendment to 31 CFR part 100, subpart C, was on December 20, 2017. On May 5, 2021, the United States Mint issued a notice of proposed rulemaking, proposing certain revisions to these regulations (86 FR 23877). Since then, the United States Mint has decided to close the bent and partial coin exchange program.

II. This Proposed Rule

For many years, the United States Mint has redeemed bent and partial coins for full face value. However, in recent years, the volume of coins submitted for possible redemption has greatly increased, and there is no practical way for the United States Mint to expand the resources devoted to the program to meet the full level of demand. This is particularly true where submissions must be carefully evaluated to ensure that counterfeit coins are not accepted to the program and where the condition of many coins, particularly large volumes of coins damaged by recycling or industrial processes, makes authentication difficult and time-consuming. An increasing number of counterfeits has been identified in imported coins intercepted by law enforcement in recent years, as well in as several large submissions to the Mutilated Coin Redemption Program. The United States Mint Philadelphia facility's capacity to process mutilated coins is limited by physical storage capacity, caseload complexity, and workload. Authentication procedures require extensive time and resources. The United States Mint has dedicated substantial time and resources to the bent and partial coin exchange program, in addition to operating the program at a loss by paying out face value for redemptions. With the closure of the exchange program, these resources could instead be redirected toward the United States Mint's core mission of manufacturing and distributing circulating, precious metal, and collectible coins and national medals, and providing security over assets entrusted to the United States Mint.

The melting of dimes, quarters, half-dollar, and dollar coins is not regulated by the United States Mint. The public may melt and reuse certain coins consistent with 31 CFR part 82. While there is a prohibition against melting pennies and nickels, there is a specific exception at 31 CFR 82.2 for coins melted or treated incidental to recycling other materials if (1) the coins were not added to the other materials for their metallurgical value, (2) the volumes of the coins, relative to the volumes of the other materials recycled, makes it clear that the presence of such coins is merely incidental, and (3) the separation of the coins from the other materials would be impracticable or cost prohibitive. See 31 CFR 82.2(c). This exception extends to the melting of coins that become mutilated due to treatment that is itself within the scope of the exception. If an

exception does not apply, then applications for licenses to melt pennies and nickels should be transmitted to the Director, United States Mint; 801 9th Street NW; Washington, DC 20220. See 31 CFR 82.2(f).

III. Procedural Analysis

Regulatory Planning and Review

The Office of Management and Budget has determined that this proposed rule does not constitute a ''significant regulatory action'' under Executive Order 12866, as amended.

Regulatory Flexibility Act Analysis

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the United States Mint is sensitive to the impact its rules may impose on small entities. In this case, the United States Mint believes that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). First and foremost, the regulations do not directly regulate any entities. The redemption of bent and or partial coins is a discretionary service offered to the public; participation is voluntary. Comments are requested on whether the proposed rule would have a significant economic impact on a substantial number of small entities.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the United States Mint has reviewed the proposed regulation. While the United States Mint believes that the proposed rule—or in this case—the removal thereof, likely would not have a significant economic impact on a substantial number of small entities given that the regulations do not directly regulate any entities, the United States Mint has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603. The United States Mint will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

The regulations at 31 CFR part 100, subpart C, are promulgated under 31 U.S.C. 5120, and provide for the exchange of uncurrent, bent, partial, fused, and mixed coins. For the reasons discussed in this preamble, the United States Mint has decided to close the bent and partial coin exchange program, which is a discretionary program that is not mandated by law.

2. Small Entities Affected by the Proposed Rule

The number of entities tendering significant quantities of coins for redemption in the past has been small. A large number of entities redeeming coins in the past were individuals—not businesses. A wide variety of businesses, such as municipal entities, recyclers, coin processors, amusement parks, auto shops, and waste management companies have applied for coins to be redeemed in the past. The United States Mint invites information and comment on the number of small entities to which the proposed rule would apply and the extent to which the proposed rule may affect them, including any costs such as lost revenue.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The United States Mint has not identified any reporting, recordkeeping, or other compliance requirements associated with the proposed rule.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The United States Mint has not identified any Federal rules that duplicate, overlap, or conflict with the proposed rule. The United States Mint seeks comment regarding any statutes or regulations that would duplicate, overlap, or conflict with the proposed rule or in this case—the removal thereof.

5. Significant Alternatives to the Proposed Rule

The United States Mint considered alternatives to the proposed regulations. For example, the United States Mint considered re-opening the program under the new parameters identified in the May 5, 2021, **Federal Register** notice (86 FR 23877), proposing certain revisions to these regulations that would establish weight and shipment limits per participant and would prohibit the submission of certain kinds of coins or coins with certain kinds of damage. Re-opening the program—even with these restrictions—would entail costs to the United States Mint. Further, the volume of coins submitted for possible redemption has greatly increased over the years, and there is no practical way for the United States Mint to expand the resources devoted to the program to meet the full level of demand. In response to the United States Mint's May 5, 2021, **Federal Register** Notice (86 FR 23877), several commenters expressed concern with the proposed 1,000 lb. per month submission limit, indicating that businesses have large volumes of coins to be redeemed that well exceed the monthly or annual limit. For example, one vendor alone indicated that at a rate of 1,000 lbs. per month, it would take over seven years just to redeem a portion of its inventory. The prior rulemaking indicated that, under these limits, participants would not be guaranteed the right to submit 1,000 lbs. per month; nor would the United States Mint have capacity even at this low rate to evaluate more than a small number of submissions per month.

The United States Mint considered re-opening the program for a short, limited time period under the new parameters identified in the May 5, 2021, **Federal Register** notice (86 FR 23877) with a published sunset date to allow those who have stored their mutilated coins in anticipation of the program reopening to submit their mutilated coins. It is clear, however, that there is no practical way for the United States Mint to expand the resources devoted to the program to meet the full level of demand, even for a limited time.

IV. Request for Comment

Before the proposed removal of the Treasury regulations at 31 CFR 100.11 are adopted as final regulations, the United States Mint will consider any comments that are submitted to the bureau as prescribed in this preamble under the **DATES** and **ADDRESSES** sections. The United States Mint and the Department of the Treasury request comments on all aspects of the proposed revisions to these regulations and the end of the exchange program.

List of Subjects in 31 CFR Part 100

Coins.

For the reasons set forth in the preamble, the United States Mint proposes to amend 31 CFR part 100 as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

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

Authority: 31 U.S.C. 321.

§ 100.11 [Removed and Reserved]

■ 2. Remove and reserve § 100.11.

■ 3. Amend § 100.12 by revising paragraph (b) to read as follows:

§ 100.12 Exchange of fused or mixed coin.

* * * * *

(b) Fused and mixed coins. The United States Mint will not accept fused or mixed coins for redemption.

§ 100.13 [Amended]

■ 4. Amend § 100.13 by:
■ a. Removing paragraph (a);
■ b. Redesignating paragraphs (b) through (d) as paragraphs (a) through (c), respectively; and
■ c. In newly redesignated paragraph (b), removing the phrase ''to any bent or partial''.

Ventris C. Gibson,

Director, United States Mint.

[FR Doc. 2024–09453 Filed 5–2–24; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

[Docket ID: USN–2024–HQ–0002]

RIN 0703–AB19

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This rule proposes to remove existing general information about the professional responsibility requirements of attorneys practicing under the cognizance and supervision of the Judge Advocate General (JAG) and includes a new requirement for all non-U.S. Government attorneys to file a notice of appearance before appearing in any matter for which the JAG is charged with supervising the provision of legal services. It also proposes to remove existing content relating to the Rules of Professional Conduct and replaces it with complaint processing procedures.

DATES: Comments will be accepted until July 2, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) number and title, by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this document. The general policy is for submissions to be made available for public viewing at *http://www.regulations.gov* without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: CDR Matthew Bailey, Office of the Judge Advocate General (Administrative Law), Department of the Navy, 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 703–614–4386.

SUPPLEMENTARY INFORMATION:

Background

This rule was promulgated on September 1, 1994; amended on March 21, 2000; and further amended on November 4, 2015.

Changes Proposed in This Rule

DoD/Navy is proposing to remove three of the current part's five subparts which do not affect the public and update two others to bring them into compliance with the current Judge Advocate General (JAG) Instruction pertaining to this subject matter, JAG Instruction 5803.1 (Series), ''Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General (JAG)'' (available at *www.jag.navy.mil*).

The three subparts that are proposed to be removed (Subparts C, D, and E) concern internal Navy processes that are currently memorialized in JAG Instruction 5803.1 (series) (*https://www.jag.navy.mil/library/instructions/JAGINST_5803-1E.pdf*).

The proposed revision of Subpart A (General) removes existing general information about the professional responsibility requirements of attorneys practicing under the cognizance and supervision of the JAG and includes a new requirement for all non-U.S. Government attorneys to file a notice of appearance before appearing in any matter for which the JAG is charged with supervising the provision of legal services.

The proposed revision of Subpart B (Rules of Professional Conduct) removes existing content relating to the Rules of Professional Conduct and replaces it with a revised version of current Subpart C (Complaint Processing Procedures). The proposed revision of Subpart B (Rules) includes new content relating to processing professional responsibility complaints, interim suspensions of attorneys, ethics investigations, effect of separate proceedings, public notice, and requests for reinstatement.

Legal Authority for This Regulatory Action

Title 10 U.S.C. 806 grants the JAG the authority to assign judge advocates for duty and requires the JAG to make frequent inspections in the field in supervision of the administration of military justice. Title 10 U.S.C. 806a provides that the President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of military judges. Title 10 U.S.C. 826 prescribes the qualifications for military judges in the armed forces. Title 10 U.S.C. 827 sets forth the requirements for the detail of trial counsel and defense counsel in the armed forces. Title 10 U.S.C. 1044 authorizes the Secretaries of the military departments to provide legal assistance to servicemembers and their dependents. The Manual for Courts-Martial, United States, 2019, is the official guide to the conduct of courts-martial in the U.S. armed forces (available at *https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20(Final)%20(20190108).pdf?ver=2019-01-11-115724-610*). The U.S. Navy Regulations, 1990 is the principal regulatory document of the Department of the Navy, endowed with the sanction of law, as to duty, responsibility, authority, distinctions and relationships of various officials, organizations and individuals (available at *https://www.secnav.navy.mil/doni/navyregs.aspx*). Department of Defense Instruction 1442.02 (series), ''Personnel Actions Involving Civilian Attorneys'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/144202p.pdf*), prescribes Department of Defense policy for personnel actions involving civilian attorneys and outside assignments of attorneys from the Department of Defense Office of the General Counsel and Defense Legal Services Agency. Secretary of the Navy Instruction 5430.27 (series), ''Responsibility Of The Judge Advocate General Of The Navy And The Staff Judge Advocate To The Commandant Of The Marine Corps For Supervision And Provision Of Certain

Legal Services'' (available at *https://www.secnav.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05400%20Organization%20and%20Functional%20Support%20Services/5430.27E.pdf*), prescribes the responsibilities of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps for the supervision and provision of certain legal services. JAG Instruction 5803.1 (series) establishes rules of professional conduct for attorneys practicing under the cognizance of the Judge Advocate General of the Navy, establishes procedures for filing complaints of professional misconduct, and prescribes procedures for engaging the outside practice of law.

Expected Impact of the Proposed Rule

This rule impacts non-U.S. Government attorneys representing clients in matters under the cognizance of the Judge Advocate General of the Navy. Clients who obtain non-USG attorneys to represent them in matters for which the JAG is charged with supervising the provision of legal services will incur costs relating to the amount of time required for their counsel to prepare and file a notice of appearance. The cost will vary widely depending on the charged rate of the attorney in question and the time required to prepare the notice. For purposes of estimating the costs involved, it is reasonable to use the mean hourly wage for lawyers as informed by the Bureau of Labor and Statistics, $78.74. Because the Navy does not keep a log of the numbers of civilian attorneys privately hired to represent individual clients in litigation that would be subject to the new notice of appearance requirement, the net cost to the public cannot readily be quantified. Generally, the time required for an attorney to prepare and file a notice of appearance in a case should not exceed one hour. Thus, a reasonable quantifiable cost to attorneys to file such notice should be the cost of one billable hour.

Additionally, the proposed revision will affect members of the public who would benefit from being aware of the professional responsibility complaint procedures that cover attorneys who practice under the cognizance of the Judge Advocate General of the Navy. It is standard practice of most tribunals to require a filing of a notice of appearance for attorneys who are not otherwise certified to practice before such tribunals. Navy believes the removal of Subparts C, D, and E offsets the costs of preparing and filing a notice of appearance by reducing the amount of time required for lawyers to read and understand the requirements.

Regulatory Reviews

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866, as amended by 14094 (88 FR 21879, April 11, 2023), 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, distribute 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 is not a ''significant regulatory action'' under Executive Order 12866.

Congressional Review Act

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

This rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

Regulatory Flexibility Act

The DON certifies that this action is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed rule does not impose any mandates on small entities.

Executive Order 13132: Federalism

The DON has determined that this action does not contain policies with Federalism or ''takings'' implications as those terms are defined in Executive Order 13132 and Executive Order 12630, respectively.

List of Subjects in 32 CFR Part 776

Administrative practice and procedure; Conflict of interests; Government employees; Lawyers.

Accordingly, 32 CFR part 776 is proposed to be revised to read as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

Sec.

Authority: 10 U.S.C. 806, 806a, 826, 827, 1044.

Subpart A—General

§ 776.1 Notice of appearance.

All non-U.S. Government (USG) attorneys must file a notice of appearance before making any appearance representing an individual in a matter for which the Judge Advocate General (JAG) is charged with supervising the provision of legal services. This notice of appearance must:

(a) State the jurisdiction(s) in which they are licensed and eligible to practice law,

(b) Certify that they are in good standing with each jurisdiction,

(c) Certify that they are not subject to any order disbarring, suspending, or otherwise restricting them in the practice of law, and

(d) State that they understand they are subject to the provisions of JAG Instruction (JAGINST) 5803.1 (series) (Professional Conduct of Attorneys Practicing under the Cognizance and Supervision of the Judge Advocate General), including those on professional disciplinary action. Each notice of appearance must be maintained in the official record of the proceeding.

Subpart B—Complaint Processing Procedures

§ 776.2 Policy.

(a) It is the JAG's policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys under JAG supervision.

(b) Rules Counsel approval will be obtained before conducting any formal investigation into an alleged violation of the Rules of Professional Conduct set forth in JAGINST 5803.1 (series) (''the Rules''), or the American Bar Association (ABA) Model Code of Judicial Conduct (''the Code of Judicial Conduct''). The Rules Counsel (as designated per JAGINST 5803.1 (series)) will notify the JAG prior to the commencement of any investigation. Any investigation into alleged violations of the Rules will be conducted according to the procedures set forth in this enclosure.

§ 776.3 Related investigations and actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, mismanagement, poor performance of duty, or a combination of all four. Care must be taken to characterize appropriately the nature of a covered attorney's conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of the JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with JAGINST 5803.1 (series), that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney's commander through the disciplinary process provided under the Uniform Code of Military Justice (UCMJ) and implementing regulations, or through referral to appropriate civil authority.

(c) Allegations of mismanagement are properly addressed by the covered USG attorney's reporting senior. Mismanagement involves any action or omission, either intentional or negligent, which adversely affects the efficient and effective delivery of legal services, any misuse of government resources (personnel and material), or any activity contrary to operating principles established by Navy regulations or JAG policy memoranda.

(d) Poor performance of duty is properly addressed by the covered USG attorney's reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

(e) Prior JAG approval is not required to investigate allegations of criminal conduct, mismanagement, or poor performance of duty involving covered attorneys. When, however, investigations into criminal conduct, mismanagement, or poor performance reveal conduct that constitutes a violation of JAGINST 5803.1 (series) or of the Code of Judicial Conduct in the case of judges, such conduct shall be reported to the Rules Counsel immediately.

(f) Generally, professional responsibility complaints will be processed in accordance with JAGINST 5803.1 (series) upon receipt. Rules Counsel may, however, on a case-by-case basis, delay such processing to await the outcome of pending related criminal, administrative, or investigative proceedings.

(g) Nothing in this part or JAGINST 5803.1 (series) prevents a military judge or other appropriate official from removing a covered attorney from acting in a particular court-martial or prevents the JAG, the Staff Judge Advocate (SJA) to the Commandant of the Marine Corps (CMC), or the appropriate official from reassigning a covered attorney to different duties prior to, during, or subsequent to proceedings conducted under the provision of JAGINST 5803.1 (series).

§ 776.4 Informal complaints.

Informal, anonymous, or ''hot line'' type complaints alleging professional misconduct must be referred to the appropriate authority (such as the JAG Inspector General (IG) or the concerned supervisory attorney) for inquiry. Such complaints are not, by themselves, cognizable under JAGINST 5803.1 (series) but may, if reasonably confirmed, be the basis of a formal complaint described in § 776.5.

§ 776.5 The complaint.

(a) The complaint shall:

(1) Be in writing, signed (by hand or electronically), and offered to any superior to the subject of the complaint;

(2) Demonstrate that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of the Rules or the Code of Judicial Conduct or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) Contain a complete, factual account of the acts or omissions constituting the substance of the complaint, as well as a description of any attempted resolution with the covered attorney concerned. Supporting statements and documentation, if any, should be attached to the complaint.

(b) Forwarding a document that contains the information required in paragraphs (a)(2) and (3) of this section (*e.g.,* a command investigation or non-judicial punishment package) can also serve as a complaint under this part.

(c) A complaint may be initiated by any person.

§ 776.6 Initial screening.

(a) *Receipt of complaint.* Complaints involving conduct of a Navy or Marine Corps trial or appellate judge shall be forwarded to the Office of the Judge Advocate General (OJAG) (Code 05). All other complaints shall be forwarded to OJAG (Code 13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of the SJA to CMC, to Research and Civil Law Branch, Judge Advocate Division, Headquarters Marine Corps (JAR). In cases involving Marine Corps judge advocates, including trial and appellate judges, where the SJA to CMC is not the Rules Counsel, the cognizant Rules Counsel (per JAGINST 5803.1 (series)) will notify the SJA to CMC when a complaint is received. OJAG (Code 05), OJAG (Code 13), and JAR shall log all complaints received.

(b) *Review for compliance and sufficiency.* The cognizant Rules Counsel shall initially review the complaint to determine whether it complies with the requirements set forth in § 776.5. Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to OJAG (Code 05), OJAG (Code 13), or JAR. If the complaint is not corrected or completed and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. OJAG (Code 05), OJAG (Code 13), and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint.

(1) *Summary dismissal.* Upon initial review of a complaint, the cognizant Rules Counsel may summarily dismiss the complaint if the Rules Counsel determines the JAG does not have

jurisdiction or the complaint, on its face, fails to establish probable cause to believe a violation of the Rules or the Code of Judicial Conduct has occurred. A dismissal letter will be sent to the complainant. If, in the judgment of the Rules Counsel, it is deemed necessary, a copy of the dismissal letter and the complaint will be sent to the covered attorney for information purposes. There is no appeal from a summary dismissal. The SJA to the CMC may delegate this authority to the Deputy SJA to the CMC. No other delegations are authorized.

(c) *Initial notice and opportunity to comment.* If Rules Counsel determines that the complaint complies with JAGINST 5803.1 (series) and contains sufficient evidence to believe probable cause to establish a violation of that instruction may exist, the covered attorney shall receive notice and an opportunity to comment. OJAG (Code 05), OJAG (Code 13), and JAR will ensure a copy of the complaint and allied papers are provided to the covered attorney who is the subject of the complaint. Service of the formal complaint and other materials on the covered attorney must be accomplished through personal service, registered/certified mail sent to the covered attorney's last known address reflected in official Navy and Marine Corps records or in the records of the State bar(s) that licensed the attorney to practice law, or email sent in a manner that verifies receipt by the covered attorney. The covered attorney's supervisory attorney must also be provided notice of the complaint. The covered attorney concerned may elect to provide an initial statement, within 10 calendar days from receipt, regarding the complaint for the Rules Counsel's consideration. The covered attorney will promptly inform OJAG (Code 05), OJAG (Code 13), or JAR if he or she intends not to submit any such statement.

(d) *Rules counsel review.* Complaints, and any statement submitted by the covered attorney concerned, shall be further reviewed by the cognizant Rules Counsel to determine whether the complaint establishes probable cause to believe that a violation of the Rules or the Code of Judicial Conduct has occurred.

(1) The cognizant Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe a violation has occurred. The Rules Counsel shall notify the complainant, the covered attorney concerned, and the supervisory attorney, that the file has been closed. OJAG (Code 05), OJAG (Code 13), and JAR will maintain copies of all correspondence related to the closing of the file.

(2) The cognizant Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision, to include a brief summary of the case, to the JAG. (In cases relating to Marine Corps judge advocates, including trial and appellate judges, in which the SJA to CMC is not the cognizant Rules Counsel, an information copy shall be forwarded to the SJA to CMC.) The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and the supervisory attorney that the file has been closed. OJAG (Code 05), OJAG (Code 13), and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, State, or local licensing authority requires reporting of such action.

(3) If the Rules Counsel determines there is probable cause to believe a violation of the Rules or the Code of Judicial Conduct has occurred, and the violation is not of a minor or technical nature, the Rules Counsel shall notify the JAG, forward the complaint as delineated in § 776.7, and cause an ethics investigation to be conducted in accordance with § 776.9 of this part. (In cases relating to Marine Corps judge advocates, including trial and appellate judges, in which the SJA to CMC is not the cognizant Rules Counsel, the SJA to CMC shall also be notified.)

§ 776.7 Processing the complaint.

(a) The cognizant Rules Counsel shall forward the complaint, a Rules violation sheet describing the specific alleged violations, and any allied papers, as follows:

(1) In cases involving a military trial judge, if practicable, to a covered attorney with experience as a military trial judge (normally senior to the covered attorney complained of and not previously involved in the case) and assign the officer to conduct an ethics investigation into the matter;

(2) In cases involving a military appellate judge, if practicable, to a covered attorney with experience as a military appellate judge (normally senior to the covered attorney complained of and not previously involved in the case) and assign the officer to conduct an ethics investigation into the matter;

(3) In all other cases, to such covered attorney as the cognizant Rules Counsel may designate (normally senior to the covered attorney complained of and not previously involved in the case), and assign the officer to conduct an ethics investigation into the matter.

(b) The Rules Counsel shall provide notice of the complaint (if not previously informed) as well as notice of the ethics investigation:

(1) To the covered attorney against whom the complaint is made as well as the supervisory attorney;

(2) In cases involving a covered USG attorney on active duty or in civilian Federal service, to the commanding officer, or equivalent, of the covered USG attorney concerned;

(3) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Commander, NLSC;

(4) In cases involving Navy attorneys serving in Marine Corps units, involving Marine Corps attorneys serving in Navy units, or involving Marine Corps trial and appellate judges, to the SJA to CMC (Attn: JAR);

(5) In cases involving trial or appellate court judges, to either the Chief Judge, Navy-Marine Corps Trial Judiciary or Chief Judge, Navy-Marine Corps Court of Criminal Appeals, as appropriate; and

(6) In cases involving covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services, to the appropriate military service attorney discipline section.

§ 776.8 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a ''substantial threat of irreparable harm'' include, but are not limited to:

(1) When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney's fitness to practice law, and where substantial evidence exists to support the charge;

(2) When engaged in the unauthorized practice of law (*e.g.,* failure to maintain good standing in accordance with JAGINST 5803.1 (series)); or

(3) When unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, the JAG may order

the covered attorney to show cause why he or she should not face interim suspension pending completion of an ethics investigation. The covered attorney shall have 10 calendar days in which to respond. Notice of the show cause order shall be provided as outlined in § 776.7(b) of this part.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice, the JAG may direct an interim suspension of the covered attorney's certification under Articles 26(b) or 27(b), UCMJ, or Rule for Courts-Martial (R.C.M.) 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under JAGINST 5803.1 (series). Notice of such action shall be provided as outlined in § 776.7(b).

(d) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of the JAG's imposition of interim suspension.

(e) Any ethics investigation involving a covered attorney who has been suspended pursuant to this rule shall proceed and be concluded without appreciable delay. However, the JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, the JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension as well as those officials outlined in § 776.7(b). Where necessary, continuation of the interim suspension shall be reviewed by the JAG every 6 months.

§ 776.9 Ethics investigation.

(a) *Investigation.* The purpose of the ethics investigation is to determine whether, by clear and convincing evidence, in the opinion of the officer appointed to conduct the investigation (the investigating officer, or IO), the questioned conduct occurred and, if so, whether clear and convincing evidence demonstrates that such conduct constitutes a violation of the Rules or the Code of Judicial Conduct. The IO is to recommend appropriate action in cases of substantiated violations. Upon receipt of the complaint, the IO shall promptly investigate the allegations, generally following the format and procedures set forth in the Manual of the Judge Advocate General (JAGMAN) for the conduct of command investigations. Reports of relevant investigations by other authorities including, but not limited to, the command, the Inspector General, and State licensing authorities should be used. The IO should also identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable, and identify, gather, and preserve all other relevant and material evidence.

(b) *Notice.* When an ethics investigation is initiated, the covered attorney concerned shall be so notified, in writing, by the Rules Counsel as outlined in § 776.7(b). The covered attorney concerned will be provided written notice of the following rights in connection with the ethics investigation:

(1) To request a hearing before the IO;

(2) To inspect all evidence gathered;

(3) To present written or oral statements or materials for consideration;

(4) To call witnesses at his or her own expense (local military witnesses should be made available at no cost);

(5) To be assisted by counsel (see paragraph (c) of this section);

(6) To challenge the IO for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and

(7) To waive any or all of these rights. Failure to affirmatively elect any of the above rights within 10 days of receipt of notice shall be deemed a waiver by the covered attorney.

(c) *Opportunity to be heard.* If a hearing is requested, the IO will conduct the hearing after reasonable notice to the covered attorney concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Neither the Federal nor Military Rules of Evidence apply. The covered attorney concerned or his or her counsel may question witnesses that appear. The proceedings shall be recorded but no transcript of the hearing need be made. The covered attorney may be represented by counsel at the hearing. Such counsel may be:

(1) A civilian attorney retained at no expense to the Government; or

(2) In the case of a covered USG attorney, another USG attorney:

(i) Detailed by the cognizant Defense Services Office (DSO), Law Center, or Legal Service Support Section (LSSS); or

(ii) Requested by the covered attorney concerned, if such counsel is deemed reasonably available in accordance with the provisions regarding individual military counsel set forth in Chapter I of the JAGMAN. There is no right to detailed counsel if requested counsel is made available.

(d) *Assistants.* The IO may appoint and use such assistants as may be necessary to conduct the ethics investigation.

(e) *Report.* The IO shall prepare a report which summarizes the evidence, to include information presented at any hearing.

(1) If the IO believes that no violation has occurred or, by clear and convincing evidence, that the violation has occurred but the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the IO believes by clear and convincing evidence that a violation did occur, and that corrective action greater than counseling is warranted, he or she shall:

(i) Provide his or her detailed findings of fact and opinions, based on the findings of fact, on which Rules the covered attorney violated;

(ii) Recommend appropriate disciplinary action; and

(iii) Forward the ethics investigation to the Rules Counsel with a copy to the attorney investigated.

(f) *Rules counsel review.* The Rules Counsel shall review all ethics investigations. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the IO, or to another IO, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own independent review of the investigation, that a violation of the Rules or the Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously notified of the complaint. OJAG (Code 05), OJAG (Code 13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own independent review of the investigation, that a violation of the Rules or the Code of Judicial Conduct has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and

close the file. The Rules Counsel shall report any such decision, to include a brief summary of the case, to the JAG. (In cases relating to Marine Corps judge advocates, including trial and appellate judges, in which the SJA to CMC is not the cognizant Rules Counsel, an information copy shall be forwarded to the SJA to CMC.) The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously notified of the complaint that the file has been closed. OJAG (Code 05), OJAG (Code 13), and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, State, or local licensing authority requires reporting such action.

(3) If the Rules Counsel believes, either consistent with the IO recommendation or through the Rules Counsel's own independent review of the investigation, that professional disciplinary action greater than corrective counseling is warranted, the Rules Counsel shall forward the investigation, with recommendations as to appropriate disposition, to the JAG. (In cases relating to Marine Corps judge advocates, including trial and appellate judges, in which the SJA to CMC is not the cognizant Rules Counsel, an information copy shall be forwarded to the SJA to CMC.)

§ 776.10 Effect of separate proceeding.

(a) For purposes of this section, the term ''separate proceeding'' includes, but is not limited to, court-martial or similar civilian proceeding.

(b) In those cases in which a covered attorney is determined to have committed misconduct by clear and convincing evidence, or a higher burden of proof, at a separate proceeding which the Rules Counsel determines has afforded procedural due process rights equal to that provided by an ethics investigation under this part, the previous determination regarding the underlying misconduct is res judicata with respect to that issue during an ethics investigation. A subsequent ethics investigation, in accordance with § 776.9, shall be convened to decide, based on such misconduct, whether the underlying misconduct constitutes a violation of these Rules, whether the violation affects his or her fitness to practice law, and what sanctions, if any, are appropriate.

(c) Notwithstanding paragraph (b) of this section, the Rules Counsel may dispense with the ethics investigation and, after affording the covered attorney concerned written notice and an opportunity to be heard in writing, recommend to the JAG that the covered attorney concerned be disciplined under JAGINST 5803.1 (series) when the covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General or Chief Counsel of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by 1 year or more of imprisonment) in a civilian or military court that, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the Department of the Navy or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this part.

§ 776.11 Action by the Judge Advocate General.

(a) The JAG is not bound by the recommendation rendered by the Rules Counsel, IO, or any other party, but will base any action on the entire administrative record as a whole. Nothing in this part or JAGINST 5803.1 (series) limits the JAG's authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated the Rules, either in DON or civilian proceedings, as detailed in JAGINST 5803.1 (series).

(b) The JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of the Rules or their application to the facts of a particular case.

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, the JAG will take such action as the JAG considers appropriate in the JAG's sole discretion. The JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Determine the allegations are unfounded, or that no further action is warranted, and direct the Rules Counsel to make appropriate file entries and notify the complainant, covered attorney concerned, and all officials previously notified of the complaint.

(3) Determine the allegations are supported by clear and convincing evidence, and take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney's authority to provide legal assistance;

(iv) Finding that the misconduct so adversely affects the covered attorney's ability to practice law in the naval service or so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of the JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ, or R.C.M. 502(d)(3), should be suspended or is no longer appropriate, and directing such certification to be suspended for a prescribed or indefinite period or permanently revoked;

(v) In the case of a judge, finding that the misconduct so prejudices the reputation of military trial and/or appellate judges that certification under Article 26(b), UCMJ, should be suspended or is no longer appropriate, and directing such certification to be suspended for a prescribed or indefinite period or to be permanently revoked; and

(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously notified of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before courts-martial or the U.S. Navy-Marine Corps Court of Criminal Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

§ 776.12 Finality.

Any action taken by the JAG is final.

§ 776.13 Report to licensing authorities.

Upon determination by the JAG that a violation of the Rules or the Code of Judicial Conduct has occurred, the JAG may cause the Rules Counsel to report

that fact to the Federal, State, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. This decision in no way diminishes a covered attorney's responsibility to report adverse professional disciplinary action as required by the attorney's Federal, State, and local bar or other licensing authority.

§ 776.14 Public notice.

The JAG will periodically publish JAGNOTE 5803, a listing of attorneys whose certification or authority to practice law in any area under the cognizance of the JAG is currently suspended, revoked, or limited.

§ 776.15 Requests for reinstatement.

(a) Attorneys whose certification or authority to practice law in any area under the cognizance of the JAG has been suspended may request reinstatement no earlier than 5 years after the effective date of suspension. Attorneys whose certification or authority to practice law in any area under the cognizance of the JAG has been revoked may not request reinstatement.

(b) Requests for reinstatement must be signed under oath, and must describe with particularity the manner in which he or she meets each of the criteria listed as follows:

(1) The attorney has fully complied with all conditions imposed at the time of the imposition of sanctions;

(2) The attorney has not engaged in or attempted to engage in the unauthorized practice of law within the Department of the Navy during the period of suspension;

(3) If the attorney was suffering under a physical disability or other infirmity at the time of the imposition of sanctions, including alcohol abuse, the attorney must provide independent evidence that the disability or infirmity has been removed. Attorneys whose disability or infirmity included the possession or use of controlled substances in violation of Article 112a, UCMJ, shall not be reinstated;

(4) The attorney has recognized the wrongfulness and seriousness of the misconduct for which sanctions were imposed;

(5) The attorney has not engaged in other professional or personal misconduct since sanctions were imposed;

(6) Notwithstanding the misconduct that resulted in imposition of sanctions, the attorney has the requisite honesty and integrity to practice before general courts-martial and all other administrative and judicial proceedings under the cognizance of the JAG;

(7) The attorney has kept informed about recent legal developments and is competent to practice before general courts-martial and all other administrative and judicial proceedings under the cognizance of the JAG; and

(8) Sufficient time has elapsed since imposition of sanctions and revocation of sanctions would be appropriate in view of the seriousness of the misconduct that resulted in sanctions and the effect that revocation of sanctions would have on the reputation of the community of covered attorneys who practice under the cognizance and supervision of the JAG.

(c) The decision whether to grant a request for reinstatement is solely within the discretion of the JAG. Although the JAG will consider the factors listed in this section and any additional information provided by the requesting attorney, the JAG has complete discretion to determine whether reinstatement would be appropriate. The JAG's decision is final.

Dated: April 25, 2024.

J.E. Koningisor,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0175; FRL–11888–01–R9]

California Air Plan Revisions; California Air Resources Board and Local California Air Districts; Crude Oil and Natural Gas Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to a California statewide rule and six California air district rules into the California State Implementation Plan (SIP) under the Clean Air Act (CAA or the Act). These revisions concern emissions of volatile organic compounds (VOCs) from crude oil and natural gas facilities. Based on our proposed finding that these revisions correct previously-identified deficiencies in these rules, we are now proposing to fully approve the reasonably available control technology (RACT) requirement for the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS) for sources covered by the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (''2016 Oil and Gas CTG'') for the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Ventura County Air Pollution Control District (VCAPCD), and the Yolo-Solano Air Quality Management District (YSAQMD). We are also proposing to conditionally approve the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the EPA's 2016 Oil and Gas CTG for the South Coast Air Quality Management District (SCAQMD). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before June 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0175 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 disabilities 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: Nicole Law, EPA Region IX, 75 Hawthorne St., San Francisco, CA,

94105. By phone: (415) 947–4126 or by email at *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Agency	Rule title	Adopted/ amended	Submitted
CARB	California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (''CARB Oil and Gas Methane Rule'').	06/22/2023	04/02/2024
SJVUAPCD	Rule 4409—Components at Light Crude Oil Production Facilities, Natural Gas Production Facilities, and Natural Gas Processing Facilities.	06/15/2023	10/13/2023
SJVUAPCD	Rule 4623—Storage of Organic Liquids*	06/15/2023	10/13/2023
SJVUAPCD	Rule 4401—Steam-Enhanced Crude Oil Production Wells*	06/15/2023	10/13/2023
VCAPCD	Rule 71.1—Crude Oil Production and Separation	07/11/2023	01/10/2024
SCAQMD	Rule 463—Organic Liquid Storage	05/05/2023	10/13/2023
SCAQMD	Rule 1178—Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities	09/01/2023	02/14/2024

*In two letters from Sheraz Gill, Deputy Air Pollution Control Officer, SJVUAPCD, to Lisa Beckham, Manager, EPA Region IX, both dated April 18, 2024, SJVUAPCD described administrative corrections to Rule 4401 section 5.4.4.2 to clarify which tables to refer to for repair leak time frames and Rule 4623 to correct table numbers and references throughout Rule 4623. The administrative corrections are minor, only clarify what is already in the rule, and do not impact our analysis of the approvability of the rules. The corrections are consistent with SJVUAPCD's Board's intent and SJVUAPCD has submitted the revised rules to the EPA to replace earlier submitted versions. For this proposed action, we are basing our evaluation on the SJVUAPCD rules as corrected.

The EPA has reviewed the submittals containing the documents listed in table 1 and finds that they fulfill the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The March 26, 2024, submittal letter to the EPA from CARB included a commitment to submit an amended version of SCAQMD Rule 1148.1 within 12 months of the effective date of our final action that will remedy the deficiency identified in this document.[1]

B. Are there earlier versions of the submitted documents in the SIP?

On September 30, 2022 (87 FR 59314), we finalized a limited approval and limited disapproval of California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (''CARB Oil and Gas Methane Rule'') as adopted on March 23, 2017. That action also finalized a disapproval of the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG regulated by various California air districts. CARB adopted revisions to the SIP-approved version of the CARB Oil and Gas Methane Rule on June 22, 2023, and submitted them to us on April 2, 2024.

We previously approved earlier versions of the six local air rules listed in table 1 into the SIP as follows: SJVUAPCD Rule 4409 on March 23, 2006 (71 FR 14652), SJVUAPCD Rule 4623 on September 13, 2005 (70 FR 53936), SJVUAPCD Rule 4401 on November 16, 2011 (76 FR 70886), VCAPCD Rule 71.1 on August 4, 1994 (59 FR 39690), SCAQMD Rule 463 on March 28, 2013 (78 FR 18853), and SCAQMD Rule 1178 on August 28, 2007 (72 FR 49196).

If we finalize our approval as proposed, the amended versions of the rules listed in table 1 will replace the previously approved versions of these rules in the SIP.

C. What is the purpose of the submitted rules?

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. In addition, CAA section 182(b)(2) requires, among other things, that SIPs for ozone nonattainment areas classified as ''Moderate'' or higher implement RACT for any category of sources covered by a control techniques guidelines (CTG) document. SMAQMD, SJVUAPCD, VCAPCD, SCAQMD, and YSAQMD all regulate ozone nonattainment areas that are classified as Moderate or higher for the 2008 and 2015 8-hour ozone NAAQS.[2] The State is required to submit SIP revisions that implement RACT-level controls for all sources covered by a CTG document within the applicable nonattainment areas. The CARB Oil and Gas Methane Rule was submitted to establish RACT-level VOC controls on sources covered by the 2016 Oil and Gas CTG in these areas.

The CARB Oil and Gas Methane Rule establishes methane emission standards for crude oil and natural gas facilities in furtherance of the California Global Warming Solutions Act (AB 32, as codified in sections 38500–38599 of the California Health and Safety Code). The rule can be used to limit VOC emissions to meet RACT requirements because many of the methane controls in the CARB Oil and Gas Methane Rule also reduce VOC emissions. Additionally, the CARB Oil and Gas Methane Rule relies, in part, on requirements in local air district rules to establish RACT-level controls on VOC emissions. Five of

[1] Letter dated March 26, 2024, submitted with the CARB Oil and Gas Methane Rule, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA, Region 9.

[2] 40 CFR 81.305. We refer to these air districts collectively as the ''applicable local air districts.''

those rules are already approved into the California SIP and we are proposing approval of the other six in this rulemaking.

SJVUAPCD Rule 4401 is designed to limit VOC emissions at steam-enhanced crude oil production wells. SJVUAPCD Rule 4409 is designed to control VOC emissions from leaking components at natural gas processing facilities and light crude oil and natural gas production facilities. SJVUAPCD Rule 4623 is designed to decrease VOC emissions from the storage of organic liquids. VCAPCD Rule 71.1 controls VOCs by establishing requirements for equipment used in the production, gathering, storage, processing, and separation of crude oil and natural gas from any petroleum production permit unit prior to custody transfer. SCAQMD Rule 463 and Rule 1178 control VOCs by establishing roof and cover requirements as well as vapor recovery system requirements for stationary above-ground tanks storing organic liquids.

The EPA's technical support documents (TSDs) for this action have more information about these rules and are included in the docket for this rulemaking.[3]

II. The EPA's Evaluation and Action

A. How is the EPA evaluating these rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)) and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)). In addition, because these rules were submitted in part to satisfy the RACT requirement for sources covered by the 2016 Oil and Gas CTG in the applicable local air districts, these rules must establish RACT level controls for such sources. Section III.D of the preamble to the EPA's final rule to implement the 2008 8-hour ozone NAAQS and sections III.F and IV.B of the preamble to the EPA's final rule to implement the 2015 8-hour ozone NAAQS discusses RACT requirements.[4]

The CARB Oil and Gas Methane Rule applies statewide, including within the applicable local air districts. However, the CARB Oil and Gas Methane Rule contains exemptions for certain equipment, provided that the equipment is subject to one of several specified local air district rules. Therefore, in order to establish RACT level controls for all facilities covered by the 2016 Oil and Gas CTG, both the CARB Oil and Gas Methane Rule and the local air district rules referenced within the CARB Oil and Gas Methane Rule must implement RACT.

In our September 30, 2022 action, we found that the CARB Oil and Gas Methane Rule, and the associated local air district rules were largely consistent with the relevant CAA requirements, including the requirement to implement RACT for sources covered by the CTG. However, in that action we identified a list of specific deficiencies that prevented full approval of the CARB Oil and Gas Methane Rule and the underlying RACT requirement in the applicable local air districts, which served as the bases for our disapproval of the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG. Our proposed approval of the CARB Oil and Gas Methane Rule and the associated local air district rules in this action does not otherwise alter our previous determination that these rules together establish RACT-level controls for all sources subject to the 2016 Oil and Gas CTG within the applicable local air districts, but for the specified deficiencies. As a result, in this action, we focus our analysis primarily on the revisions that have been made to these seven rules, and supporting analysis, to cure the previously identified deficiencies and serve as the bases for now proposing to approve and conditionally approve[5] the associated RACT requirement for the 2008 and 2015 ozone NAAQS.

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).
4. EPA 453/B–16–001, Control Techniques Guidelines for the Oil and Natural Gas Industry, October 2016.

B. Do these rules meet the evaluation criteria?

In our 2022 action, we determined that the CARB Oil and Gas Methane Rule established RACT level controls except for certain deficiencies that are addressed by this rulemaking.[6] The revisions to the submitted CARB Oil and Gas Methane Rule as well as the six submitted California District rules correct the deficiencies identified in the EPA's previous action. Our analysis in our previous action relied on the CARB Oil and Gas Methane Rule and the SIP-approved local air district rules regulating sources covered by the 2016 Oil and Gas CTG. Some of the deficiencies were contained in the applicable local air district rules and precluded approval of the RACT requirement for these districts, even if the deficiencies in the CARB Oil and Gas Methane Rule were rectified. Our proposed approval of the CARB Oil and Gas Methane Rule and the revised local air district rules addressing these deficiencies does not otherwise alter our previous RACT determination.

On April 2, 2024, CARB submitted the CARB Oil and Gas Methane Rule (adopted June 22, 2023), to correct the deficiencies of the limited disapproval. CARB also submitted rules for the SCAQMD, VCAPCD, and SJVUAPCD on the dates specified in table 1 to correct the deficiencies of the disapproved RACT requirement from our September 30, 2022 action. Below we describe the prior deficiencies, explain how they have been corrected, and evaluate the overall enforceability and stringency of the submitted rules. Our TSD for the CARB Oil and Gas Methane Rule and six additional TSDs for the district rules include in-depth descriptions of the deficiencies and how they have been corrected.

1. Deficiencies in the CARB Oil and Gas Methane Rule

Subsections 95668(a)(2)(C), 95669(b)(1), and 95670(a)(1) of the CARB Oil and Gas Methane Rule provided general exemptions from the requirements for storage tanks or components when ''approved for use by a local air district'' or ''subject to a local air district requirement.'' It was unclear which specific requirements these provisions pointed to and whether these requirements were in the SIP. Additionally, absent specificity about what is required for ''approv[al],'' these exemptions appeared to provide unbounded director's discretion. To address this deficiency, for areas that

[3] There are seven TSDs that support this action, one for each rule listed in table 1.

[4] 80 FR 12264, March 6, 2015, and 83 FR 62998, December 6, 2018.

[5] See Section II.E of this preamble. We are proposing to approve the RACT requirement for SMAQMD, SJVUAPCD, VCAPCD, and YSAQMD, and conditionally approve the RACT requirement for SCAQMD.

[6] See 87 FR 59314.

must meet RACT, CARB revised the Rule to specify the local air district rule(s) a source must follow in place of the specified requirements in the CARB Oil and Gas Methane Rule.

Subsections 95668(a), 95668(b)(4), and section 95671 of the CARB Oil and Gas Methane Rule did not contain a requirement for separator and tank systems to demonstrate initial and continuous compliance with the requirement to control emissions with a vapor collection system. Nor did the subsections specify which test methods must be used to determine compliance or requirements to report information demonstrating initial and continuous compliance. To address this deficiency, Appendices D and E were added to the CARB Oil and Gas Methane Rule to require initial and continuous compliance for subsection 95668(a) and section 95671. These appendices closely follow the CTG model rule requirements.[7] Subsection 95668(a) and section 95671 were also revised to require owners and operators to follow the provisions in Appendix D and E. Subsection 95668(b)(4) was removed in response to another deficiency, so no further revisions were needed to address this deficiency with respect to subsection 95668(b)(4).

The CARB Oil and Gas Methane Rule provided exemptions from the vapor control requirements of the Rule for low use compressors in subsections 95668(c)(2)(A) and 95668(d)(2)(A); however, the 2016 Oil and Gas CTG does not provide for this type of exemption. To address this deficiency, CARB conducted an analysis using compressor data from 2018,[8] which demonstrated that the active exempted compressors estimated emissions were 2.4 MT CH4/yr,[9] and the total emissions from the compressors complying with subsections 95668(c) and (d) of the CARB Oil and Gas Methane Rule is 7,000 MT CH4/yr for reciprocating compressors and 52 MT CH4/yr for centrifugal compressors.[10] According to CARB's analysis, the emissions from all of the exempted low use compressors in 2018 amounted to 0.03% of total methane emissions from compressors subject to subsections 95668(c) and (d). CARB expects the relative composition of methane and VOCs in natural gas to be similar for compressors subject to control requirements as for those qualifying for the low-use exemption.[11] Based on this analysis, we consider the VOC emissions exempted for low use reciprocating natural gas compressors to represent a de minimis amount of emissions and therefore addresses this deficiency.

Subsections 95668(c)(4)(F) and 95668(d)(9) of the CARB Oil and Gas Methane Rule potentially allowed a leak to go unrepaired for an additional year after being identified, but the 2016 Oil and Gas CTG does not allow for this extended timeline. To address this deficiency, CARB removed the extended repair provisions in subsections 95668(c)(4)(F) and 95668(d)(9).

Subsections 95668(c)(4)(B), 95668(d)(4), and 95668(g)(1) of the CARB Oil and Gas Methane Rule required measuring flowrate using ''direct measurement (high volume sampling, bagging, calibrated flow measuring instrument).'' However, the Rule did not specify test methods or a calculation methodology for determining flowrate. To address this deficiency, in place of the parenthetical following the term ''direct measurement'' in these subsections, CARB added a definition of direct measurement in subsection 95667(a)(17) of the rule that only allows high volume sampling or measurement with a calibrated flow measuring instrument. The definition requires high-volume sampling be performed in accordance with the procedures in the new Appendix G, requires owners and operators using a calibrated flow measuring instrument to meet the requirements in U.S. EPA Method 2D, and requires that the instrument is calibrated annually according to that test method. Given the addition of the test methods in Appendix G, along with the definitional changes described above. These amendments correct the deficiency.

Subsections 95668(c)(3)(D)(1)(a), (c)(4)(D)(1)(a), (d)(6)(A)(1) and subsections 95669(h)(4)(A)(1) and (i)(5)(A)(1) of the CARB Oil and Gas Methane Rule described delay of repair that is not allowed to exceed a specified number of days unless CARB is notified and provided with an estimated repair completion time. This provided an open-ended and potentially indefinite period during which a leak could remain unrepaired. To address this deficiency, CARB added section 95670.1 to the Rule, which requires operators to submit an estimated repair date that is as soon as practicable and to complete repairs by that date. This request must be substantiated with specified documentation providing justification for any delay. CARB must approve or deny a delay of repair request within five days. This removes the open-ended, potentially indefinite periods for unrepaired leaks. Subsection 95668(c)(3)(D)(1)(a) of the Rule was removed, and subsections 95668(c)(4)(D)(1)(a) and (d)(6)(A)(1) and subsections 95669(h)(4)(A)(1) and (i)(5)(A)(1) were revised to require that the operators use the delay of repair provisions in section 95670.1 of the amended Rule. These amendments address the deficiency.

The 2016 Oil and Gas CTG applies to most storage vessels in the oil and natural gas industry constructed primarily of non-earthen materials that contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water. Those storage vessels with a potential to emit (PTE) of 6 tons per year (tpy) or greater of VOC are required to implement RACT-level control. The 2016 Oil and Gas CTG recommends RACT-level control to provide for at least (1) 95% vapor control efficiency or (2) maintenance of actual VOC emissions below 4 tpy. Because CARB's rule only considers the separator and first tank connected to the separator to determine whether the source meets the 10 tpy methane emissions applicability threshold,[12] it was not clear whether the

[7] CARB Oil and Gas Rule Appendix D is modeled very closely to the 2016 Oil and Gas CTG Appendix A sections A.2–A.4, which is the section of the CTG model rule for requirements of VOC Emission control, initial compliance, and continuous compliance for storage vessels. CARB Oil and Gas Rule Appendix E is modeled very closely to the 2016 Oil and Gas CTG Appendix A section A.2(d)–(e) which is the closed vent and control device requirements for storage vessels under the model rule, and Appendix A section A.3–A.4 which details the requirements for continuous and continuous compliance for VOC emission control for storage vessels.

[8] CARB stated in the ''Technical Clarifications Document'' page 14, that Data from 2018 was used because CARB had previously been provided data about the operating hours of the compressors at issue for that year.

[9] Using Table 7–2 of Methane Emission Factors for Reciprocating and Centrifugal Compressors in EPA's 2021 Emissions Guidelines and New Source Performance Standards Technical Support Document. U.S. EPA, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Background Technical Support Document Proposed NSPS and EG, 40 CFR subparts OOOOb and OOOOc, 2021.

[10] CARB (2016a). Proposed Regulation for Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities. Staff Report: Initial Statement of Reasons. Appendix B: Economic Analysis. Posted 31 May 2016. *https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2016/oilandgas2016/oilgasappb.pdf.*

[11] CARB, ''Technical Clarifications on the Resubmission of California's Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities into the California State Implementation Plan Following Amendments Effective April 1, 2024'', at p.15.

[12] The definition of ''separator and tank system'' found in section 95667(a)(57) limits the system to ''the first separator in a crude oil or natural gas production system and any tank or sump connected directly to the first separator.'' The 10 tpy methane threshold is found in section 95668(a)(4), (5), and

rule captured all storage vessels at oil and gas facilities that meet or exceed the 2016 Oil and Gas CTG PTE threshold, and which are therefore required to implement RACT. To address this deficiency, CARB and the applicable local air districts have demonstrated that storage vessels at oil and gas facilities in ozone nonattainment areas are required to have RACT-level controls for VOCs when the PTE exceeds 6 tpy of VOCs. SJVUAPCD Rule 4623, SCAQMD Rule 463, and SCAQMD Rule 1178 have been amended to include storage vessels with PTE of 6 tpy VOC or greater. VCAPCD demonstrated that an explicit 6 tpy VOC applicability threshold was not needed in the rule because most storage vessels are already required to meet the 95% vapor control efficiency requirement in VCAPCD Rule 71.1, and the exemptions to that requirement would not be available to storage vessels with a PTE of 6 tpy or greater.[13] CARB demonstrated that sources regulated by SMAQMD and YSAQMD only have single tank systems (*i.e.,* separator and connected tank), and therefore the issue raised in this deficiency does not apply in these areas and the CARB Oil and Gas Methane Rule alone is sufficient to require RACT level controls for storage tanks regulated by these two districts.[14] The amendments to the local SJVUAPCD and SCAQMD rules, along with VCAPCD and CARB's demonstrations address this deficiency.

Subsection 95668(a)(2)(A) of the CARB Oil and Gas Methane Rule exempted separator and tank systems, as defined within the rule, that receive an average of less than 50 barrels of crude oil *or* condensate per day from the rule's flash testing and vapor control requirements for storage vessels. By using the word ''or,'' this exemption potentially exempted tanks that receive a minor amount of either crude oil or condensate, but a significant quantity of the other organic liquid. To address this deficiency, CARB amended subsection (a)(2)(A) and replaced ''or'' with ''and'' so that only separator and tank systems that receive an average of less than 50 barrels of crude oil and less than 50 barrels of condensate per day will be exempted.

Subsections 95668(a)(3) and (4) of the CARB Oil and Gas Methane Rule required existing and new tanks that are not equipped with vapor collection systems to comply with specified requirements for flash testing. The rule required tanks with emissions greater than 10 tpy of methane to meet specified vapor control requirements. The rule did not specify requirements for how tanks equipped with vapor control (either vapor collection systems, or tanks with floating roofs) determine their emissions (PTE or actual) to assess whether they must meet RACT-level control requirements (*i.e.,* vapor collection systems that meet 95% control, or to maintain actual emissions at less than 4 tpy VOC). To address this deficiency, CARB amended the Rule to include specific requirements for how tanks equipped with vapor controls must conduct compliance testing, performance testing, and flash testing. The new requirements were added in subsections 95671(d) and (e).

Subsection 95668(b)(4) of the CARB Oil and Gas Methane Rule required circulation tanks for well completion to be controlled with at least 95% vapor collection and control efficiency unless CARB made a determination that controlling emissions was not possible. This provision was deficient because it insufficiently bounded CARB's discretion and provided for an exemption for these tanks that is inconsistent with the 2016 Oil and Gas CTG. To address this deficiency, CARB removed this section of the Rule and clarified that circulation tanks are now covered under requirements for separator and tank systems. Since this section of the rule, including the exemption, has been removed, CARB's discretion is now sufficiently bounded. These amendments address this deficiency.

Subsections 95668(c)(3)(B) and (c)(4)(B)(3) of the CARB Oil and Gas Methane Rule contained the term ''inspection period.'' The term was not defined, nor was it used in the relevant part of section 95669—Leak Detection and Repair—that specifies when to conduct equipment inspections. It was not clear if ''inspection period'' was referencing the section 95669(g) quarterly testing requirement or something else. To address this deficiency, section 95668(c)(3)(B) of the Rule, which addressed compressor rod packing and seals, has been deleted and the inspection requirement for this equipment is now included under subsection 95669(g), which requires leak detection testing each calendar quarter for all components. While rod packings and seals are not explicitly mentioned in section 95669, the definition of components includes ''reciprocating compressor rod packing or seals for compressors located at onshore or offshore crude or natural gas production facilities.'' Additionally, the ''inspection period'' language in subsection 95668(c)(4)(B)(3) was replaced with ''calendar year.'' Generally, in the places where the term ''inspection period'' was used, it has been replaced with ''calendar year.'' This quantifies the inspection period and clarifies the requirements. These amendments address the deficiency.

Subsection 95669(b)(7) of the CARB Oil and Gas Methane Rule exempted one-half inch and smaller stainless steel tube fittings used to supply natural gas to equipment or instrumentation from continuous monitoring. When these stainless-steel tube fittings are at natural gas processing plants or gathering and boosting stations, the 2016 Oil and Gas CTG recommends quarterly testing for leaks, as well as semi-annual fugitive emissions testing at well sites and gathering/boosting stations. Thus, this exemption was inconsistent with the CTG and identified as a deficiency in the Rule. To address this deficiency, CARB removed this exemption.

Subsection 95669(i)(1) of the CARB Oil and Gas Methane Rule required leaks of 1,000–9,999 ppm be repaired within 14 days, but this timing did not meet RACT level stringency because the 2016 Oil and Gas CTG recommends attempting repairs within 5 days of the detected leak.[15] To address this deficiency, subsection 95669(h)(1) now contains additional language requiring that a first attempt at repair be made within five calendar days for leaks between 1,000–9,999 ppm.

The 2016 Oil and Gas CTG contains a requirement to maintain a list of identification numbers for all the equipment subject to leak regulation.[16] Section 95669 of the CARB Oil and Gas Methane Rule did not contain a similar requirement, which undermined the enforceability of CARB's rule. To address this deficiency, subsection 95669(d)(1) was revised to require that

(6). CARB's staff report estimates that the 10 tpy of methane emissions threshold in the Rule is about ~1.8 tpy VOC and below the CTG requirement that systems maintain emissions less than 4 tpy VOC. CARB Staff Report, 4.

[13] The TSD for VCAPCD Rule 71.1 has more detailed information.

[14] CARB, ''Technical Clarifications on the Resubmission of California's Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities into the California State Implementation Plan Following Amendments Effective April 1, 2024'', at pp.18–19.

[15] 2016 Oil and Gas CTG recommends implementation of an LDAR program equivalent to what is required under 40 CFR part 60, subpart VVa. Subpart VVa contains the requirement for first attempt at repair within 5 days in several sections for various types of components: 60.482–2a Pumps in liquid service, 60.482–31 Compressors, 60.482–7a Valves in gas/vapor service and in light liquid service, 60.482–8a Pumps, valves, and connectors in heavy liquid service and pressure relief devices in light liquid or heavy liquid service, and 60.482–10a Closed vent systems and control devices.

[16] 2016 Oil and Gas CTG, 8–15.

operators develop and maintain detailed facility-specific leak detection and repair plans. Given the level of detail in these plan requirements, and specifically the inclusion of subsection 95669(d)(1)(C) in the Rule that specifies that the plan must include a list of equipment with an identification number or detailed description for each piece of equipment, these amendments correct the previous deficiency.

Section 95669 of the CARB Oil and Gas Methane Rule did not contain a requirement to maintain a list of equipment that is designated as ''unsafe to monitor'' consistent with the 2016 Oil and Gas CTG. This deficiency was corrected by an added requirement in subsection 95669(d)(1)(E) that leak detection and repair plans include a list of equipment and components that are designated as inaccessible or unsafe to monitor.

Subsection 95671(f) of the CARB Oil and Gas Methane Rule allowed vapor control systems (VCS) to be taken out of service for up to 30 calendar days per year while maintenance is performed. The 2016 Oil and Gas CTG does not specify time allowed for maintenance. Moreover, this maintenance requirement resulted in CARB having unbounded discretion to remove control equipment from service by not having requirements specifying the necessity of taking the system out of service and minimizing the outage time. To address this deficiency, subsection 95671(g) (formerly subsection 95671(f)) was revised to lower the number of non-operation days for maintenance of vapor collection systems per year from 30 to 14. Subsection 95671(g)(1) was revised to require that for any further extension to the number of maintenance days per year, the owner or operator must obtain approval from CARB and, among other requirements, provide CARB justification for the maintenance, the number of additional days requested, and justification that the number of additional days is necessary to perform the maintenance. These amendments correct the previous deficiency by lowering the standard number of days allowed for maintenance and any further extension is now sufficiently bounded.

Section 95672 of the CARB Oil and Gas Methane Rule did not specify what type of records needed to be kept for certain units, such as separator and tank systems, vapor collection systems, vapor control devices, compressors, and pneumatic devices. The section was not sufficiently enforceable because it did not describe what type of records need to be kept such as testing and monitoring results. To address this deficiency, section 95672 was revised to include several requirements specifying the types of records that must be kept. In addition, Appendix A also now contains recordkeeping and reporting forms that more specifically identify the types of records that must be kept. Given the additional specificity about the types of records that must be kept that have been added to the rule, including for the categories mentioned in the previously identified deficiency, these amendments correct the deficiency.

Previously, the CARB Oil and Gas Methane Rule relied on test methods that had otherwise not been approved by the EPA, and allowed alternative test procedures, sampling methods, or laboratory methods to be used if written permission was obtained from CARB. This created a deficiency because it undermined the enforceability of the rule and allowed CARB the discretion to modify rule provisions without a SIP revision. To address this deficiency, CARB revised Appendix C by removing references to test methods that have not been approved by the EPA and removing the relevant unbounded director's discretion language related to changing test methods.

2. Deficiencies Identified in District SIP-Approved Rules

We previously identified three deficiencies related to SMAQMD Rule 446 and one deficiency related to YSAQMD Rule 2.21. The deficiencies related to ensuring all the storage vessels required to be covered by the 2016 Oil and Gas CTG would be subject to these rules, and, in the case of Rule 446, ensuring the rule met RACT-level stringency. To address this deficiency, the CARB Oil and Gas Methane Rule now includes a specific list of local rules that allow equipment to be exempt from the Rule's requirements, and this list does not include SMAQMD Rule 446 or YSAQMD 2.21 as exemptions to CARB's requirements for separator and tank systems. As a result, all the storage tanks within the jurisdiction of SMAQMD and YSAQMD that are covered by the 2016 Oil and Gas CTG are now subject to the requirements in the CARB Oil and Gas Methane Rule and will meet RACT-level stringency.

SCAQMD Rule 463, SCAQMD Rule 1178, SJVUAPCD Rule 4623, VCAPCD Rule 71.1, and VCAPCD Rule 71.2 were each determined to potentially not apply to all the storage vessels at oil and gas facilities required to be covered by the 2016 Oil and Gas CTG. The 2016 Oil and Gas CTG recommends determining applicability for this equipment based on PTE and each of these rules determined applicability based only on a tank's volumetric capacity or vapor pressure. To address this deficiency, SCAQMD Rule 463, SCAQMD Rule 1178, and SJVUAPCD Rule 4623 were revised to establish the 6 tpy PTE threshold from the 2016 Oil and Gas CTG in determining applicability. For VCAPCD Rule 71.1, VCAPCD provided additional information and calculations to address the deficiency.[17] VCAPCD performed calculations for each of the three vapor recovery exemptions in the rule and showed that all tanks currently using those exemptions are below the 6 tpy PTE threshold. The memo also demonstrates that no future tanks that exceed the 6 tpy PTE threshold will be exempt because either those exemptions are not available to future tanks or the size of tank that would be necessary to exceed the threshold is not a realistic tank size. Finally, the amended CARB Oil and Gas Methane Rule does not rely on VCAPCD 71.2 to meet RACT-level stringency and no revisions to this Rule were needed to address this deficiency.

VCAPCD Rule 71.1 was determined to not be sufficiently enforceable because it did not include initial or continuous compliance demonstration requirements. VCAPCD corrected this deficiency by adding such requirements that are consistent with the 2016 Oil and Gas CTG.

We previously determined that SJVUAPCD Rule 4401 did not meet RACT-level stringency because it required annual leak inspections with a threshold of 1,000 ppm, using Method 21, at a lower frequency and threshold than the 2016 Oil and Gas CTG (which recommends semiannual inspection frequency with threshold of 500 ppm). To address this deficiency, SJVUAPCD amended Rule 4401 to lower the minimum leak threshold and increase inspection frequency. SJVUAPCD lowered the minimum leak rate threshold for a minor leak from 2,000 ppm to 500 ppm for all components, except for pressure relief devices, which already had a lower threshold of 400 ppm. These revisions are consistent with the 2016 Oil and Gas CTG. The inspection frequency was also changed from annual to quarterly, which exceeds the 2016 Oil and Gas CTG's recommendation of semiannual inspections and aligns with the inspection frequency in SJVUAPCD Rule 4409 and the CARB Oil and Gas Methane Rule. These amendments correct the previously identified deficiency.

[17] Appendix A, VCAPCD Rule 71.1 Vapor Recovery Exemption Analysis'' in VCAPCD's Staff Report for Rule 71.1.

3. Deficiency Identified in CARB Oil and Gas Methane Rule and SJVUAPCD Rule 4409

The CARB Oil and Gas Methane Rule and SJVUAPCD Rule 4409 provide exemptions from leak detection and repair (LDAR) requirements based on the API gravity of crude oil at well sites. We previously determined that these exemptions had not been demonstrated to meet RACT because the 2016 Oil and Gas CTG does not provide for such an exemption based on API gravity. However, as described herein and in greater detail in our TSD for the CARB Oil and Gas Methane Rule, we have determined that the CARB Oil and Gas Methane Rule ensures RACT-level stringency for LDAR requirements at well sites. The 2016 Oil and Gas CTG limits its RACT recommendation for semiannual LDAR monitoring to well sites with crude oil that has a gas to oil ratio (GOR) greater than or equal to 300.[18] This was based on the EPA's conclusion that monitoring for well sites producing heavy oils would not be sufficiently cost effective, as leaks associated with heavy oil production will generally emit less VOC. In developing the 2016 Oil and Gas CTG, the EPA defined a heavy oil well as a well that produces crude oil with a GOR of 300 standard cubic feet (scf)/barrel (bbl) or less.[19] However, GOR is not the only metric that can be used to classify whether crude oil is heavy oil. Upon review of available information, we can conclude that an API gravity equal to or greater than 20 degrees, as used in the CARB Oil and Gas Rule to exempt well sites from LDAR requirements, is consistent with the 2016 Oil and Gas CTG recommendation to only exclude heavy oils from such requirements.[20] However, SJVUAPCD Rule 4409 is intended to apply to ''light'' crude oil production and uses an API gravity equal to or greater than 30 degrees to make this determination. As a result, we do not agree that Rule 4409 alone ensures only heavy crude oils are exempt from LDAR requirements for sources regulated by SJVUAPCD. But well sites producing crude oil with an API gravity between 20 degrees and 30 degrees will still be required to meet RACT-level stringency because such sources will be subject to LDAR requirements under the CARB Oil and Gas Methane Rule. Sources can only be exempted from the requirements in the CARB Oil and Gas Methan Rule if they are ''subject to'' the specified local air district rules. Sources regulated by SJVUAPCD that are exempt from Rule 4409 are not ''subject to'' such rules, and thus do not qualify to be exempted from the CARB Oil and Gas Methane Rule. Thus, this deficiency has been addressed because we were able to determine that all sources regulated by the SJVUAPCD covered by the 2016 Oil and Gas CTG are required to meet RACT-level requirements by either the CARB Oil and Gas Methane Rule or SJVUAPCD Rule 4409.

4. Overall Stringency and Enforceability of the Submitted Rules

In our 2022 action, we reviewed the CARB Oil and Gas Methane Rule and applicable local air district rules that regulated the sources covered by the 2016 Oil and Gas CTG and determined that these rules together established RACT level controls, except for certain deficiencies.[21] As described above, the submitted rules that contained deficiencies that precluded approval of the RACT demonstration were either amended to address the deficiencies, or were removed from the list of local air district rules that allow exemptions from the requirements of the CARB Oil and Gas Methane Rule.

The CARB Oil and Gas Methane Rule and the local air district rules listed in table 1 strengthen the SIP by establishing enforceable emission limits and by clarifying monitoring, recordkeeping, and reporting provisions. Except for one issue described below, these rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs for each of the rules we are proposing to approve into the California SIP in this rulemaking also include more information regarding the basis for our proposed approval.

C. Were there any newly identified deficiencies with the April 2, 2024, submitted CARB Oil and Gas Methane Rule?

The CARB Oil and Gas Methane Rule exempts sources from compliance with portions of the Rule if those sources comply with certain existing California air district rules. One such rule is SCAQMD Rule 1148.1—Oil and Gas Production Wells (Amended March 5, 2004). SCAQMD Rule 1148.1 lacks reporting requirements comparable to the reporting requirements included in the CARB Oil and Gas Methane Rule and applicable local air district rules. SCAQMD Rule 1148.1 otherwise contains comparable inspection requirements, recordkeeping and records retention requirements, and appropriate test methods to determine compliance, but it does not contain reporting requirements equivalent to similar CARB and local air district rules. For example, by comparison, section 95673 of the CARB Oil and Gas Methane Rule requires annual reports of LDAR inspections, and SJVUAPCD Rule 4401 contains annual reporting requirements for Operator Managment Plans.

In a letter included in their submittal on April 2, 2024, CARB has committed to submit an amended version of South Coast Rule 1148.1 that will address this deficiency. Consistent with the requirements of CAA section 110(k)(4), CARB has committed to submit the adopted rule to EPA within 12 months of the effective date of EPA's final rulemaking conditionally approving the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG and regulated by SCAQMD.

D. The EPA's Recommendations to Further Improve the Rules

The TSDs include recommendations for the next time CARB and SJVUAPCD modify their rules.

E. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the SIP submissions amending: the CARB Oil and Gas Methane Rule, SJVUAPCD Rule 4401, SJVUAPCD Rule 4409, SJVUAPCD Rule 4623, VCAPCD Rule 71.1, SCAQMD Rule 463, and SCAQMD Rule 1178. Based on our proposed conclusion that the amended rules cure the previously identified deficiencies, and our prior analysis concluding that these rules met the RACT requirement but for the identified deficiencies, we are also proposing to fully approve the CTG RACT

[18] 2016 Oil and Gas CTG, 9–39.

[19] EPA, ''Information Collection Request Supporting Statement, Information Collection Effort for Oil and Gas Facilities,'' EPA ICR No. 2548.01, November 9, 2016, *https://www.epa.gov/sites/default/files/2016-11/documents/oil-natural-gas-icr-supporting-statement-epa-icr-2548-01.pdf*.

[20] As further explained in our TSD for the CARB Oil and Gas Methane Rule, both API gravity and GOR are metrics that reflect the volatility of crude, with greater VOC emissions coming from crude with higher values—both of API gravity and of GOR.

[21] See ''Technical Support Document for EPA's Rulemaking for the California State Implementation Plan California Air Resources Board (CARB) Regulation for Greenhouse Gas Emissions Standards for Crude Oil and Natural Gas Facilities California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4 Subarticle 13: Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities'' p. 8 (stating that ''we have reviewed the local air district rules and conclude that the provisions in those rules that relate to the Oil and Gas CTG generally establish RACT level controls'' with the exception of specifically enumerated deficiencies).

requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG in SMAQMD, SJVUAPCD, VCAPCD, and YSAQMD because the rules fulfill all relevant requirements.

In addition, we propose to find that the CARB Oil and Gas Methane Rule, in combination with the specified local air district rules in the SCAQMD largely fulfills the relevant CAA section 110 and part D requirements, except for the newly identified deficiency in SCAQMD Rule 1148.1. As discussed in section II.C, this deficiency precludes full approval of the RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG and regulated by SCAQMD. Section 110(k)(4) authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.[22] Because CARB has committed to provide the EPA with a SIP submission within 12 months of this final action that would adequately address the identified deficiency, we are proposing to conditionally approve the CTG RACT requirement for the 2008 and 2015 ozone NAAQS for sources covered by the 2016 Oil and Gas CTG in SCAQMD, pursuant to section 110(k)(4) of the Act.

If CARB and SCAQMD submit the required rule revisions by the specified deadline, and the EPA approves the submission, then the identified deficiency will be cured. However, if this proposed conditional approval is finalized, and SCAQMD, through CARB, fails to submit these revisions within the required timeframe, the conditional approval would be treated as a disapproval for the RACT requirement for sources covered by the 2016 Oil and Gas CTG in SCAQMD.

If we finalize this rulemaking as proposed, CARB and the applicable local air districts will have corrected the deficiencies identified in our September 30, 2022 action, and all sanction and Federal implementation plan clocks started by our September 30, 2022 action would be permanently stopped. We are concurrently making an interim final determination to defer CAA section 179 sanctions associated with our 2022 action finalizing a limited approval and limited disapproval of the 2018 submittal of the CARB Oil and Gas Methane Rule and a disapproval of the associated CTG RACT requirements. Consistent with our order of sanction regulations,[23] this determination is based on this proposal to approve and conditionally approve SIP revisions from CARB that resolve the deficiencies that were the basis of our prior disapproval that triggered sanctions under section 179 of the CAA. The deficiency associated with our proposed conditional approval in this action is for a newly identified deficiency in SCAQMD Rule 1148.1, as discussed in section C, and is distinct from the deficiencies that formed the basis of our 2022 disapproval that triggered sanctions under sanction 179 of the CAA.

We will accept comments from the public on this proposal until June 3, 2024. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

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 the CARB Oil and Gas Methane Rule, SJVUAPCD Rule 4409, SJVUAPCD Rule 4401, SJVUAPCD Rule 4623, SCAQMD Rule 1178, SCAQMD Rule 463, and VCAPCD Rule 71.1 described in section I.C. of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

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

[22] 42 U.S.C. 7410(k)(4).

[23] 40 CFR 52.31.

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 Executive Order 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–09306 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0059; FRL–11682–03–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (March 2024)

AGENCY: Environmental Protection Agency (EPA).

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

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

DATES: Comments must be received on or before June 3, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0059, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov*; or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566–2427, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. What action is the Agency taking?

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

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

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

A. Notice of Filing—New Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11860. (EPA–HQ–OPP–2024–0153). Evonik Corporation, 7801 Whitepine Road, Richmond, VA 23237, requests to establish an exemption from the requirement of a tolerance for residues of oxirane, phenyl-, polymer with oxirane, mono (dihydrogen phosphate), decylethers, (CAS Reg. No. 308336–53–0), with a minimum number average molecular weight of 1225 daltons, when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 3F9091. EPA–HQ–OPP–2024–0157. Plant Health Care Inc., 242 South Main Street, Suite 216, Holly Springs, NC 27540, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the biochemical pesticide PDHP 68949 in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, PDHP 68949 would not result in residues that are of toxicological concern. *Contact:* BPPD.

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

Dated: April 29, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2024–09679 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 40

[FAR Case 2023–008, Docket No. FAR–2023–0008, Sequence No. 1]

RIN 9000–AO56

Federal Acquisition Regulation: Prohibition on Certain Semiconductor Products and Services

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: DoD, GSA, and NASA are considering amending the Federal Acquisition Regulation (FAR) to implement paragraphs (a), (b), and (h) in section 5949 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that prohibits executive agencies from procuring or obtaining certain products and services that include covered semiconductor products or services effective December 23, 2027.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before July 2, 2024 to be considered in the formation of the proposed rule.

ADDRESSES: Submit comments in response to FAR Case 2023–008 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2023–008''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2023–008''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2023–008'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2023–008'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAR Case 2023–008.

SUPPLEMENTARY INFORMATION:

I. Background

Semiconductors are tiny electronic devices that are essential to America's economic and national security. Semiconductors power our consumer electronics, automobiles, data centers, critical infrastructure, and virtually all military systems. These devices power tools as simple as a power adapter and as complex as a fighter jet or a smartphone. They are also essential building blocks of the technologies that will shape our future, including artificial intelligence, biotechnology, and clean energy. For additional information on semiconductors, visit *https://www.nist.gov/semiconductorsandchips.gov.* See the section containing definitions in this advance notice of proposed rulemaking for the definition of ''semiconductor''.

The National Counterintelligence and Security Center, located in the U.S. Office of the Director of National Intelligence, has identified semiconductors as one of the technology sectors where the stakes of disruption are potentially greatest for U.S. economic and national security. There are numerous opportunities for adversaries and other threat actors to introduce hardware backdoors, malicious firmware, and malicious software into a semiconductor during production. Since semiconductors are key components of U.S. critical infrastructure (*e.g.,* information technology, communications) and have many military applications, it is vital that these threat vectors are addressed during the production process. Chips are ultimately integrated into end products, so it can be difficult to identify and mitigate risks to semiconductor hardware, firmware, and software.

Due to this significant national security risk, Congress included a prohibition for certain covered semiconductors in section 5949 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). The statute states that ''[t]he head of an executive agency may not (A) procure or obtain, or extend or renew a contract to procure or obtain, any electronic parts, products, or services that include covered semiconductor products or services; or (B) enter into a contract (or extend or renew a contract) with an entity to procure or obtain electronic parts or products that use any electronic parts or products that include covered semiconductor products or services''. However, executive agencies are not required to—

(1) Remove or replace any products or services resident in equipment, systems, or services, prior to the effective date of the prohibition.

(2) Prohibit or limit the utilization of covered semiconductor products or services throughout the lifecycle of existing equipment.

DoD, GSA, and NASA plan to implement section 5949 of the NDAA for FY 2023 in the FAR via FAR Case

2023–008, Prohibition on Certain Semiconductor Products and Services.

A. Prohibition Scope

The statute's prohibition applies to products, parts, and services. The term ''products'' is currently defined in FAR 2.101 to mean supplies, which in turn includes all types of property including parts, except land and interests in land. Thus, under the FAR's definition, the term ''product'' already covers ''parts'' (see FAR 2.101). To avoid redundancy, DoD, GSA, and NASA are planning to use the following language, which removes the term ''part'', to implement the statutory prohibition:

- Section 5949(a)(1)(A) of the NDAA for FY 2023 prohibits executive agencies from procuring or obtaining electronic products or electronic services that include covered semiconductor products or services.
- Section 5949(a)(1)(B) of the NDAA for FY 2023 prohibits executive agencies from procuring or obtaining electronic products that use electronic products that include covered semiconductor products or services; however, this prohibition does not apply to electronic products used in systems that are not critical systems.

Section 5949(a)(1)(B) goes beyond the prohibition in section 5949(a)(1)(A) by prohibiting Federal agencies from acquiring electronic products used within critical systems that use electronic products that incorporate covered semiconductor products or services. For example, section 5949(a)(1)(B) could restrict a Federal agency from acquiring a replacement control panel within a critical system that enables an Internet of Things (IoT) device that includes a covered semiconductor product or service and was purchased prior to the effective date of the prohibition.

B. Definitions

DoD, GSA, and NASA are considering incorporating the following definitions that are referenced in section 5949 of the NDAA for FY 2023:

- *Covered entity* (section 5949(j)(2)).
  - An entity that—
    - Develops, domestically or abroad, a design of a semiconductor that is the direct product of United States origin technology or software; and
    - Purchases covered semiconductor products or services from an entity described in the first or third paragraph of the definition of covered semiconductor product or services.
- *Covered nation* (section 5949(j)(5) and 10 U.S.C. 4872(d))
  - The Democratic People's Republic of Korea (North Korea);
  - The People's Republic of China;
  - The Russian Federation;
  - The Islamic Republic of Iran.
- *Covered semiconductor product or service* (section 5949(j)(3))
  - A semiconductor, a semiconductor product, a product that incorporates a semiconductor product, or a service that utilizes such a product, that is designed, produced, or provided by Semiconductor Manufacturing International Corporation (SMIC) (or any subsidiary, affiliate, or successor of such entity);
  - A semiconductor, a semiconductor product, a product that incorporates a semiconductor product, or a service that utilizes such a product, that is designed, produced, or provided by ChangXin Memory Technologies (CXMT) or Yangtze Memory Technologies Corp (YMTC) (or any subsidiary, affiliate, or successor of such entities); or
  - A semiconductor, semiconductor product, or semiconductor service produced or provided by an entity that the Secretary of Defense or the Secretary of Commerce, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, determines to be an entity owned or controlled by, or otherwise connected to, the government of a foreign country of concern, provided that the determination with respect to such entity is published in the **Federal Register**.
- *Critical national security interests* mean any interests having a critical impact on the national defense, foreign intelligence and counterintelligence, international and internal security, or foreign relations of the United States.
- *Critical system* (section 5949(j)(4))
  - National security system (see 40 U.S.C. 11103(a)(1));
  - Additional systems identified by the Federal Acquisition Security Council; or
  - Additional systems identified by the Department of Defense, consistent with guidance provided under section 224 of the NDAA for FY 2020 (Pub. L. 116–92).
  - Does not include a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).
- *Foreign country of concern* (15 U.S.C. 4651)
  - A country that is a covered nation; and
  - Any country that the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.
- *National security system* (40 U.S.C. 11103(a)(1))
  - A telecommunications or information system operated by the Federal Government, the function, operation, or use of which—
    - Involves intelligence activities;
    - Involves cryptological activities related to national security;
    - Involves command and control of military forces;
    - Involves equipment that is an integral part of a weapon or weapons system; or
    - Is critical to the direct fulfillment of military or intelligence missions.
  - This term excludes a system to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

DoD, GSA, and NASA are also considering using the following definitions in the FAR rule:

- *Affiliate* means associated business concerns or individuals if, directly or indirectly either one controls or can control the other; or a third-party controls or can control both. See FAR 2.101.
- *Electronic products* means products that include technology, parts, or components that have electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. See 15 U.S.C. 7006.
- *Electronic services* means services that use electronic products.
- *Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about whether any electronic products or electronic services that are provided to the Government—

(1) Include covered semiconductor products or services; or

(2) Use electronic products that include covered semiconductor products or services.

A reasonable inquiry may reasonably rely on the certifications of compliance from covered entities and subcontractors who supply electronic products or services. This inquiry is not required to include independent third-party audits or other formal reviews but may be required to include other mechanisms of diligence review depending on the facts and circumstances. Diligence review shall be required with regard to entities that are established or operated in foreign countries of concern, even when they certify compliance with this rule.

- *Routine administrative and business applications* means applications for payroll, finance,

logistics, and personnel management applications primarily used for standard commercial practices and functions.

• *Semiconductor* means an integrated electronic device or system most commonly manufactured using materials including, but not limited to, silicon, silicon carbide, or III–V compounds, and processes including, but not limited to, lithography, deposition, and etching. Such devices and systems include, but are not limited to, analog and digital electronics, power electronics, and photonics, for memory, processing, sensing, actuation, and communications applications. See Creating Helpful Incentives to Produce Semiconductors (CHIPS) Program Office, National Institute of Standards and Technology, Department of Commerce rule published September 25, 2023 (88 FR 65600).

• *Subsidiary* means an entity in which more than 50 percent of the entity is owned directly by a parent corporation or through another subsidiary of a parent corporation. See FAR 9.108–1.

C. Solicitation Provision

DoD, GSA, and NASA are planning to require a provision in all solicitations that would require offerors to certify, after conducting a reasonable inquiry, to the non-use of covered semiconductor products or services in electronic products or electronic services provided to the Government in accordance with section 5949(h)(1)(A).

D. Contract Clause

DoD, GSA, and NASA are planning to require a clause in all solicitations and contracts that incorporates the prohibitions in section 5949(a)(1)(A) and 5949(a)(1)(B), and the requirements in section 5949(h). The clause would—

(1) Direct contractors to apply the prohibition in section 5949(a)(1)(A);

(2) Direct contractors to apply the prohibition in section 5949(a)(1)(B) unless the agency identified a non-critical system that is not subject to this specific part of the prohibition;

(3) Require contractors to conduct a reasonable inquiry to detect and avoid the use or inclusion of covered semiconductor products or services in electronic products and electronic services;

(4) Require covered entities that are Federal contractors or subcontractors to disclose to direct customers the inclusion of a covered semiconductor product or service in electronic products or electronic services;

(5) Require that any Federal contractor or subcontractor, including any covered entity, who becomes aware, or has reason to suspect, that any product to be used in a critical system purchased by the Federal Government, or purchased by a Federal contractor or subcontractor for delivery to the Federal Government for any critical system, that contains covered semiconductor products or services shall notify appropriate Federal authorities in writing within 60 days;

(6) Require that a contractor or subcontractor that provides a notification under paragraphs (4) and (5) above regarding electronic parts or products that are manufactured or assembled by an entity other than the contractor or subcontractor shall not be subject to civil liability nor determined to not be a presently responsible contractor on the basis of such notification;

(7) State that a contractor or subcontractor that provides a notification under paragraphs (4) and (5) above regarding electronic parts or products manufactured or assembled by such contractor or subcontractor shall not be subject to civil liability nor determined to not be a presently responsible contractor on the basis of such notification if the Federal contractor or subcontractor makes a comprehensive and documentable effort to identify and remove the covered semiconductor products or services;

(8) Provide that a covered entity that is a Federal contractor or subcontractor that fails to disclose the inclusion to direct customers of a covered semiconductor product or service in electronic parts or electronic services shall be responsible for any rework or corrective action that may be required to remedy the use or inclusion of such covered semiconductor product or service;

(9) State that any rework or corrective action that may be required to remedy the use or inclusion of a covered semiconductor product or service is not an allowable cost;

(10) State that contractors and subcontractors may reasonably rely on the certifications of compliance from covered entities and subcontractors who supply electronic products or services when providing proposals to the Federal Government and are not required to conduct independent third-party audits or other formal reviews related to such certifications.

E. Subcontractors

Since section 5949(c) mandates prime contractors to incorporate the substance of these prohibitions and applicable implementing contract clauses into contracts, DoD, GSA, and NASA are planning to require that prime contractors insert the clause developed for FAR Case 2023–008 into all subcontracts for the supply of any electronic products.

F. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

DoD, GSA, and NASA are planning to require the provision and clause in all solicitations and contracts, including those valued at or below the simplified acquisition threshold, for the acquisition of commercial products and commercial services, and for the acquisition of COTS items, because the prohibitions impact any product or service that uses or provides electronic products or electronic services to the Government. Due to the prevalence of electronic products and services, DoD, GSA, and NASA anticipate this would impact a large majority of contracts and orders. If this prohibition was not included in every solicitation, it would be very difficult for the contracting officer to identify which offerors would not be providing an electronic product or electronic service.

G. Applicability to Micro-Purchases

DoD, GSA, and NASA anticipate applying these prohibitions to micro-purchases. The statute does not exempt micro-purchases and there would be national security risks associated with allowing purchases of covered semiconductors under the micro-purchase threshold. Many electronic products and electronic services are procured under the current micro-purchase threshold that are critical to the mission of the Federal Government, and it is important that this rule address such risks.

H. Means of Identifying Elements and Components

DoD, GSA, and NASA are considering requiring offerors to identify the provenance of the supply chain for the semiconductor components for each electronic product provided to the Government. This information could allow the Government to validate contractor compliance with this prohibition. The required provenance information for semiconductor products could include, but is not limited to, identification of vendors and facilities responsible for the design, fabrication, assembly, packaging, and test of the product, manufacturer codes used for the product, and distributor codes used for the product. DoD, GSA, and NASA plan to assess existing supply chain

provenance initiatives (*e.g.,* Uyghur Forced Labor Prevention Act Operational Guidance for Importers at *https://www.cbp.gov/document/guidance/uflpa-operational-guidance-importers*) to align any provenance requirements in this rulemaking with current industry practices.

I. Government List of Electronic Products With Prohibited Semiconductors

DoD, GSA, and NASA are considering referencing in the proposed rule a web page or report being considered that could be issued by the Department of Commerce that would identify a list of electronic products and services that include covered semiconductor products or services that utilize such products, such as telecommunications and cloud storage or computing services. As precedent, the Department of Commerce published a report in January 2022 that identified key semiconductor products that were in short supply, and the downstream industries that depended on those products, based on the results of a public request for information. Going forward, such a public list of covered semiconductor products could assist offerors and contractors with identifying electronic products and electronic services that are prohibited.

J. Waivers

DoD, GSA, and NASA are planning to clarify that the waiver authority for the Secretary of Defense, Director of National Intelligence, Secretary of Commerce, and Secretary of Energy allows each of these officials to grant a waiver for any executive agency in accordance with the statutory requirements. The waiver authority would be in addition to the waiver authority granted to the head of each executive agency. See section 5949(b).

K. Impact

DoD, GSA, and NASA anticipate that entities will be impacted by this rule in the following ways:

- Education and training—time to review and become familiar with the rule.
- Time to update existing contractor business policies.
- Time to conduct an investigation to determine whether the entity uses prohibited semiconductors.
- Time to complete the certification.

Given that every unique awardee with electronic products or services would need to conduct a reasonable inquiry, as part of its initial analysis, DoD, GSA, and NASA anticipate using the following assumptions:

- 75 percent of all unique awardees have electronic products or services that will be impacted by this prohibition.
- For impacted contracts, it is estimated that each contract will involve an average of 5 to 15 products with semiconductors.
- For these semiconductors, it is anticipated that an average of 10 to 20 percent of the semiconductors are not currently compliant with the prohibition. While this represents an average across economic sectors, it is recognized that the prevalence of covered semiconductor products and services is higher in certain industries.
- For each non-compliant semiconductor product or service, it is anticipated to cost on average $10,000 to come into compliance by providing an alternative product or service or updating a product or service to remove prohibited semiconductors.

L. Future Rulemaking

While this advance notice of proposed rulemaking is focused on DoD, GSA, and NASA's implementation of the prohibition in paragraphs (a), (b), and (h) of section 5949, DoD, GSA, and NASA anticipate addressing through separate rulemaking the requirements in paragraph (g) for mitigating supply chain risks for semiconductor products and services that are not otherwise prohibited by section 5949. As friendly and allied nations expand their production and the United States continues to build out our domestic semiconductor production capacity through the CHIPS and Science Act and the Department of Commerce's CHIPS for America program, DoD, GSA, and NASA anticipate this additional rulemaking will help ensure that Federal contractors will increasingly have a diverse and more trustworthy source of suppliers that can provide secure and resilient semiconductors.

II. Request for Public Comment

DoD, GSA, and NASA welcome general input from the public on the amendments to the FAR being considered to accomplish the stated objectives when implementing section 5949 of the NDAA for FY 2023. Respondents are encouraged to offer their feedback on the following questions:

(a) Do you have any recommendations for how DoD, GSA, and NASA can further clarify the scope of the prohibition?

(b) Do you have any comments on the proposed definitions being considered for this rule, including the definition for reasonable inquiry?

(c) Are there any definitions that should be added?

(d) Do you have any comments on DoD, GSA, and NASA's plan for requiring a solicitation provision and contract clause?

(e) Are there any details regarding the waiver authority that would be helpful to clarify?

(f) Do you have sufficient visibility into your supply chain to understand whether your supply chain uses any covered semiconductor products or services? What information is normally requested from subcontractors and suppliers about semiconductor provenance?

(g) What procedures do you anticipate using to conduct a reasonable inquiry into your supply chain to understand whether your supply chain uses any covered semiconductor products or services? How do you currently or how do you plan to detect the inclusion of covered semiconductor products and services in your supply chain?

(h) If your organization does use covered semiconductor products or services, how much of an impact will this prohibition have on your organization?

(i) Do you have any comments on DoD, GSA, and NASA's estimated impact of a future rule to implement section 5949?

(j) Are there any categories of products or services you currently provide to the Government for which you anticipate needing a waiver when the prohibition is effective in December 2027? If so, which categories of products or services?

(k) For categories of products or services for which a waiver may be necessary, how long do you anticipate it will take to find alternative semiconductors that are compliant?

(l) What impact will implementation of section 5949 in the FAR have on small businesses, including small disadvantaged businesses, women-owned small businesses, service-disabled veteran-owned small businesses, and Historically Underutilized Business Zone (HUBZone) small businesses? How should DoD, GSA, and NASA best align this objective with efforts to ensure opportunity for small businesses?

(m) What additional information or guidance do you view as necessary to effectively comply with a future rule to implement section 5949?

(n) What challenges do you anticipate facing in effectively complying with a future rule to implement section 5949?

(o) What would be the best method or process for identifying the provenance of the supply chain for the

semiconductor components? Are you aware of existing guidelines or best practices for identifying and documenting the provenance of the supply chain for electronic products and electronic services? Do you have any suggestions for how and when the Government should validate supply chain provenance information and documentation?

(p) If the Department of Commerce establishes a public list that identifies electronic products with prohibited semiconductors, would this be helpful for implementing this prohibition?

(q) Do you have any feedback regarding how DoD, GSA, and NASA should incorporate the requirements regarding certification, disclosure, notification safe harbors, and allowable costs in paragraph (h) of section 5949?

(r) What else should DoD, GSA, and NASA consider in drafting a proposed rule to implement the prohibitions outlined in section 5949?

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–08735 Filed 5–2–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2024–0073]

RIN 2126–AC65

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes amendments to its Hazardous Materials Safety Permits (HMSPs) regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route-controlled quantities (HRCQs) of radioactive material (RAM). The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1, 2023, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2024, edition.

DATES: Comments must be received on or before June 3, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0073 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2024-0073/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at the National Transportation Library, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–1812. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: David Sutula, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–9209, *david.sutula@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this notice of proposed rulemaking (NPRM) as follows:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2024-0073), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can

contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2024-0073/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the 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 the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2024-0073/document* and choose the document to review. To view comments, click this NPRM, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

II. Executive Summary

This NPRM proposes to update an incorporation by reference found at 49 Code of Federal Regulations (CFR) 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2023, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and HRCQs of RAM. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Hazardous Materials Division) at (202) 493–0027. The document may be purchased from the Commercial Vehicle Safety Alliance 99 M Street SE, Suite 1025, Washington, DC 20003, 202–998–1002, *www.cvsa.org.*

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2024, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2023 edition of the handbook.

Eleven updates distinguish the April 1, 2024, handbook edition from the April 1, 2023, edition. The incorporation by reference of the 2024 edition does not impose new regulatory requirements.

III. Abbreviations

ATIS Automatic Tire Inflation Systems
CBI Confidential Business Information
CDL Commercial Driver's License
CE Categorical Exclusion
CFR Code of Federal Regulations
CLP Commercial Learner's Permit
CVSA Commercial Vehicle Safety Alliance
DACH Drug and Alcohol Clearinghouse
DOT Department of Transportation
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
HM Hazardous Materials
HMSP Hazardous Materials Safety Permit
HRCQ Highway Route Controlled Quantity
MCMIS Motor Carrier Management Information System
OOS Out-of-Service
OOSC Out-of-Service Criteria
PBBT Performance-Based Brake Test
PIA Privacy Impact Assessment
PTA Privacy Threshold Assessment
RAM Radioactive Material
RFA Regulatory Flexibility Act
TSA Transportation Security Administration
UMRA The Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

IV. Legal Basis

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits (''HMSPs''), the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on HMSPs. The FMCSA Administrator has been delegated authority under 49 U.S.C. 113(f) and 49 CFR 1.87(d)(2) to carry out the functions vested in the Secretary of Transportation related to HMSPs. Consistent with that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on HMSPs. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

Congress authorized DOT by statute to promote safe transportation of hazardous materials in interstate commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures for inspections and safety permits for motor vehicles carrying certain hazardous materials. 49 U.S.C. 5105(d); 49 U.S.C. 5109. The purpose of this rule is to incorporate by reference the 2024 edition of the CVSA handbook outlining the OOSC and inspection procedures for commercial highway

vehicles transporting RAMs. The provisions within the CVSA handbook are intended to operate holistically in addressing a range of issues necessary to ensure the safe transport of hazardous materials. However, FMCSA recognizes that certain provisions focus on unique topics. Therefore, FMCSA finds that the various provisions within the CVSA handbook would be severable and the remaining provision or provisions within the handbook would continue to operate functionally if any one or more provisions were invalidated and any other provision(s) remained.

V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and HRCQs of RAM. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' As of January 1, 2005, all vehicles and carriers transporting HRCQs of RAM are covered by the U.S. Department of Transportation's HM Safety Permit rules (June 30, 2004; 69 FR 39350). All HRCQs of RAM must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All HRCQs of RAM shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the United States.

Operational requirements for motor carriers transporting hazardous materials for which a HMSP is required are prescribed by § 385.415. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a HRCQ of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.''

According to 2020 through 2023 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 2.9 million Level I through Level VI inspections were performed annually. Nearly 96.2 percent of these were Level I,[1] Level II,[2] and Level III [3] inspections. During the same period, an average of 876 Level VI inspections were performed annually, comprising only 0.03 percent of all inspections. On average, OOS violations were cited in only 5 Level VI inspections annually (0.6 percent), whereas on average, OOS violations were cited in 223,679 Level I inspections (27 percent), 265,132 Level II inspections (27 percent), and 59,179 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2024 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2024 edition of the CVSA handbook to significantly affect the number of OOS violations cited during Level VI inspections.

VI. Discussion of Proposed Rulemaking

Section 385.4(b)(1), as amended on November 8, 2023 (88 FR 77010), references the April 1, 2023, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2023, edition date with a reference to the new edition date of April 1, 2024.

[1] Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

[2] Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

[3] Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

The changes made based on the 2024 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

In preparing this NPRM, FMCSA obtained clarification from CVSA on various aspects of the 2024 edition of the handbook. FMCSA contacted CVSA on February 28, 2024, regarding why CVSA released a version in February 2024 before the changes were effective. Following this, on March 8, 2024, FMCSA contacted CVSA again to highlight a minor typographical error in the OOSC handbook. Finally, on April 3, 2024, FMCSA contacted CVSA regarding the change relating to the distinction between vehicles equipped with automatic tire inflation systems (ATIS) and vehicles not equipped with ATIS in the North American Standard OOSC Part II, Item 12(b)(1) and 12(b)(2). CVSA explained how the tires are treated differently. In each instance, CVSA provided clarifying information that aided the Agency with drafting the NPRM. FMCSA has placed a memorandum in the rulemaking docket documenting these communications.

April 1, 2024, Changes

Eleven changes in the 2024 edition of the CVSA handbook distinguish it from the April 1, 2023, edition:

1. Part I, Item 2.b (''Endorsements and Restrictions''), was amended to add a note clarifying the status of a Hazardous Materials (HM) endorsement in cases where a U.S. driver's Transportation Security Administration (TSA) screening/HM determination is expired, and the driver requires renewal. The HM endorsement threat assessment program is administered by TSA, which conducts security threat assessments for drivers seeking to obtain, renew, or transfer an HM endorsement on a State-issued commercial driver's license (CDL). A note was added to clarify that if a driver possesses a State-issued CDL and transports HM but fails to renew their HM endorsement, typically required to be renewed every 5 years, the HM endorsement becomes invalid, irrespective of the license's expiration date. Additionally, the note specifies that a driver will be placed OOS if transporting HM in a quantity necessitating placards. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

2. Part I, Item 4.b (''Medical Certificate'') was amended by removing language in the note regarding the requirement that Class D license-holders in Ontario, Canada provide additional evidence of compliance with medical prerequisites. The language was removed because a cyclical renewal of driver medical certification is now mandatory and integrated into this class of license. This amendment is applicable only to the enforcement of Canadian regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

3. Part I, Item 7.c (''Prohibited from performing safety-sensitive functions'') was amended by adding a new regulation code and a note addressing the use of this new regulation code for drivers prohibited from performing safety-sensitive functions. FMCSA agrees with CVSA's determination that the language was needed for instances where drivers are found operating a CMV while in prohibited status in the Drug and Alcohol Clearinghouse (DACH or Clearinghouse) under § 392.15. However, because § 392.15 is presently unavailable in the inspection software, a note was added stating that a citation to § 390.3(e) may be used until November 18, 2024,[4] prior to the addition of the updated regulatory code into the inspection software and to provide U.S. jurisdictions a means of achieving early compliance with the requirement. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

4. Part I, Item 7.c (''Prohibited from performing safety-sensitive functions'') was also amended by adding language in the applicability table regarding the prohibition against commercial learner's permit (CLP) holders performing safety-sensitive functions after engaging in prohibited use of drugs or alcohol, until the CLP holder has completed the return to duty requirements established by 49 CFR part 40, subpart O.[5] CVSA concluded that the table should also refer to CLP holders in the ''Current CDL Holder'' section. CLP holders were not added to the ''Former CDL Holder'' section because a former CDL holder would possess a non-CDL license not subject to the Clearinghouse requirements. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

5. Part II, Item 1.a.5.a (''Drum (Cam-Type and Wedge) Air Brakes'') was amended to include language specifying that missing camshaft bushings must be included in the 20 percent brake criterion. The 20 percent criterion relates to the proportion of brakes on a vehicle or combination that are found to be defective during an inspection. Specifically, if 20 percent or more of the total number of brakes on the vehicle are found to be defective, the vehicle is considered OOS. During a roadside inspection, CVSA found a missing camshaft bushing in the drum brake system of a CMV. However, due to the positioning of the camshaft within the spider casting, the brake was not out of adjustment and was still partially operative. Subsequently, FMCSA agrees with CVSA's determination it was appropriate to include missing camshaft bushings in the 20 percent brake criterion. With this update, CVSA added language clarifying that a brake can be considered defective if it has a missing camshaft bushing. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

6. Part II, Item 1 (''Brake Systems'') was amended by adding language that more clearly identifies which violations are to be included in the 20 percent criterion calculation for defective brakes. Previously, this specification was only found at the end of the list of brake violations. CVSA has added standard language to the side of each criterion as a visual indicator for Items 1.a. (''Defective Brakes'') and 1.b (''Front Steering Axle(s) Brakes''), to facilitate identification of the violations included in the 20 percent criterion. Additionally, language was added at the end of the list of violations to clarify that the remaining OOS conditions are not part of the 20 percent criterion but are standalone OOS violations. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

7. Part II, Item 1.q (''Performance-Based Brake Test'') was amended by changing the language in the note from ''shall'' to ''may,'' providing inspectors discretion regarding retesting the vehicle on an approved Performance-Based Brake Test (PBBT). The previous OOSC noted that, if a PBBT was accessible, the vehicle had to undergo retesting on the PBBT. However, this requirement for a vehicle to return for re-inspection posed a traffic hazard at certain inspection locations, particularly due to the layout of some inspection pull-off locations. While it is still advisable to conduct the retest whenever feasible, there may be circumstances where it cannot be carried out. Changing the language in the note from ''shall'' to ''may'' will allow inspector discretion during the vehicle retest, ensuring the safety of the motoring public. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

8. Part II, Item 3.c.1 (''Pintle Hooks: Mounting and Integrity'') and 3.g.1 (''Hitch Systems (Excluding Fifth Wheels and Pintle Hooks): Mounting and Integrity'') were amended by adding language that specifies an OOSC for latches that are not in use and ball hitches that are mismatched with the receiver, respectively. Roadside inspectors encountered a situation where a CMV had a pintle hook disconnected from the trailer, with the full trailer only connected by the safety chains and wedged under the bumper. Additionally, during inspections, ball and coupler type connections were found with mismatched components, such as the wrong size ball or receiver hitch. Adding language to specify the OOSC if latches are not in use and for mismatched ball hitches with the receiver will help cover such occurrences. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

9. Part II, Item 9.a was amended by changing the title for the part from ''When Lights Are Required To Be On'' to ''When Lights Are Required To Be On (does not include lamps that are not turned on).'' The added language is intended to indicate that the absence of activated lights does not constitute an OOS condition. FMCSA agrees with CVSA's determination that if the lights are operational upon inspection and no mechanical issues are identified with the vehicle, it would be unreasonable to

[4] On October 7, 2021, FMCSA published a final rule in the **Federal Register** (86 FR 55718) establishing requirements for State driver's licensing agencies to access and use information obtained through the DACH, an FMCSA-administered database containing driver-specific controlled substance (drug) and alcohol records. Among other actions, the final rule added a new § 392.15 to prohibit any driver subject to the CMV driving prohibition in § 382.501(a) from operating a CMV. The deadline for States to come into compliance with that requirement is November 18, 2024.

[5] Similar to the previous change, this is necessary to meet the November 2024 compliance date for the October 2021 DACH final rule.

declare the vehicle OOS when operational lights are not turned on. Each State, Province, and Territory has regulatory provisions regarding drivers operating vehicles without activating necessary lights. In such instances, the driver should be cited, and the violation should be recorded as a traffic violation on the inspection report. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

10. Part II, Item 9 (''Lighting Devices (Headlamps, Tail Lamps, Stop Lamps, Turn Signals, and Lamps/Flags on Projecting Loads)'') was amended by adding a note applicable to the entire item, clarifying that required lighting that is operational but outside the scope of the requirements of 393.11/National Safety Code Standard 11B for issues such as height, lens color, or position is considered a violation. However, in such cases, the vehicle should not be placed OOS. FMCSA agrees with CVSA's determination that adding such a note would clarify the OOSC. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

11. Part II, Item 12.b (''All Tires Other Than Those Found on the Front Steering Axle(s) of a Power Unit'') was amended by introducing a new section and renumbering the subsequent sections within item 12.b. CVSA believes that with the increasing prevalence of ATIS the OOSC should distinguish between leaks in the tread area of a tire equipped with ATIS versus a tire without ATIS. Underinflated tires pose a significant risk of tire blowouts due to increased susceptibility to overheating and structural damage. While ATIS help mitigate this risk by continuously monitoring and adjusting tire inflation levels, it is essential to acknowledge that they may not entirely prevent the occurrence of underinflated tires. For ATIS-equipped tires, if, at any point during the inspection, a tire is found to have a noticeable leak that can be heard or felt, which is specific to the tread area, and significant enough that the ATIS cannot maintain inflation pressure greater than 50 percent of the maximum inflation pressure marked on the tire sidewall, the vehicle will be placed OOS. However, if a tire not connected to an operable ATIS has a noticeable leak or is inflated to 50 percent or less of the maximum inflation pressure marked on the tire sidewall, the vehicle will also be placed OOS. Therefore, CVSA added language to the 12.b.1 and 12.b.2 OOSC to distinguish vehicles equipped with and without ATIS. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

VII. Section-by-Section Analysis

Section 385.4 Matter Incorporated by Reference

Section 385.4(b)(1), as amended on November 8, 2023, references the April 1, 2023, edition of the CVSA handbook. This NPRM proposes to replace the reference to the April 1, 2023, edition date with a reference to the new edition date of April 1, 2024.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2023, edition to the April 1, 2024, edition of CVSA's handbook titled ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' FMCSA reviewed its MCMIS data on inspections performed from 2020 to 2023 and does not expect the handbook updates to have a significant effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule's impact would be de minimis.

B. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[6] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2024 edition impose new requirements or make substantive changes to the Federal Motor Carrier Safety Regulations.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to ''prepare and make available an initial regulatory flexibility analysis'' that will describe the impact of the proposed rule on small entities (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule would update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and would incorporate by reference the April 1, 2024, edition of the CVSA handbook. The changes to the 2024 edition of the CVSA handbook from the 2023 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2024 edition of the CVSA handbook to significantly affect the number of OOS violations cited during Level VI inspections in the United

[6] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

States. Accordingly, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. 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 consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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

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 $192 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.''

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[7] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[8] requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA was adjudicated by DOT's Chief Privacy Officer on March 26, 2024.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE.

K. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2126-AC65.*

List of Subjects in 49 CFR 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

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

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. Amend § 385.4 by revising paragraph (b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR 173.403,'' April 1, 2024,

[7] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[8] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024–09357 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 89, No. 87
Friday, May 3, 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

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden 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.

Comments regarding these information collections are best assured of having their full effect if received by June 3, 2024. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Field Crops Production—Substantive Change.

OMB Control Number: 0535–0002.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code title 7, section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The primary functions of the National Agricultural Statistics Services' (NASS) are to prepare and issue State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. The Field Crops Production Program consists of probability field crops surveys and supplemental panel surveys. NASS will use surveys to collect information through a combination of the internet, mail, telephone, and personnel interviews. The general authority for these data collection activities is granted under U.S. Code title 7, section 2204.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Field Crops Production information collection request (OMB No. 0535–0002) for program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes in this change request balance resources across all of the programs included in the annual estimating program ensuring NASS' annual statistical program aligns with its appropriation. This substantive change is to accommodate the field crop program changes that affect this ICR. The changes in this request decreases burden hours.

Need and Use of the Information: NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and import and export programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; Business or other for-profits.

Number of Respondents: 348,675.

Frequency of Responses: Reporting: Weekly, Monthly, Quarterly, Annually.

Total Burden Hours: 111,621.

National Agricultural Statistics Service (NASS)

Title: Fruit, Nuts, And Specialty Crops—Substantive Change.

OMB Control Number: 0535–0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data activities is granted under U.S. Code title 7, section 2204(a). Information is collected on a voluntary basis from growers, processors, and handlers through surveys. Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, as amended, 7 U.S.C, 2276, and title III of Public Law 115–435 (CIPSEA) which requires USDA to afford strict confidentially to non-aggregated data provided by respondents.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the Fruit, Nuts, And Specialty Crops information collection request (OMB No. 0535–0039) for mushroom program changes. Every five years NASS conducts a program review following the completion of the Census of Agriculture. The program changes balance resources across all of the programs included in the annual estimating program, which represents over 400 individual reports across multiple Information Collection Requests (ICRs). This substantive

change is to accommodate the mushroom program changes that affect this ICR. The methodology, publication dates, burden and data collection plan do not change as result of these program changes. The changes to these surveys will not affect burden hours.

Need and Use of the Information: Data reported on fruit, nut, and specialty crops are used by NASS to estimate crop acreage, yield, production, utilization, price, and value in States with significant commercial production. These estimates are essential to farmers, processors, importers and exporters, shipping companies, cold storage facilities and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected crop supplies under federal and State market orders.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 55,435.

Frequency of Responses: On occasion; Annually; Semi-annually; Quarterly; Monthly; Weekly.

Total Burden Hours: 28,114.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–09700 Filed 5–2–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: School Meals Operations Study: Evaluation of the School-Based Child Nutrition Programs

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' plans to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) and invites the general public and other public agencies to comment on the proposed ICR before FNS submits it to OMB. The proposed information collection is a revision of an approved information collection. The approved information collection (OMB Control Number 0584–0607) permitted the School Meals Operations (SMO) study to collect survey and administrative data about school year (SY) 2019–2020 through SY 2022–2023 from a census of State agencies, and survey data about SY 2020–2021 and SY 2022–2023 from a nationally representative sample of school food authorities. With the revision, FNS will seek approval for the SMO study to collect survey and administrative data about SY 2023–2024 from a census of State agencies. The SMO study will not collect survey data about SY 2023–2024 from school food authorities.

DATES: Written comments must be received on or before July 2, 2024.

ADDRESSES: Comments may be sent to: Darcy Güngör at *darcy.gungor@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Darcy Güngör at *darcy.gungor@usda.gov,* 703–305–4345.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: School Meals Operations Study.

Form Number: N/A.

OMB Number: 0584–0607.

Expiration Date: 08/31/2026.

Type of Request: Revision of a currently approved collection.

Abstract: Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the USDA Secretary to conduct annual national performance assessments of the school meal programs, which include the National School Lunch Program (NSLP) and School Breakfast Program (SBP). The School Meals Operations (SMO) study was originally planned to conduct this annual assessment. When the COVID–19 pandemic closed schools and disrupted NSLP and SBP operation, the SMO study collected data about the Child Nutrition (CN) Programs used to feed children during the pandemic, which included the NSLP Seamless Summer Option (SSO), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) in addition to NSLP and SBP. SMO study data correspond to school year (SY) 2019–2020 through SY 2022–2023, and help FNS answer annual research questions about (1) CN Program participation, (3) meal counting, (4) financial management, and (5) CN Program integrity.

The proposed information collection is a minor revision. It will collect data about SY 2023–2024. As in previous study years, the respondents will be the State agencies that administer NSLP, SBP, SSO, SFSP, and CACFP in the 50 states, 3 territories, and District of Columbia. It will use the same administrative data request as previous years and an updated survey. The updated survey will collect timely data on policy, administrative, and operational issues for the CN Programs. This information collection will help FNS obtain:

1. General descriptive data on the characteristics of CN Programs to inform the budget process and answer questions about topics of current policy interest;

2. Data on CN Program operations to identify potential topics for training and technical assistance for States agencies and school food authorities responsible for administering the Programs; and

3. Administrative data to identify CN Program trends and predictors.

The activities that will be conducted subject to this notice include:

1. Collecting disaggregated administrative data from an estimated 68 State CN Directors (these data are reported in aggregate on forms FNS–10, Report of School Program Operations, FNS–418, Report of the Summer Food Service Program for Children, and FNS–44, Report of the Child and Adult Care Food Program, under OMB Control Number 0584–0594, expiration date 09/30/2026).

2. Conducting a web survey of an estimated 54 of the 68 State CN Directors above.

All 68 respondents will receive one email with an attached study brochure from their FNS Regional Office expressing their support of the study, and will receive one advance email from the study team to summarize the upcoming data collection activities. The subset of 54 respondents who will take the survey will receive one invitation email. They will complete the web survey one time. They may receive

reminder emails, phone calls, and a last chance postcard until they have all responded. The 68 respondents who will be asked to submit administrative data will have one telephone meeting with the study team to describe the data request and will respond to the FNS–10, FNS–418, or FNS–44 administrative data request one time. They may receive reminder emails and phone calls until they have all responded.

To reduce data collection burden, the SMO study will analyze existing administrative data to reduce the number and type of questions included in the survey. The survey will take an estimated 30 minutes to complete.

To facilitate the collection of administrative data, State agencies will receive an agenda for initial telephone meetings and a template for the data request. The data request template will link each data element to the corresponding item number on forms FNS–10, FNS–418, and FNS–44. Examples of the types of data that the administrative request will respond to include number of schools and students participating in the meal programs and the number of meals served under the meal programs.

Note: Personally identifiable information will not be used to retrieve survey records or data.

Affected Public: State Governments: State Agency Directors from the 50 States, 3 territories, and the District of Columbia that oversee NSLP, SBP, SSO, SFSP, and CACFP.

Estimated Number of Respondents: 68 unique respondents.

Estimated Number of Responses per Respondent: Average of 9.9 (671 responses/68 unique respondents).

Estimated Total Annual Responses: 671.

Estimated Time per Response: Average of 1.4 hours (0.05 to 6 hours depending on the instrument).

Estimated Total Annual Burden on Respondents: 941.2 hours.

BILLING CODE 3410–30–P

Table 1. Total estimated annualized burden – hours

Respondent category	Type of respondent	Instruments	Sample Size	Responsive					Non-Responsive					All
				Number of respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Number of non-respondents	Frequency of response	Total Annual responses	Hours per response	Annual burden (hours)	Total Annual hour burden
State Government	State CN Director	Study support email (from FNS RO to SA)	68	68	1	68	0.05	3.40	0	0	0	0	0	3.40
	State CN Director	Brochure	68	68	1	68	0.05	3.40	0	0	0	0	0	3.40
	State CN Director	Advance email	68	68	1	68	0.05	3.40	0	0	0	0	0	3.40
	State CN Director	Initial Telephone Meeting	68	68	1	68	0.33	22.44	0	0	0	0	0	22.44
	State CN Director	Invitation email	54	54	1	54	0.05	2.70	0	0	0	0	0	2.70
	State CN Director	Reminder email	27	27	4	108	0.05	5.40	0	0	0	0	0	5.40
	State CN Director	Telephone reminder script	8	8	2	16	0.08	1.28	0	0	0	0	0	1.28
	State CN Director	Last chance post card	4	4	1	4	0.05	0.20	0	0	0	0	0	0.20
	State CN Director	Web survey about SY 2023-2024	54	54	1	54	0.50	27.00	0	0	0	0	0	27.00
	State CN Director	Request for FY 2024 FNS-10 Administrative data	55	55	1	55	6.00	330.00	0	0	0	0	0	330.00
	State CN Director	Request for FY 2024 FNS-418 Administrative data	53	53	1	53	4.00	212.00	0	0	0	0	0	212.00
	State CN Director	Request for FY 2024 FNS-44 Administrative data	55	55	1	55	6.00	330.00	0	0	0	0	0	330.00
		TOTAL	68	68	9.9	671	1.4	941.2	0	0.0	0	0.00	0.0	941.2

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–09678 Filed 5–2–24; 8:45 am]

BILLING CODE 3410–30–C

INTERNATIONAL BROADCASTING ADVISORY BOARD

Sunshine Act Meeting Notice

TIME AND DATE: May 7, 2024, 4 p.m.–5:30 p.m. ET

May 8, 2024, 9 a.m.–9:30 a.m. ET

PLACE: On May 7, 2024, the Board will meet at:

Wilbur J. Cohen Building, 330 Independence Avenue SW, Washington, DC 20237

On May 8, 2024, the Board will meet at:

Radio Free Asia, 2025 M Street NW, Suite 300, Washington, DC 20036

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The International Broadcasting Advisory Board (Board) will conduct a meeting closed to the public at the dates and times listed above. Board Members (membership includes Chair Kenneth Jarin, Luis Botello, Jamie Fly, Jeffrey Gedmin, Michelle Giuda, Kathleen Matthews, Under Secretary Elizabeth Allen (Secretary of State's Representative)), Chief Executive Officer of the U.S. Agency for Global Media (USAGM), General Counsel and Acting Board Secretary to the Board, the Secretariat to the Board, and recording secretaries will attend the closed meeting. Certain USAGM staff members who may be called on to brief or support the Board also may attend.

The USAGM General Counsel and Acting Board Secretary has certified that, in his opinion, exemptions set forth in the Government in the Sunshine Act, in particular 5 U.S.C. 552b(c)(2), (6), and (9)(B), permit closure of this meeting.

The Board approved the closing of this meeting.

The closed meeting will focus on discussing the development of internal rules and practices to govern Board processes and functions. This includes developing processes or rules relating to IBAB, USAGM, and the USAGM networks. Publicizing these deliberations would frustrate the implementation of the very items they will be proposing. [Relates to (2), (6), and (9)(B).]

In the event that the time, date, or location of this meeting changes, USAGM will post an announcement of the change, along with the new time, date, and/or place of the meeting on its website at *https://www.usagm.gov.*

Although a separate federal entity, USAGM prepared this notice and will continue to support the Board in accordance with 22 U.S.C. 6205(g).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 920–2583.

Authority: 5 U.S.C. 552b, 22 U.S.C. 6205(e)(3)(C).

Dated: April 29, 2024.

Meredith L. Meads,

Executive Assistant, USAGM.

[FR Doc. 2024–09853 Filed 5–1–24; 4:15 pm]

BILLING CODE –P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–17–2024]

Foreign-Trade Zone (FTZ) 21, Notification of Proposed Production Activity; Patheon API Inc.; (Pharmaceutical Products); Florence, South Carolina

Patheon API Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Florence, South Carolina, within Subzone 21J. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 26, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include: oseltamivir phosphate—active pharmaceutical ingredient (API); benserazide hydrochloric acid (Parkinson's Disease finished drug); AMG 510 API; capecitabine API; MSBA–30K (methyl succinimidyl butanoic acid 30 kilodalton) API; and, PEG2–NHS (PEGinterferon with N-hyroxysuccinate) finished drug (duty rate ranges from duty-free to 6.5%).

The proposed foreign-status materials and components include: resorcinol; ethyl alcohol (specifically denatured alcohol); ethyl acetate; hydrogen; hydrochloric acid; silica gel pack; sodium hydroxide solid and in solution; sodium hydroxide; copper II sulfate pentahydrate; palladium (catalyst); N-heptane; methylene chloride, unpreserved; methanol; benzaldehyde; pyrogallolaldehyde; glacial acetic acid; N-pentylchloroformate; 2-Bromo-5-hydroxybenzoic acid; DL-serine hydrazide hydrochloride; pyridine, 99.5%; aminofuranoside; capecitabine API; sodium bicarbonate; fiber drum (cardboard); drum (high density polyethylene); drum (steel); and, drum jet ring (steel) (duty rate ranges from duty-free to 5.8%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 12, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: April 30, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–09659 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–849]

Certain Paper Shopping Bags From the Republic of Türkiye: Final Affirmative Determination of Sales at Less Than Fair Value; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On March 18, 2024, the U.S. Department of Commerce (Commerce) published in the **Federal Register** its final determination in the less-than-fair value (LTFV) investigation of certain paper shopping bags (paper bags) from the Republic of Türkiye (Türkiye). In that notice, Commerce incorrectly included the company name ''Umur Basim'' in the rate table.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office

IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2024, Commerce published in the **Federal Register** its final determination in the LTFV investigation of paper bags from Türkiye.[1] In that notice, Commerce incorrectly listed Umur Basim in the rate table with other companies to which Commerce applied total adverse facts available (AFA) because of their failure to timely respond to Commerce's quantity and value (Q&V) questionnaire. However, Umur Basim timely responded to Commerce's Q&V questionnaire. Therefore, Commerce should not have listed Umur Basim in the rate table as one of the companies with an AFA rate of 47.56 percent. Rather, Umur Basim is part of the group of all other producers and exporters that were not individually examined, and that are required to post a cash deposit for estimated antidumping duties at a rate of 26.32 percent.

Commerce will amend its cash deposit instructions to U.S. Customs and Border Protection consistent with the above correction. Specifically, Commerce will amend the cash deposit rate for Umur Basim to the all-others rate of 26.32 percent effective as of March 18, 2024, the date of publication of the *Final Determination* in the **Federal Register**.[2]

Correction

In the **Federal Register** of March 18, 2024, in FR Doc 2024–05675, on page 19296, in the first column remove the name Umur Basim from the rate table.

Notification to Interested Parties

This notice is issued and published in accordance with sections 735(d) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(c) and 19 CFR 351.224(e).

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–09620 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Paper Shopping Bags from the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value,* 89 FR 19295 (March 18, 2024) (*Final Determination*).

[2] *See Final Determination,* 89 FR at 19295.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–840]

Common Alloy Aluminum Sheet From the Republic of Türkiye: Preliminary Results of the Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and/or exporters of common alloy aluminum sheet (CAAS) from the Republic of Türkiye (Türkiye), during the period of review (POR) January 1, 2022, through December 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 3, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2023, Commerce initiated this administrative review of the countervailing duty order on CAAS from Türkiye.[1] The mandatory company respondents are Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Americas, Inc., and Kibar Dış Ticaret A.S. (collectively, Assan) and Teknik Aluminyum Sanayi A.S. (Teknik). On December 12, 2023, Commerce extended the deadline for these preliminary results to April 26, 2024.[2]

For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is CAAS from Türkiye. For a complete description of the scope of this *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs preliminarily found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient and that the subsidy is specific.[4] For a full description of the methodology underlying Commerce's preliminary conclusions, see the Preliminary Decision Memorandum.

Companies Not Selected for Individual Examination

The Act and Commerce's regulations do not directly address the subsidy rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight averaging the countervailable subsidy rates established for each of the companies individually investigated,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023); *see also See Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders,* 86 FR 22144 (April 27, 2021) (*Order*).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Review,'' dated December 12, 2023.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from Türkiye; 2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available.[5] We preliminarily determine that Assan received countervailable subsidies that are above *de minimis* and are not based entirely on facts available and that Teknik received countervailable subsidies that are below *de minimis.* Therefore, we preliminarily determine to apply the net subsidy rate calculated for Assan to the non-selected companies.[6] The companies for which a review was requested, and which were not selected for individual examination as mandatory respondents or found to be cross-owned with a mandatory respondent, are: ASAS Aluminyum Sanayi ve Ticaret A.S.; Assan; P.M.S. Metal Profil Aluminum Sanayi Ve Ticaret A.S.; and Teknik.

Preliminary Results of Review

Commerce preliminarily determines the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent *ad valorem*)
Assan Aluminyum Sanayi ve Ticaret A.S.[7]	1.08
Teknik Aluminyum Sanayi A.S	0.19 (*de minimis*)
Companies Not Selected for Individual Examination	1.08

Disclosure and Public Comment

Commerce intends to disclose its calculations performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.[8] Commerce will notify interested parties of the deadline for submission of case briefs. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically, using ACCESS. Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days of the publication date of this notice. If a request for a hearing is made, parties will be notified of the time and date of the hearing.[13]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), Commerce preliminarily assigned a subsidy rate in the amount for the producer/exporter shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends upon publication of the final results, to instruct CBP to collect cash deposits of the estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. If the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the

[5] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[6] *See* Memorandum, ''Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this memorandum.

[7] This rate is applicable to Assan and its cross-owned companies Kibar Americas, Inc., and Kibar Dış Ticaret A.S.

[8] *See* 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 for general filing requirements.

[9] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[12] *See APO and Service Procedures.*

[13] *See* 19 CFR 351.310(d).

all-others rate (*i.e.,* 3.45 percent).[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: April 26, 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

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09619 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See Order,* 86 FR at 22145.

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Sub-Saharan Africa Rail and Port Trade Mission to South Africa and Angola—August 19–24, 2024. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers, and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including the likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry

Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Sub-Saharan Africa Rail and Port Trade Mission to South Africa and Angola—August 19–24, 2024.

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Sub-Saharan Africa Rail and Port Trade Mission (SSARP TM) to South Africa and Angola from August 19 through August 24, 2024. The objective of this mission is to advance U.S. national interests and focus on meeting demand for U.S. rail and port solutions for African markets.

The business development mission will bring 10–15 companies from U.S. rail and port manufacturers to Johannesburg, South Africa, to participate in the Southern African Railways Association (SARA) Conference and to Luanda and Lobito, Angola to meet with officials and potential buyers focused on the Lobito Corridor, the first strategic economic corridor launched by President Biden under the flagship G7 Partnership for Global Infrastructure and Investment Initiative (PGI).

ITA will organize a tailored program for U.S. companies exploring opportunities in African markets and will leverage strong connections with U.S. interagency partners to lead discussions on trade, financing, and technical aspects of doing business in Africa. Mission participants will have the opportunity to meet with transportation leaders at the SARA Conference, where leaders from across Africa will converge. Mission participants will participate in the expo and conference, develop business prospects through ITA-hosted networking events, vetted business-to-business matchmaking, roundtable discussions with U.S. and foreign government and industry leaders, product presentations, and site visits to manufacturing and infrastructure facilities.

Mission participants will receive assistance to secure meetings, gain greater exposure to African markets, and benefit from the guidance and insights of ITA's commercial team and the support and expertise of interagency partners focused on funding and financing opportunities for U.S. companies working in Africa, including EX–IM Bank, DFC, TDA, and other USG partners.

South Africa Stop

The anchor event for the SSARP TM is the SARA Conference and Exhibition (August 21–23, 2024) in Johannesburg, an annual event that has been gaining traction in recent years (*https://www.sararailconference.com/conference/*). It is closely linked to the Transportation Committee (*https://www.sadc.int/pillars/transport*) of the Southern African Development Community (SADC), which seeks to increase integration, investment, and development of the rail sector in southern Africa.

The SARA Conference has traditionally attracted many regional rail stakeholders (government, parastatals, operating concessionaries, and service providers) from SADC, primarily in rail, but also mining and ports. SADC consists of Angola, Botswana, Comoros, the Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, the United Republic of Tanzania, Zambia, and Zimbabwe.

Angola Stop

The second destination for the SSARP TM is Luanda and Lobito in Angola. Angola was selected as a second stop to increase U.S. rail and port companies' awareness and engagement in the Lobito Corridor Project, which is a flagship project under PGI. The Lobito Corridor will integrate Angola, the Democratic Republic of Congo, and the northwestern part of Zambia, into regional and global markets via Angola's Port of Lobito. The project represents the largest financial investment through the U.S. Export-Import (EXIM) Bank. The endeavor will develop green energy supply chains, and is envisioned to spur investments in agriculture, telecommunications, natural resources, logistics, and additional supply-chain sub-sectors in Angola.

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Monday, August 19, 2024	• Trade Mission Participants Arrive in Johannesburg, South Africa.
Johannesburg, South Africa	• No Host Dinner with Business Development Mission Participants.
Tuesday, August 20, 2024	• U.S. Embassy Team Briefing.
Johannesburg, South Africa	• Policy Roundtable with interagency partners. • One-on-one business matchmaking. • Evening Reception.
Wednesday, August 21, 2024	• SARA Conference participation.
Johannesburg, South Africa	• SARA networking events. • One-on-one business matchmaking. • Evening Reception.
Thursday, August 22, 2024	• SARA Conference participation.
Johannesburg, South Africa–Luanda, Angola	• One-on-one business matchmaking. • Site visit to infrastructure projects. • Travel to Luanda, Angola.
Friday, August 23, 2024	• U.S. Embassy Team Briefing: In-depth discussion on the Lobito Corridor project.
Luanda, Angola–Lobito, Angola	• B2B meeting and B2G meetings: Ministry of Transportation, Angolan Cargo and Logistics Certification Regulatory Agency, local companies currently providing services to the port of Luanda, Maritime and Port Institute Director (TBC). • Site Visit to the Port of Luanda (Operations Tour and meeting with Luanda Port Board members) (TBC). • Evening Networking reception.
Saturday, August 24, 2024	• Travel to Benguela (one hour flight; take the first available morning flight).
Lobito, Angola	• Drive directly to Lobito infrastructure sites—Conduct port and rail site visits. • B2B meeting and B2G meetings: Ministry of Transportation, Angolan Cargo and Logistics Certification Regulatory Agency, infrastructure project leaders, National Institute of Railways of Angola, Association of Ports of Angola (TBC).

	• Evening Networking Reception. • End of Mission.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 15 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be $5,775.00 for small or medium-sized enterprises (SME)1; and $6,620.00 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $1000.00. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate in a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than June 28, 2024. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after June 28, 2024, will be considered only if space and scheduling constraints permit.

Contacts

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John Tracy, Senior International Trade Specialist, U.S. Commercial Service Syracuse, *John.Tracy@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2024–09715 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–839]

Common Alloy Aluminum Sheet From Türkiye: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (CAAS) from the Republic of Türkiye (Türkiye) was sold in the United States at less than normal value during the period of review (POR) April 1, 2022, through March 31, 2023. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 3, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2021, Commerce published the antidumping duty order on common alloy aluminum sheet from Türkiye.[1] On June 12, 2023, in accordance with 19 CFR 351.221(c)(i), Commerce initiated an administrative review of the *Order,* covering eight producers/exporters: Aluminyum Sanayi ve Ticaret A.S.; Assan Aluminyum Sanayi ve Ticaret A.S. (Assan); Kibar Americas, Inc.; Kibar Dis Ticaret A.S.; Panda Aluminyum A.S.; PMS Metal Profil Aluminyum Sanayi ve Ticaret A.S.; TAC Metal Ticaret Anonim Sirketi; and Teknik Aluminyum Sanayi A.S. (Teknik).[2]

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on December 11, 2023, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review until April 26, 2024.[3]

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise subject to the *Order* is CAAS from Türkiye. Products subject to the Order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of the *Order* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We calculated constructed export price in accordance with section 772 of the Act and normal value in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine the following weighted-average dumping margins for the period April 1, 2022, through March 31, 2023:

Exporter or producer	Weight-average dumping margin (percent)
Assan Aluminyum Sanayi ve Ticaret A.S	1.49
Teknik Aluminyum Sanayi A.S	2.59
Non-Selected Companies	2.04

Rate for Companies Not Individually Examined

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available. In this review, we calculated a weighted-average dumping margin of 1.49 percent for Assan and 2.59 percent for Teknik. In accordance with section 735(c)(5)(A) of the Act, Commerce has assigned the average of these two calculated weighted-average dumping margins, 2.04 percent, to the non-selected companies in these preliminary results.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[5] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, Southern Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 22139 (April 27, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 88 FR 38021 (June 12, 2023).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated December 11, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Common Alloy Aluminum Sheet from Türkiye; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.309(c)(1)(ii).

case briefs.[6] Interested parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; and (2) a table of authorities.[7]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings, we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide, at the beginning of their briefs, a public executive summary for each issue raised in their briefs.[8] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed hearing request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues the party intends to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[10]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If Assan's or Teknik's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[11] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If either Assan's or Teknik's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[12]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Assan or Teknik for which they did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (*i.e.,* 4.85 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the company-specific cash deposit rate for Assan and Teknik will be equal to the weighted-average dumping margin established in the final results of this review for each respondent (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.85 percent, the all-others rate established in the less-than-fair-value investigation.[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[6] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,*88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[9] *See APO and Service Final Rule.*

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.212(b)(1).

[12] *See* 19 CFR 352.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[13] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[14] *See Order,* 85 FR at 17866.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: April 26, 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

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09621 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD925]

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) Ecosystem Advisory Subpanel (EAS) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held Tuesday, May 21, 2024, from 12 p.m. to 2 p.m. or until business for the day is completed.

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 EAS online meeting is to develop recommendations on Pacific Council operations and priorities, which the Pacific Council will discuss at its June 7–13, 2024, meeting. The EAS may also discuss recommendations for other items on the Pacific Council's June meeting agenda relevant to ecosystem management and the business of the EAS.

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: April 29, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–09625 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD928]

Marine Mammals; File No. 27597

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NOAA Alaska Fisheries Science Center's Marine Mammal Laboratory (MML), 7600 Sand Point Way NE, Seattle, WA 98115 (Responsible Party: John Bengston, Ph.D.) has applied in due form for a permit to conduct research on Steller sea lions (*Eumetopias jubatus*).

DATES: Written comments must be received on or before June 3, 2024.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting the File No. 27597 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Sara Young or Courtney Smith, Ph.D., at (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

MML proposes to conduct research to measure population status, vital rates, foraging ecology, habitat requirements, and effects of natural and anthropogenic factors impacting the eastern distinct population segment (eDPS) of Steller sea lion populations pursuant to fulfilling the NMFS legal requirements under the MMPA, and to test hypotheses of mechanisms underlying population trends. Proposed activities include surveys (aerial, vessel, and land) including use of unmanned aircraft systems (UAS), capture and handling, marking, hot branding, sampling (including but not limited to blood, blubber, swabs of all mucus membranes and lesions, skin samples, vibrissae, and hair), tagging, and unintentional disturbance. Animals may be disturbed by surveys, captured, sampled and released for vital rates, foraging ecology and/or health studies multiple times per year. MML requests four unintentional mortalities from the eDPS of Steller sea lions annually, not to exceed eight over the duration of the permit. Non-target species that may be disturbed unintentionally during these studies include northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea

lions (*Zalophus californianus*). Collected biological samples may be exported for analysis. See the application for complete numbers of animals requested by species and procedure. The requested duration of this permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007) and a supplemental environmental assessment (NMFS 2014) prepared for the addition of unmanned aerial surveys to the suite of Steller sea lion research activities analyzed under the EIS that concluded that issuance of the permits would not have a significant adverse impact on the human environment. An environmental review memo is being prepared to summarize these findings.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 29, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–09615 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD212]

Draft Updated Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Underwater and In-Air Criteria for Onset of Auditory Injury and Temporary Threshold Shifts (Version 3.0)

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

ACTION: Notice; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS), announces the availability of our draft *Update to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0): Underwater and In-Air Criteria for Onset of Auditory Injury and Temporary Threshold Shifts* (draft Updated Technical Guidance) for public comment. The draft Updated Technical Guidance assesses the effects of anthropogenic sound on marine mammal species under NMFS's jurisdiction. The draft Updated Technical Guidance provides updated received levels and auditory weighting functions, or acoustic criteria, above which individual marine mammals, in-air and underwater, are predicted to experience changes in their hearing sensitivity (auditory injury or temporary threshold shift) for all anthropogenic sound sources. Once finalized, the Updated Technical Guidance will replace NMFS's current *2018 Revisions to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0): Underwater Thresholds for Onset of Permanent and Temporary Threshold Shifts* (2018 Revised Technical Guidance).

DATES: Comments must be received by June 17, 2024.

ADDRESSES: The draft Updated Technical Guidance is available in electronic form via the internet *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.* You may submit comments by including NOAA–NMFS–2024–0026, by either of the following methods:

Federal e-Rulemaking Portal: Go to *https://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2024-0026,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Send comments to: Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Updated Acoustic Technical Guidance.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will generally post 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: Amy R. Scholik-Schlomer, Office of Protected Resources, 301–427–8449, *Amy.Scholik@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service has developed a draft Updated Technical Guidance document for assessing the effects of anthropogenic sound on the hearing of marine mammal species, in-air and underwater, under NMFS's jurisdiction. Specifically, the draft Updated Technical Guidance identifies the received levels and auditory weighting functions, or acoustic criteria, above which individual marine mammals are predicted to experience changes in their hearing sensitivity (auditory injury (AUD INJ) or temporary threshold shift (TTS)) for all anthropogenic sound sources. This document is intended for use by NMFS analysts and managers and other relevant user groups and stakeholders, including other Federal agencies, when seeking to determine whether and how their activities are expected to result in particular types of impacts to marine mammals via acoustic exposure in-air and underwater. The draft Updated Technical Guidance outlines NMFS's updated acoustic criteria and describes in detail how they were developed and how they will be updated in the future.

As with our current 2018 Revised Technical Guidance (*https://www.fisheries.noaa.gov/s3/2023-05/TECHMEMOGuidance508.pdf*), NMFS worked with the U.S. Navy, which updated their marine mammal acoustic criteria. Upon evaluation, NMFS has determined that the Navy's proposed criteria reflects the best available science and incorporated it into our draft Updated Technical Guidance.

NMFS conducted an independent peer review in October/November 2022 in association with the draft Updated Technical Guidance. Details of the peer reviews are available at the following website: *https://www.noaa.gov/information-technology/update-to-20162018-technical-guidance-for-assessing-effects-of-anthropogenic-sound-on-marine-mammal.* Additionally, in May and June of 2023, NMFS solicited input from other relevant Federal agencies on the draft Updated Technical Guidance. Federal agency comments and NMFS responses to those comments are available at the following website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.* To complete the review process, NMFS is now soliciting additional stakeholder feedback via public comment on the draft Updated Technical Guidance.

As an overview of the draft Updated Technical Guidance, the main body of the document contains a summary of the updated acoustic threshold levels and marine mammal auditory weighting functions, with additional details provided in Appendix A (Navy Technical Report), Appendix B (Research Recommendations), Appendix C (Review Process, which will be completed before finalization to reflect input received during this public comment period), and Appendix D (Glossary).

There are some notable changes associated with the draft Updated Technical Guidance. Namely, the marine mammal hearing group terminology from Southall *et al.* 2019 has been adopted. Furthermore, in-air acoustic criteria are also now included. However, the methodology for deriving AUD INJ and TTS criteria within the draft Updated Technical Guidance is very similar to the methodology for NMFS's current 2018 Revised Technical Guidance (which also underwent peer review and public comment), which we believe represents the best available science. Thus NMFS encourages members of the public to focus their comments on the incorporation of new data and recommended improvements to the existing methodology, if applicable.

Changes to AUD INJ and TTS criteria as reflected in the draft Updated Technical Guidance are primarily a result of new marine mammal audiogram and TTS data. Some of the most notable changes to the AUD INJ and TTS criteria include predictions of AUD INJ and TTS thresholds below 10 kHz for species formerly classified as mid-frequency cetaceans (now classified as high-frequency cetaceans) and significantly lower AUD INJ and TTS thresholds for underwater otariid pinnipeds.

Please note that until NMFS finalizes the Updated Technical Guidance, the 2018 Revised Technical Guidance remains our current guidance.

NMFS is aware that the National Marine Mammal Foundation successfully collected preliminary hearing data on two minke whales during their third field season in Norway (summer 2023). These data have implications for not only the generalized hearing range for low-frequency cetaceans but also on their weighting function. However, no official results have been published. Furthermore, a fourth field season (2024) is proposed, where more data will likely be collected. Thus, NMFS has not proposed any changes to our draft Updated Technical Guidance based on these limited and unpublished data, though we recognize that mysticete hearing will likely merit re-evaluation in the future. Therefore, we anticipate that once the data from both field seasons are published, it will likely warrant additional updates to our Technical Guidance.

Dated: April 30, 2024.

Catherine G. Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–09657 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648–XD861

Atlantic Highly Migratory Species; Gear Considerations

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

ACTION: Notice of availability of scoping document; request for comments.

SUMMARY: NMFS announces the availability of a scoping document to consider changes to gear regulations and requirements in fisheries targeting Atlantic highly migratory species (HMS). While management measures implemented since 1999 have helped achieve fishery management and conservation goals, the combination of over two decades of gear-specific measures may have had unanticipated consequences. Changes in species distribution, fishing gears, fishing techniques, market conditions, and fishing interests may warrant a reexamination of some gear-specific management measures to see if they are still meeting applicable goals. NMFS requests comments on the options presented in the scoping document as well as additional ideas that may warrant consideration.

DATES: Written comments on this notice of availability and the scoping document must be received on or before July 31, 2024. Three virtual scoping meetings will be held during the comment period. **SEE SUPPLEMENTARY INFORMATION** for all meeting dates and times.

ADDRESSES: Electronic copies of the scoping document and the public hearing presentation may also be obtained on the internet at: *https://www.fisheries.noaa.gov/action/public-comment-requested-gear-considerations-atlantic-highly-migratory-species-fisheries.* You may submit comments on this document, identified by NOAA–NMFS–2024–0050, via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov,* enter NOAA–NMFS–2024–0050 into the search box, click 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: Guy DuBeck (*Guy.DuBeck@noaa.gov*), Steve Durkee (*Steve.Durkee@noaa.gov*), Becky Curtis (*Becky.Curtis@noaa.gov*), or Karyl Brewster-Geisz (*Karyl.Brewster-Geisz@noaa.gov*) by email, or by phone at (301) 427–8503 for information on the scoping document.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Under the Magnuson-Stevens Act, conservation and management measures must prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery (16 U.S.C. 1851(a)(1)). Where a fishery is determined to be in or approaching an overfished condition, NMFS must adopt conservation and management measures to prevent or end overfishing and rebuild the fishery (16 U.S.C. 1853(a)(10) and 1854(e)). In addition, NMFS must, among other things, comply with the Magnuson-Stevens Act's 10 national standards, including a requirement to use the best scientific information available as well as to consider potential impacts on residents of different States, efficiency, costs,

fishing communities, bycatch, and safety at sea (16 U.S.C. 1851(a)(1–10)). Under ATCA, the Secretary shall promulgate regulations as may be necessary and appropriate to carry out binding recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Since the 1999 Federal FMP for Atlantic Tunas, Swordfish, and Sharks and amendment 1 to the Atlantic Billfish FMP (64 FR 29090, May 28, 1999), NMFS has implemented a wide range of management measures specific to fishing gear in order to comply with the Magnuson-Stevens Act and ATCA. These management measures were designed to, among other things, prevent or stop overfishing and to minimize bycatch to the extent practicable. Many of these management measures included restrictions on fishing gear to reduce impacts on bycatch species, increase post-release survivability, limit the use of some gears to reduce lost and derelict gear, and meet other objectives as necessary. While each of these management measures helped achieve fishery management and conservation goals, the combination of over two decades of gear-specific measures may have had unanticipated consequences given the many changes in species distributions, fishing gears, fishing techniques, market conditions, and fishing interests that have occurred over the years. These unanticipated consequences could include limiting fishing opportunities, which in turn may limit the ability to achieve optimum yield from the fisheries. Additionally, these unanticipated consequences may reduce the ability of fishermen to adjust their fishing techniques to account for a changing environment and changing species distributions and/or to modify their gear to be more efficient or less likely to catch non-target species. As such, NMFS announces the availability of a scoping document and requests comments to consider whether certain gear-specific management measures are still meeting applicable goals. NMFS anticipates potential changes to gear regulations and requirements in fisheries targeting Atlantic HMS through a future rulemaking.

Scoping Document

In the scoping document, NMFS details a wide range of potential management options based on comments and suggestions from constituents, including members of the HMS Advisory Panel. See **ADDRESSES** section for information to access the scoping document and the public hearing presentation. NMFS is considering options to facilitate targeting of swordfish deeper in the water column; authorize additional species for certain gears along with gears under additional permit types; and address gear regulation inconsistencies across HMS and non-HMS fisheries.

The management measures presented in the scoping document should not be considered an exhaustive list. The management options are intended to facilitate discussion of the merits of each range of topics under consideration.

Request for Comments

NMFS invites public comment on the options presented in the scoping document as well as additional ideas that could provide increased flexibility and still meet applicable fishery management and conservation goals. Three virtual scoping meetings will be held during the comment period (table 1). Any comments received on the scoping document will be used to assist in the development of options to be considered in a future rulemaking.

TABLE 1—DATES, TIMES, AND INFORMATION FOR VIRTUAL SCOPING MEETING CONFERENCE CALLS/WEBINARS

Meeting type	Date, time	Conference call/webinar information
Conference calls/Webinars	May 29, 2024, 5 p.m.–7 p.m. ET .. June 28, 2024, 10 a.m.–12:00 p.m. ET. July 17, 2024, 1 p.m.–3 p.m. ET.	*https://www.fisheries.noaa.gov/action/public-comment-requested-gear-considerations-atlantic-highly-migratory-species-fisheries.*

The public is reminded that NMFS expects participants at virtual scoping meetings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the Agency; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). A NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules they will be asked to leave the scoping meeting. For the virtual scoping meetings, participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

In addition to the scoping meetings, NMFS will discuss the topics in the scoping document at the May 2024 HMS Advisory Panel meeting. The HMS Advisory Panel meeting will be accessible via conference call and webinar. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/action/public-comment-requested-gear-considerations-atlantic-highly-migratory-species-fisheries.* NMFS has requested to present the scoping document to four Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico Fishery Management Councils) that are meeting during the public comment period. Please see the Councils' and Commissions' meeting notices for times and locations.

Dated: April 24, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–09269 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD930]

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: Pacific Fishery Management Council (Pacific Council) staff will provide an online briefing on the

Executive Director's recommendations on Pacific Council operations and priorities. This online briefing is open to the public.

DATES: The online meeting will be held on Tuesday, May 21, 2024, from 9 a.m. to 12 p.m., Pacific Time.

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: Kelly Ames, Deputy Director, Pacific Council; telephone: (503) 820–2417.

SUPPLEMENTARY INFORMATION: The Pacific Council created the Ad Hoc Committee of the Whole, composed of Pacific Council members, to make recommendations on Council operations in light of the Pacific Council's medium and long-term financial status. Based on the Committee's recommendations, the Pacific Council's Executive Director has proposed potential changes to Pacific Council operations in line with anticipated budget ceilings for the next three to five years. The Council will consider these recommendations at its June meeting and provide guidance on further development and implementation of any such changes. In this online briefing Pacific Council staff will present these recommendations for Pacific Council advisory bodies and the public to allow informed comment at the June Pacific Council 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: April 29, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–09623 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD927]

Marine Mammals; File No. 27514–01

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Heather E. Liwanag, Ph.D., California Polytechnic State University, 1 Grand Avenue, San Luis Obispo, CA 93407–0401, has applied for an amendment to Scientific Research Permit No. 27514.

DATES: Written comments must be received on or before June 3, 2024.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27514–01 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27514–01 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Sara Young, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 27514 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 27514, issued on March 21, 2024 (89 FR 27418, April 17, 2024), authorizes the permit holder to conduct research on northern elephant seals (*Mirounga angustirostris*) in California, including unintentional harassment of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern fur seals (*Callorhinus ursinus*). The permit holder is requesting the permit be amended to increase the unintentional harassment for California sea lions from 50 to 150 animals and northern fur seals from 25 to 100.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 29, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–09622 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD898]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Skagway Ore Terminal Redevelopment Project in Skagway, Alaska

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

ACTION: Notice; issuance of a modified incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued a modified incidental harassment authorization (IHA) to Municipality of Skagway (MOS) to incidentally harass marine mammals during construction associated with the Ore Terminal

redevelopment project in Skagway, Alaska.

DATES: This modified IHA is effective from the date of issuance through September 30, 2024.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-municipality-skagways-skagway-ore-terminal-redevelopment.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

History of Request

On August 9, 2022, MOS submitted a request to NMFS requesting an IHA for the take of small numbers of seven species of marine mammals incidental to the Ore Terminal redevelopment project in Skagway, Alaska. On April 18, 2023, NMFS published a **Federal Register** notice (88 FR 23627) for the proposed IHA. On August 29, 2023, NMFS issued an IHA to MOS, and on September 5, 2023, NMFS published a **Federal Register** notice (88 FR 60652) announcing the issuance of the IHA, which is valid from October 1, 2023 through September 30, 2024.

On February 5, 2024, NMFS received a request from MOS to modify the 2023 IHA. MOS subsequently submitted multiple revised IHA modification requests and submitted a final version on March 15, 2024, which NMFS determined to be adequate and complete. In the original IHA issued to MOS, NMFS authorized 2 takes by Level A harassment and 196 takes by Level B harassment for Steller sea lion, and no take by Level A or Level B harassment for northern fur seals.

MOS intended for all work to be conducted from October through March; thus, the species densities, and therefore take requests, proposed in the original request were focused on fall and winter months. However, due to construction delays, construction will not be completed by March 31, 2024, making the original densities inaccurate for the entirety of the construction window, which is now proposed to extend into the spring and summer months as well. Additionally, in the initial review of species likely to be found in the action area, northern fur seal was determined unlikely to be found here. This species has not been previously documented in Skagway and was not expected to appear in the project area; therefore, no take was originally requested. However, a northern fur seal yearling was observed by a Protected Species Observer (PSO) near the project site on multiple occasions in January 2024, causing project shutdowns and delays.

Therefore, the MOS is requesting a modification to the issued authorization to add 2 takes by Level A harassment and 45 takes by Level B harassment for northern fur seal, and to adjust take requests based on average species densities throughout the year due to work occurring in all seasons and, consequently, increasing authorized take by Level B harassment to 270 for Steller sea lion. There have been no changes from the proposed modification.

Description of the Activity and Anticipated Impacts

The modified IHA would include the same construction activities (impact pile driving and vibratory pile driving and removal) in the same locations that were described in the proposed notice of the 2023 IHA (88 FR 23627, April 18, 2023). The mitigation, monitoring, and reporting measures remain the same as prescribed in the initial IHA. Please see the additional relevant documents related to the issuance of the initial IHA, including MOS' application and the notice of issuance of the IHA (88 FR 60652, September 5, 2023) (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-municipality-skagways-skagway-ore-terminal-redevelopment*) for more detailed description of the project activities.

Detailed Description of the Action

A detailed description of the construction activities can be found in the aforementioned documents associated with the issuance of the initial IHA. The location and general nature of the activities are identical to those described in the previous documents. However, as stated in the History of Request section, MOS will not complete construction during their planned work window. MOS plans to continue construction past their original construction timeline and work into spring and summer. As of February 7, 2023, MOS conservatively estimates that there are 128 days of construction left. Detailed pile removal and installation quantities left can be found in table 1 and table 2.

TABLE 1—REMAINING PILE REMOVAL QUANTITIES

Pile type and size (inches (in))	Quantity remaining
Timber Piles	267
Steel (14-in)	12
Steel (16-in)	51
Steel (24-in)	12
Steel (28-in)	26
Temporary piles (24-in or smaller)	18

TABLE 2—REMAINING INSTALLATION QUANTITIES

Pile type and size (in)	Quantity remaining
Steel (24-in)	162
Steel (36-in)	21
Steel (48-in)	6
Temporary piles (24-in or smaller)	18

Comments and Responses

A notice of NMFS' proposal to issue a Modified IHA to the MOS was published in the **Federal Register** on April 2, 2024 (89 FR 22684). That notice described, in detail, the MOS's modified activities. In that notice, we requested

public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA modification, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 15-day public comment period. NMFS received no public comments on the proposed modification.

Description of Marine Mammals

A description of the marine mammals in the area of the activities can be found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed the draft 2023 Stock Assessment Reports (SARs; Young *et al.,* 2023; available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*), information on relevant Unusual Mortality Events, and recent scientific literature, and incorporated that into table 3 below.

Table 3 lists all species or stocks for which take is expected and authorized to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska Marine Mammal SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeanglinae*	Hawai'i	-,-,N	11,278 (0.56, 7,265, 2020).	127	27.09
		Mexico-North Pacific	T,D,Y	918 (0.217, UNK, 2006)	UNK	0.57
Minke whale	*Balaenoptera acutorostra*	Alaska	-,-,N	UNK	NA	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orca orcinus*	Eastern North Pacific, Norther Residents, Southeast Alaska.	-,-,N	302 (N/A, 302, 2018)	2.2	0.2
		Eastern North Pacific Alaska Residents.	-,-,N	1,920 (N/A, 1,920, 2019)	19	1.3
		West Coast Transients	-,-,N	349 (N/A, 349, 2018)	3.5	0.4
		Gulf, Aleutian, Bering Transients.	-,-,N	587 (N/A, 587, 2020)	5.9	0.8
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Southeast Alaska Inland Waters.	-,-,N	1,619 (0.26, 1,250, 2019)	13	5.6
Dall's porpoise [4]	*Phocoenoides dalli*	Alaska	-,-,N	UND (UND, UND, 2015)	UND	37
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western Stock	E,D,Y	49,837 (N/A, 49,837, 2022).	299	267
		Eastern Stock	-,-,N	36,308 (N/A, 36,308, 2022).	2,178	93.2
Northern fur seal	*Callorhinus ursinus*	Pribilof Island/Eastern Pacific Stock.	-,D,Y	626,618 (0.2, 530,376, 2019).	11,403	373
Family Phocidae (earless seals):						
Harbor seal	*Phoca vituline richardii*	Alaska- Lynn Canal/Stephens Passage.	-,-,N	13,388 (N/A, 11,867, 2016).	214	50

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

We have determined that no new information affects our original analysis of impacts under the initial IHA. However, as stated above, MOS is requesting to add take by Level A and Level B harassment of northern fur seal. This species was not previously documented in Skagway and was not expected to appear in the project area; therefore, no take was originally requested or authorized in the initial IHA. However, a northern fur seal yearling has been observed near the project site on multiple occasions in January 2024.

Northern Fur Seal

Northern fur seals primarily inhabit open ocean and rocky or sandy beaches on islands for resting, reproduction, and molting (NOAA, 2022a). Non-breeding northern fur seals may occasionally haul out on land at other sites in Alaska, British Columbia, and on islets along the west coast of the United States (Fiscus, 1983). During the reproductive season, adult males usually are on shore during the 4-month period from May to August, although some may be present until November. Adult females are on shore during a 6-month period, June to November. Following their respective times ashore, Alaska northern fur seals of both sexes then move south and remain at sea until the next breeding season (Roppel, 1984). In Alaska, pups are born during summer months and leave the rookeries in the fall, on average around mid-November but ranging from late October to early December. Alaska northern fur seal pups generally remain at sea for 22 months (Kenyon and Wilke, 1953). There is no relevant site-specific information on northern fur seals in the project area other than the two sightings of one individual in January 2024 by PSOs.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the final IHA, which remains applicable to the modification of the IHA. NMFS is not aware of new information regarding potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take for the specified activity are found in the previous notice (88 FR 60652, September 5, 2023). The types and sizes of piles, ensonified areas and source levels, methods of pile driving, and methods for calculating take remain unchanged from the IHA.

The modification addresses the updated species densities to accommodate work in spring and summer, which would result in increased take by Level B harassment of Steller sea lions. The modification includes work in spring and summer seasons, which were not previously included in the IHA. Therefore, in this modification MOS uses the same density methodology for take calculations but using an annual average density for each species (see revised species densities in table 4). Additionally, this modification adds take by both Level A and Level B harassment for northern fur seal, which were not previously expected to be in the project area. The annual average density estimate for northern fur seal is provided below utilizing the same methodology as all other species in the original IHA.

TABLE 4—DENSITY OF MARINE MAMMAL SPECIES IN THE PROJECT AREA

Species	Seasonal density (animals per square kilometer (km^2))				Average density (animals per km^2)
	Spring	Summer	Fall	Winter	
Humpback whale	[1] 0.0081	0.0117	0.018	[1] 0.0081	0.0115
Minke whale	[1] 0.0003	0.0008	0.0005	[1] 0.0003	0.0005
Killer whale	0.0153	[2] 0.005	0.0349	[2] 0.005	0.0151
Harbor porpoise	[3] 0.01	[3] 0.01	[3] 0.01	[3] 0.01	0.01
Dall's porpoise	[3] 0.121	[3] 0.121	[3] 0.121	[3] 0.121	0.121
Harbor seal	[4] 1.727	0.7811	[4] 1.727	[4] 1.727	1.4905
Steller sea lion	0.2662	0.3162	0.2205	0.2662	0.2673
Northern fur seal	0.2763	0	0	0	0.0691

[1] Listed density was provided for winter and spring.
[2] Listed density was provided for winter and summer.
[3] Listed density was annual average.
[4] Listed density was provided for fall, winter, and spring.

MOS is requesting a modification of the previously issued authorization to add take by Level A and Level B harassment of northern fur seal and to adjust the take requests for other species based on average species densities throughout the year due to work occurring in all seasons. This consequently increases the take by Level B harassment request for Steller sea lion (table 5). No other species take requests are updated in this modification. Additionally, the updated take by Level B harassment of Steller sea lions is only a modification for the Eastern U.S. stock and not the MMPA depleted Western U.S. stock which is equivalent to the ESA-listed Western Distinct Population Segment. As per the original IHA and the Biological Opinion, we still only expect take by Level B harassment of 3 individuals from the Western U.S. stock and the remaining 267 from the Eastern U.S. stock.

TABLE 5—REQUESTED TAKE AMOUNT, PER SPECIES, RELATIVE TO POPULATION SIZE

	Stock	Level A	Level B	Total take	Percent of population
Humpback whale	Hawaii	2	13	15	<1
	Mexico-North Pacific	0	1	1	<1
Minke whale	Alaska	2	6	8	UNK
Killer whale	Eastern North Pacific, Northern Residents, Southeast Alaska; Eastern North Pacific Alaska Residents; West Coast Transients; and Gulf, Aleutian, Bering Transients.	2	90	92	2.57
Harbor porpoise	Southeast Alaska	17	75	92	8.9
Dall's porpoise	Alaska	43	193	236	1.8
Harbor seal	Alaska—Lynn Canal/Stephens Passage	193	2,760	2,953	22.14
Steller sea lion	Eastern U.S. + Western U.S	2	270	272	<1
Northern fur seal	Pribilof Islands/eastern Pacific stock	2	45	47	<1

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring and reporting measures are identical to those included in the initial IHA and remain relevant for this modified IHA. These can all be found in the documents supporting the initial final IHA.

Determinations

With the exception of the revised take numbers and addition of a new species, the MOS's in water construction activities as well as mitigation and reporting requirements are unchanged from those in the initial IHA. The effects of the activity on the affected species and stocks remain unchanged, notwithstanding the increase to the authorized amount of Steller sea lion take by Level B harassment and addition of take by Level A and Level B harassment of northern fur seal.

The additional takes from Level A and Level B harassment would be due to potential behavioral disturbance, temporary threshold shift (TTS) or permanent threshold shift (PTS). No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Description of Mitigation, Monitoring and Reporting Measures* section).

The MOS's pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (within Taiya Inlet) of the stock's range. Level A and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the amount of take authorized is extremely small when compared to stock abundance.

The additional 74 takes of Steller sea lion represents a minor increase in the percent of stock taken that was authorized in the initial IHA, and the anticipated impacts are identical to those described in the 2023 final IHA. Additionally, this increase is only of the Eastern U.S. stock; no additional takes of the Western U.S. stock are anticipated or authorized. There is no new information suggesting that our initial analysis or findings should change for Steller sea lions. Separately, the addition of take by Level A and Level B harassment of northern fur seal is less than 0.1 percent of the total stock and therefore this activity will not cause effects on annual rates of recruitment or survival. We have determined that the impacts resulting from this activity are not expected to adversely affect annual rates of recruitment or survival for northern fur seals and we re-affirm our previous findings for Steller sea lions.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) MOS's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we plan to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

For the original IHA, NMFS Office of Protected Resources completed a section 7 consultation with the NMFS Alaska Regional Office for the issuance of this IHA on August 23, 2023. The Alaska Regional Office's biological opinion states that the action is not likely to jeopardize the continued existence of the listed species. This modification of the IHA does not modify or change any take of listed species and there for the prior determination remains unchanged.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the modification of the IHA continues to qualify to be categorically excluded from further NEPA review.

Authorization

NMFS has issued a modified IHA to MOS for conducting construction activities associated with the terminal redevelopment in Skagway, Alaska, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: April 30, 2024.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–09655 Filed 5–2–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* June 2, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20064.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On March 29, 2024 (89 FR 22131), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–583–0556—Folders, File, Reinforced Tab, Manila, ⅓ Cut, Letter
7530–01–583–0557—Folders, File, Reinforced Tab, Manila, Straight Cut, Letter
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: File Maintenance
Mandatory for: US Department of Treasury, Bureau of Public Debt, 200 Third Street, Parkersburg, WV
Designated Source of Supply: SW Resources, Inc., Parkersburg, WV
Contracting Activity: BUREAU OF THE FISCAL SERVICE, PSB 3

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–09703 Filed 5–2–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities: Proposals, Submissions, and Approvals

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled operates as the U.S. AbilityOne Commission (Commission). This notice announces the Commission's intent to submit the Information Collection Request (''ICR'') described below to the Office of Management and Budget (OMB) for approval under applicable provisions of the Paperwork Reduction Act. This notice provides an opportunity to interested members of the public and affected agencies to comment on a proposed Nonprofit Agency (NPA) AbilityOne Representations and Certifications (ARC) form.

DATES: Submit comments on or before July 1, 2024.

ADDRESSES: Submit comments to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Stewart, Compliance and Enforcement Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (703) 254–6172; email: *cstewart@abilityone.gov.* If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: *Overview of ICR:* This notice pertains to an ICR the Commission intends to submit to OMB for approval of an updated form that an AbilityOne NPA will submit annually regarding its AbilityOne Program performance. This is a revision of an existing form that is submitted on an annual reporting cycle. This ICR is consistent with OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These regulations require the Commission to provide an opportunity for interested members of the public and affected agencies to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)), such as those proposed to be implemented through this updated form.

The Commission is responsible for implementing the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 8501–8506. In doing so, the Commission oversees the AbilityOne Program (Program), a program in which individuals who are blind or have significant disabilities provide products and services to Federal agencies, thereby creating employment opportunities for such individuals. The Commission maintains a Procurement List of mandatory source products and services provided by approximately 400 qualified nonprofit agencies (NPAs). Individuals who are working on AbilityOne contracts and counted towards the direct labor hour ratio mandated by the JWOD Act are called ''participating employees.''

The implementing regulations for the JWOD Act, located at 41 CFR chapter 51, provide the program's requirements, procedures, and standards. Section 51–4.3 of the regulations sets forth the

requirements that an NPA must meet to maintain qualification for participation in the Program. Under this section of the regulations, an NPA must submit a completed copy of the appropriate Annual Certification form. This documentation helps the Commission determine whether the NPA is meeting the qualification requirements of the Program. The Commission has also published policies regarding compliance expectations of the NPAs. This information collection request seeks approval for the Commission to update its collection of information necessary to verify an NPA's compliance with Program requirements, as well as regarding an NPA's effective performance in meeting the mission of the Program. To ensure consistency with the Commission's modernization of the Program, the updated form will collect information on employment benefits offered to participating employees, aggregate data regarding employment mobility outcomes achieved by participating employees, and the prevalence of subcontracting that contributes to workplace integration and employee career development for participating employees.

The proposed updated ARC is available at *www.abilityone.gov.*

The ARC will be required annually at the Federal fiscal year-end. The form will be completed and submitted electronically.

The updated form is expected to provide a net reduction in the time burden for NPAs and to result in greater efficiency and cost savings in the oversight process.

The estimated time burden for the existing form is 8 hours. The Commission estimates that the updated form will require 5 hours to complete.

The existing form requires 33 yes/no/not applicable responses to questions about the NPA's AbilityOne Program qualification standing, and these questions require that attachments be provided to explain certain responses to these questions. The existing form also includes seven data tables to be completed, with more than 60 rows of data.

The proposed new form limits qualification standing responses to 10, comprised of five yes/no/not applicable responses, with only two questions directing further explanation or an attachment, as well as one multiple choice question and four open text field questions. The proposed new form contains one less data table than the existing form and requires fewer than 30 rows of data to be completed. The Commission proposes two related forms for electronic completion, which should enable auto-calculation of certain data fields required by this proposed form, further streamlining the process to complete the proposed form. In total, the existing form requires 132 mandatory responses and requires additional (conditional) explanations to 33 questions. The proposed new form requires fewer than 80 mandatory responses and approximately 65 conditional responses. The Commission does not expect the NPAs preparing this form to answer ''yes'' to every question that involves a conditional response. The Commission has also designed the new proposed form with check boxes where possible, to make preparation of the form more efficient.

To calculate the cost burden for the average annual burden, the Commission used national average pay data from the U.S. Bureau of Labor Statistics, using the May 2023 National Occupational Employment and Wage Estimate of $30.88 as the median hourly wage for a Human Resources Specialist (OC 13–1070) to fill out the form and a median principal officer hourly wage from the 990 Forms filed by a sampling of NPAs for the NPA principal officer to review and sign the form. (*https://www.bls.gov/oes/current/oes_nat.htm#11-0000.*)

The table below represents the time and cost burden the Commission estimates this form will necessitate.

NPA positions	Annual form time burden (hours)	Cost estimate for annual time burden on employees	Annual form cost burden on all NPAs
HR Specialist	4	$123.52 (for 4 hours)	$49,408
Principal Officer	1	$384.60 (for 1 hour)	153,840

Total Cost Burden: $203,248.

With respect to this collection of information via the proposed form, the Commission welcomes comments on the following:

- The necessity to collect this information to support the Commission's mission and oversight responsibilities;
- Methodology to improve the accuracy of the estimated time burden;
- Suggestions or methods to minimize the burdens associated with collecting the information described in this ICR.
- The proposed form is viewable at *www.abilityone.gov.*

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–09706 Filed 5–2–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes product(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* June 2, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51–5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the DEPT OF THE AIR FORCE, FA4419 97 CONS CC at Altus Air Force Base, OK with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the

service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Contractor Operated Civil Engineer Supply Store
Mandatory for: U.S. Air Force, Altus Air Force Base, Altus AFB, OK
Authorized Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: DEPT OF THE AIR FORCE, FA4419 97 CONS CC

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8415–00–NIB–0810—Glove, Vinyl, Industrial/Non-Medical Grade, Small
8415–00–NIB–0811—Glove, Vinyl, Industrial/Non-Medical Grade, Medium
8415–00–NIB–0812—Glove, Vinyl, Industrial/Non-Medical Grade, Large
8415–00–NIB–0813—Glove, Vinyl, Industrial/Non-Medical Grade, XLarge
Mandatory Source of Supply: BOSMA Enterprises, Indianapolis, IN
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s):
6508–01–694–1827—Refill, PURELL-SKILCRAFT, Healthcare Advanced Hand Sanitizer, Ultra Nourishing Foam, ES8 System
Mandatory Source of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–09702 Filed 5–2–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Changes

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed changes to the Procurement List.

SUMMARY: The Committee is proposing to change requirements for products already existing on the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* June 2, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Changes

If the Committee approves the proposed changes, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Product(s)

NSN(s)—Product Name(s):
8415–01–623–5162—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XS
8415–01–623–5052—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XXS
8415–01–623–5165—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–S
8415–01–623–5166—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–R
8415–01–623–5169—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–L
8415–01–623–5170—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XL
8415–01–623–5172—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XXS
8415–01–623–5174—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XS
8415–01–623–5178—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–S
8415–01–623–5180—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–R
8415–01–623–5182—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–L
8415–01–623–5236—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XL
8415–01–623–5237—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XXS
8415–01–623–5525—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XS
8415–01–623–5526—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–S
8415–01–623–5528—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–R
8415–01–623–5529—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–L
8415–01–623–5534—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XL
8415–01–623–5537—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XXL
8415–01–623–5541—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XXS
8415–01–623–5542—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XS
8415–01–623–5543—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–S
8415–01–623–5552—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–R
8415–01–623–5553—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–L
8415–01–623–5554—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XL
8415–01–623–5557—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XXL
8415–01–623–5740—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XXS
8415–01–623–5742—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XS
8415–01–623–5789—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–S
8415–01–623–5790—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–R
8415–01–623–5793—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–L
8415–01–623–5795—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XL
8415–01–623–5796—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XXL
8415–01–623–5797—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–R
8415–01–623–5801—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–L
8415–01–623–5803—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–XL
8415–01–623–5805—Coat, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–XXL
Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Authorized Source of Supply: ReadyOne

Industries, Inc., El Paso, TX
Authorized Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Authorized Source of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

The Coats, Army Combat Uniform, Permethrin, Unisex, OCP 2015 were administratively added to the Procurement List 04/15/20105 in accordance with 41 CFR 51–6.13(b), as an additional size, color or other variation of an existing PL product. The requirement on the PL was eventually changed to 28.1% of DLA Troop Support's total requirement. However, when possible and to ensure clarity on existing PL requirements for military garments, or other applicable products, the Committee is departing from stating the mandatory purchase requirement as a percentage of a contracting activity's overall requirement and is instead stating the mandatory purchase requirement as a specified annual quantity of a garment or product. For the Coats, Army Combat Uniform, Permethrin, Unisex, OCP 2015, DLA Troop Support and the authorized sources of supply, assisted by the central nonprofit agency, have agreed that the mandatory purchase requirement is 447,000 units annually. The Committee intends to amend the Procurement List and reflect the agreed annual quantity. Additionally, for administrative purposes, the Committee is assigning a new PL number to the Coats, Army Combat Uniform, Permethrin, Unisex, OCP 2015, which will sever the coats as a legacy from garments no longer being produced and increase the Committee's overall efficiency when processing future transactions.

NSN(s)—Product Name(s):
8415–01–623–3923—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XS
8415–01–623–3926—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–S
8415–01–623–3927—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–R
8415–01–623–3928—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–L
8415–01–623–3929—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XL
8415–01–623–3931—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XS–XXL
8415–01–623–4172—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XS
8415–01–623–4175—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–S
8415–01–623–4176—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–R
8415–01–623–4177—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–L
8415–01–623–4179—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XL
8415–01–623–4181—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, S–XXL
8415–01–623–4183—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XS
8415–01–623–4184—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–S
8415–01–623–4186—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–R
8415–01–623–4187—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–L
8415–01–623–4541—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XL
8415–01–623–4542—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, M–XXL
8415–01–623–4543—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XS
8415–01–623–4544—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–S
8415–01–623–4546—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–R
8415–01–623–4547—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–L
8415–01–623–4548—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XL
8415–01–623–4550—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, L–XXL
8415–01–623–4734—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XS
8415–01–623–4736—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–S
8415–01–623–4737—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–R
8415–01–623–4738—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–L
8415–01–623–4743—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XL
8415–01–623–4745—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XL–XXL
8415–01–623–4762—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–XS
8415–01–623–4763—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–S
8415–01–623–4765—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–R
8415–01–623–4766—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–L
8415–01–623–4767—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–XL
8415–01–623–4768—Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, XXL–XXL
Authorized Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Authorized Source of Supply: ReadyOne Industries, Inc., El Paso, TX
Authorized Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

The Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015 were administratively added to the Procurement List 04/21/2015 in accordance with 41 CFR 51–6.13(b), as an additional size, color or other variation of an existing PL product. The requirement on the PL was eventually changed to 35.3% of DLA Troop Support's total requirement. However, when possible and to ensure clarity on existing PL requirements for military garments, or other applicable products, the Committee is departing from stating the mandatory purchase requirement as a percentage of a contracting activity's overall requirement and is instead stating the mandatory purchase requirement as a specified annual quantity of a garment or product. For the Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, DLA Troop Support and the authorized sources of supply, assisted by the central nonprofit agency, have agreed that the mandatory purchase requirement is 240,000 units annually. The Committee intends to amend the Procurement List and reflect the agreed annual quantity. Additionally, for administrative purposes, the Committee is assigning a new PL number to the Trousers, Army Combat Uniform, Permethrin, Unisex, OCP 2015, which will sever the garments as a legacy from garments no longer being produced and increase the Committee's overall efficiency when processing future transactions.

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–09704 Filed 5–2–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled operates as the U.S. AbilityOne Commission (Commission). This notice announces the Commission's intent to submit the Information Collection Request (''ICR'') described below to the Office of Management and Budget (OMB) for approval under applicable provisions of the Paperwork Reduction Act. This notice provides an opportunity to interested members of the public and affected agencies to comment on a proposed Individual Employee Information form.

DATES: Submit comments on or before July 1, 2024.

ADDRESSES: Submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Stewart, Compliance and Enforcement Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (703) 254–6172; email: *cstewart@abilityone.gov.* If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Overview of ICR: This notice pertains to an ICR the Commission intends to submit to OMB for approval of a form that an AbilityOne participating nonprofit agency employer will fill out to document relevant information for each of its employees whose work on an AbilityOne Procurement List contract is counted by the NPA as direct labor hours. These individuals are called ''Participating Employees.''

This ICR is consistent with OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These regulations require the Commission to provide an opportunity to interested members of the public and affected agencies to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)) such as those proposed to be implemented through this form.

The Commission is responsible for implementing the Javits-Wagner-O'Day (JWOD) Act, 41 U.S.C. 8501–8506. In doing so, the Commission oversees the AbilityOne Program, an employment program in which individuals who are blind or have significant disabilities provide products and services to Federal agencies, thereby creating employment opportunities for such individuals. The Commission maintains a Procurement List of mandatory source products and services provided by approximately 413 qualified nonprofit agencies (NPAs).

This Participating Employee Information (PEI) form will collect data from qualified NPAs regarding Participating Employees in order to ensure the integrity and further the mission of the AbilityOne Program. This form will provide data on matters such as employee wages, the nature of Participating Employees' disabilities, what job supports and accommodations the Participating Employees are receiving, and a description of employee career development activities that are available to Participating Employees, if an NPA is currently providing such activities.

The form described in this ICR is the second of three forms designed to modernize the Commission's information gathering efforts and align it with the Commission's Strategic Plan for FY2022 to FY2026, as well as with Commission regulations, including, *inter alia,* 41 CFR 51–4.3.

The Commission is also developing a new Policy 51.405 which will set forth an NPA's responsibility to provide Participating Employees with employee career development activities such as job individualizations and employee career plans. Although the requirements of Policy 51.405 will be implemented over time, this form will allow those NPAs that are already providing such employee career development activities to provide data on what they offer.

A draft version of the PEI form is available at *www.abilityone.gov.*

The PEI form will be filled out and submitted annually for each Participating Employee through an electronic system that will be established by the Central Nonprofit Agency for the use of the NPAs.

The Commission estimates that it will take 45 minutes to complete the form. Information regarding employee wages and hours worked is currently maintained by each NPA in their payroll system. Information on the accommodations and job supports an individual employee is receiving is currently required by the predecessor form that is currently completed by the NPA for each direct labor employee who is blind or has a significant disability. The additional information regarding whether third parties have paid for or reimbursed the NPA for the provision of accommodations or job supports, or career development support, was not previously collected. However, information regarding the third-party provision of services and/or third party provision of funding for an individual should accessible from the employee's records, which the preparer will review to complete this form. In addition, the listing of multiple-choice text boxes on the proposed form is expected to streamline the process for providing this information.

To calculate the burden for completion of the form in units of hours, the Commission multiplied the estimated total number of annual responses by 0.75. NPAs can assess the burden to their particular organization by multiplying the time by their total number of Participating Employees.

The cost burden is based upon national average pay data from the U.S. Bureau of Labor Statistics, using the May 2022 National Occupational Employment and Wage Estimate of $30.88 as the median hourly wage for a Human Resources Specialist (OC 13–1070). (*https://www.bls.gov/oes/current/oes_nat.htm#11-0000*) The table below represents the time and cost burden the Commission estimates this form will necessitate. The Commission believes that collecting this critical data will further the Program's mission and ultimately result in an expansion in opportunities for the individuals employed through the AbilityOne Program.

Number of NPAs	Annual responses for this form	Annual form burden (minutes/employee) (hour)	Total time burden for all employees	Annual form cost burden (dollars)
413	36,377	.75	27,282.75	$842,491.32

With respect to this collection of information via the proposed form, the Commission welcomes comments on the following:

- The necessity to collect this information to support the Commission's mission and oversight responsibilities.
- Methodology to improve the accuracy of the estimated time burden, *i.e.,* specific year-over-year employee turnover rates for NPAs or number of additional employee hires above turnovers, expressed as a percentage of the NPAs' total number of Participating Employees;
- Suggestions or methods to minimize the burdens associated with collecting the information described in this ICR.

The proposed form is viewable at *www.abilityone.gov.*

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–09705 Filed 5–2–24; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights, Issue 32, Spring 2024

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its thirty-second edition of Supervisory Highlights.

DATES: The findings in this report cover select examinations in connection with credit reporting and furnishing that were completed from April 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

Credit reporting is critical to consumers' ability to access credit and other products and services and often is used as a factor in rental and employment determinations. Accuracy in consumer reports is of vital importance to the credit reporting system and to consumers. Inaccurate information on a consumer report can have significant consequences for consumers and may, among other things, lead them to receive products or services on less favorable terms or impede their ability to access credit or open a bank account.

Inaccuracy in the credit reporting system is a long-standing issue that remains a problem today. Accordingly, the CFPB continues to prioritize examinations of consumer reporting companies (CRCs) and furnishers. CRCs are companies that regularly engage in whole or in part in the practice of assembling or evaluating information about consumers for the purpose of providing consumer reports to third parties.[1] Furnishers are entities, such as banks, loan servicers, and others, that furnish information to the CRCs for inclusion in consumer reports.

CRCs and furnishers play a crucial role in ensuring the accuracy and integrity of information contained in consumer reports. They also have an important role in the investigation of consumer disputes relating to the accuracy of information in consumer reports. The Fair Credit Reporting Act (FCRA) [2] and its implementing regulation, Regulation V,[3] subject CRCs and furnishers to requirements relating to their roles in the credit reporting system, including the requirement to reasonably investigate disputes and certain accuracy-related requirements. The FCRA and Regulation V also impose obligations in connection with, among other things, consumer-alleged identity theft and—most recently—adverse information resulting from human trafficking including on consumer reports of human-trafficking victims.

In recent reviews of CRCs, examiners have continued to find deficiencies in CRCs' compliance with the accuracy and identity theft requirements of the FCRA and Regulation V.[4] For example, examiners found some CRCs were engaged in the practice of automatically declining to implement identity theft blocks upon receipt of the requisite documentation based on overbroad disqualifying criteria and without an individualized determination that there is a statutory basis to decline the block, in violation of the FCRA. Examiners also found some CRCs violated Regulation V's human trafficking requirements, effective as of July 25, 2022, by failing to timely block, or in some cases failing to block all, adverse items of information identified by the consumer as resulting from human trafficking.

In recent reviews of furnishers, examiners have continued to find deficiencies in furnishers' compliance with the accuracy and dispute investigation requirements of the FCRA and Regulation V. Examiners found several furnishers violated the FCRA duty to promptly update or correct information determined to be incomplete or inaccurate, including, for example, by continuing to report fraudulent accounts to CRCs as valid (*i.e.,* non-fraudulent) accounts for several years after determining the accounts were fraudulent. Examiners also found that some furnishers violated the FCRA, after receiving an identity theft report from a consumer at the appropriate address, by continuing to furnish information identified in the report as resulting from identity theft without the furnishers knowing or being informed by the consumer that the information was, in fact, correct. The findings in this report cover select examinations in connection with credit reporting and furnishing that were completed from April 1, 2023, through December 31, 2023. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and related findings may pertain to one or more institutions.

2. Supervisory Observations

2.1 Consumer Reporting Companies

In recent reviews of CRCs, examiners found deficiencies in CRCs' compliance with FCRA and Regulation V identity theft block, human trafficking submission and accuracy requirements.

2.1.1 CRC Duty To Block the Reporting of Information Resulting From an Alleged Identity Theft

The FCRA requires CRCs to block the reporting of any information in a consumer's file that the consumer identifies as information that resulted from an alleged identity theft not later than four business days after the CRC receives certain documentation relating to the alleged identity theft. Such documentation includes appropriate proof of the consumer's identity, a copy of an identity theft report, identification of the information that resulted from the alleged identity theft, and a statement by the consumer that such information

[1] The term ''consumer reporting company'' as used in this publication means the same as ''consumer reporting agency,'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), including nationwide consumer reporting agencies as defined in 15 U.S.C. 1681a(p) and nationwide specialty consumer reporting agencies as defined in 15 U.S.C. 1681a(x).

[2] 15 U.S.C. 1681 *et seq.*

[3] 12 CFR part 1022.

[4] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

does not relate to any transaction by the consumer.[5] A CRC may decline to block, or rescind any block of, information if the CRC reasonably determines that: the information was blocked in error or a block was requested by the consumer in error; the information was blocked, or the block was requested, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or the consumer obtained possession of goods, services or money as a result of the blocked transaction(s).[6]

In recent reviews of CRCs, examiners found that CRCs failed to timely implement blocks of information after receiving the requisite documentation relating to an alleged identity theft, without otherwise making a reasonable determination with respect to one of the statutory bases for declining to block such information. Examiners found that the CRCs instead maintained policies pursuant to which the CRCs automatically declined to block information if the associated account(s) of the consumer met any one of a set of overbroad disqualifying criteria that were not sufficiently tailored to support a reasonable determination regarding any of the statutory declination bases.

In response to these findings, CRCs were directed to cease the practice of automatically declining to implement blocks based on overbroad disqualifying criteria without an individualized determination that there is a statutory basis to decline. CRCs also were directed to implement revisions to the CRCs' policies to ensure compliance with FCRA identity theft block obligations, including any circumstances in which the CRCs may reasonably request additional information or documentation to determine the validity of an alleged identity theft and any circumstances in which there is a valid basis to decline to block.

2.1.2 CRC Duty To Promptly Notify Consumers After Declining To Implement, or Rescind, an Identity Block

The FCRA requires CRCs to promptly notify the affected consumer if the CRC declines to block, or rescinds a block of, information that the consumer identifies as information resulting from an alleged identity theft.[7] CRCs must notify the consumer in the same manner as CRCs are required to notify consumers of a reinsertion of information into a consumer's file—*i.e.,* in writing within five business days and by providing certain information, including the name and address of the furnisher of the identified information if reasonably available and a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of such information.[8]

In recent reviews of CRCs, examiners found that CRCs failed to provide the requisite notice within five business days of declining to block information—in some instances due to system issues and in others due to human error. Examiners also found that CRCs systematically failed to timely provide consumers with the relevant furnisher's contact information and/or notice regarding the consumer's right to add a statement to the consumer's file disputing the accuracy or completeness of the furnished information.

In response to these findings, CRCs were directed to revise their policies to ensure compliance with FCRA identity theft block notice obligations and update notice templates to include the requisite information for consumers.

2.1.3 CRC Duty To Provide Victims of Identity Theft With Summaries of Rights

The FCRA requires CRCs, upon a consumer contacting the CRC and expressing a belief that they are a victim of fraud or identity theft, to provide the consumer with a summary of rights containing all of the information required by the CFPB in its model summary of rights,[9] along with information about how to request more detailed information from the CFPB.[10] In recent reviews of CRCs, examiners found that CRCs failed to comply with this provision, either by failing to include required information in summaries of rights or by failing to provide the summary of rights to eligible consumers entirely.

In response to these findings, CRCs are updating their systems to ensure that they provide the required summary of rights.

2.1.4 CRC Duty To Block Adverse Information Resulting From Human Trafficking

Regulation V requires CRCs to block adverse items of information identified by a consumer or their representative as resulting from a severe form of trafficking in persons or sex trafficking, as defined in the regulation.[11] CRCs must block such items within four business days of receiving a consumer's submission, except in limited circumstances where additional information is necessary to complete the submission.[12] In recent reviews of CRCs, examiners found that CRCs failed to timely block identified adverse items of information within the applicable four business days. CRCs blocked some but not all items identified in a qualifying consumer submission and in other instances failed to implement a block entirely.

In response to these findings, CRCs were directed to revise their compliance processes to ensure that they process all human trafficking block requests in accordance with the requirements of Regulation V.

2.1.5 CRC Duty To Follow Reasonable Procedures To Assure Maximum Possible Accuracy

The FCRA requires that, wherever a CRC ''prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.'' [13] In recent reviews of CRCs, examiners found that CRCs' accuracy procedures failed to comply with this obligation because the CRCs (1) failed to adequately monitor dispute metrics that would suggest a furnisher may no longer be a source of reliable, verifiable information about consumers, and (2) continued to include information in consumer reports that was provided by unreliable furnishers without implementing procedures to assure the accuracy of information provided by unreliable furnishers. Specifically, the CRCs did not monitor metrics and thresholds tied to objective measures of inaccuracy or unreliability. Moreover, the CRCs maintained data from furnishers that responded to disputes in ways that suggested that the furnishers were no longer sources of reliable, verifiable information about consumers. For example, CRCs received furnisher dispute response data indicating that, for several months, furnishers failed to respond to all or nearly all disputes, or responded to all disputes in the same manner. Despite observing this dispute response behavior by these furnishers, CRCs continued to include information from these furnishers in consumer reports.

In response to these findings, CRCs were directed to revise their accuracy

[5] 15 U.S.C. 1681c–2(a); *see* 15 U.S.C. 1681a(q)(4) and 12 CFR 1022.3(i)(1) (defining ''identity theft report'').

[6] 15 U.S.C. 1681c–2(c).

[7] 15 U.S.C. 1681c–2(c)(2).

[8] *Id.* (referencing the notice requirements of 15 U.S.C. 1681i(a)(5)(B)).

[9] Consumer Fin. Prot. Bureau, *Appendix I to part 1022—Summary of Consumer Identity Theft Rights, https://www.consumerfinance.gov/rules-policy/regulations/1022/i.*

[10] 15 U.S.C. 1681g(d)(2).

[11] 12 CFR 1022.142(c).

[12] 12 CFR 1022.142(e)(1).

[13] 15 U.S.C. 1681e(b).

procedures to identify and monitor furnishers and take corrective action regarding data from furnishers whose dispute response behavior indicates the furnisher is not a source of reliable, verifiable information about consumers.

2.2 Furnishers

In recent reviews of furnishers, examiners found deficiencies in furnishers' compliance with FCRA and Regulation V accuracy, dispute investigation and identity theft requirements.

2.2.1 Furnisher Duty to Promptly Correct and Update Information Determined To Be Incomplete or Inaccurate

Examiners are continuing to find that furnishers are violating the FCRA duty to promptly correct and update furnished information after determining that such information is incomplete or inaccurate.[14] Specifically, in recent reviews of auto loan furnishers, examiners found that furnishers continued to furnish incomplete or inaccurate information for several months, and in some cases years, after the furnishers determined, through either dispute handling or identification of systemic issues, the information was furnished incompletely or inaccurately. For example, examiners found that furnishers continued to report dates of first delinquency inaccurately for several months after determining that they were reporting inaccurately due to various system coding issues. Examiners also found that after determining accounts were in a bankruptcy status and therefore should have been reported as current with dates of first delinquency that reflect the bankruptcy filing dates, furnishers failed to update the dates of first delinquency for the accounts to the bankruptcy filing dates. By failing to update the dates of first delinquency for the accounts in bankruptcy when they determined the accounts were in bankruptcy, the furnishers failed to promptly update or correct information they had determined to be incomplete or inaccurate. In response to these findings, furnishers are updating their internal controls related to promptly correcting or updating furnished information after determining it is incomplete or inaccurate and engaging in lookbacks to remediate the furnishing of the previously impacted accounts.

Examiners also found that auto loan furnishers did not promptly send corrections or updates to CRCs after determining that accounts with lease returns were paid-in-full. When leased cars were returned to dealerships, furnishers updated their systems of record to reflect that the accounts had been paid-in-full. However, examiners found that the furnishers failed to update the information furnished to CRCs to reflect that the accounts were paid-in-full. In response to these findings, furnishers are conducting lookbacks to ensure that corrections or updates are furnished for impacted accounts and are implementing internal controls to ensure they promptly correct or update furnished information after determining it is incomplete or inaccurate.

In addition, in reviews of deposit furnishers, examiners found that furnishers continued to report fraudulent accounts to CRCs for several years after determining the accounts were fraudulent. While, in some instances, furnishers closed the accounts determined to be fraudulent, they continued to furnish the accounts as valid (*i.e.,* non-fraudulent) accounts and failed to notify CRCs that the accounts should be deleted because they were fraudulent. By not instructing CRCs to delete the accounts promptly after determining they were fraudulent, the furnishers failed to promptly correct or update furnished information determined to be inaccurate or incomplete.

In response to these findings, furnishers conducted lookbacks to ensure they deleted all accounts they determined to be opened fraudulently and updated their policies and procedures related to notifying CRCs when accounts are determined to be fraudulent to ensure the accounts are deleted.

2.2.2 Furnisher Duty To Notify CRCs of Direct Disputes

Examiners are continuing to find that furnishers are violating the FCRA duty to notify CRCs that the accuracy or completeness of items being furnished by them are subject to dispute.[15] Specifically, in recent reviews of deposit furnishers, examiners found that furnishers who received direct disputes from consumers were continuing to furnish the disputed information to CRCs without notifying the CRCs that the information was subject to dispute.

In response to these findings, furnishers are updating their policies to make clear that they will provide notices of direct disputes to CRCs.

2.2.3 Furnisher Duty To Conduct Reasonable Investigations of Direct Disputes

Examiners are continuing to find that furnishers are violating the Regulation V duty to conduct a reasonable investigation of direct disputes.[16] Specifically, in recent reviews of auto loan furnishers, examiners found evidence that furnishers failed to investigate direct disputes that did not satisfy those furnishers' extraneous identity verification requirements. Regulation V specifically defines what a consumer must include in a dispute notice to trigger a furnisher's duty to investigate. Although these disputes met the Regulation V requirements for a direct dispute, examiners found evidence that the furnishers did not investigate the disputes because the consumer had not satisfied additional identity verification requirements of the furnisher. However, Regulation V does not permit a furnisher to establish additional requirements beyond what the regulation requires in order to initiate a direct dispute investigation by the furnisher.

Also, in recent reviews of debt collection furnishers, examiners found that when the furnishers received a direct dispute, they simply deleted the tradeline, rather than conducting an investigation. As the Bureau has previously explained, simply deleting tradelines in response to a direct dispute does not satisfy furnishers' responsibility to conduct a reasonable investigation with respect to the disputed information.[17] After identification of these issues, furnishers were directed to update their policies and procedures to ensure they conduct reasonable investigations of direct disputes.

2.2.4 Furnisher Duty To Provide Notice of Delinquency of Accounts

Examiners are continuing to find that furnishers are violating the FCRA duty to notify CRCs of the dates of first delinquency on applicable accounts.[18] Specifically, in recent reviews of auto loan furnishers, examiners found that furnishers inaccurately reported dates of first delinquency to CRCs due to various coding issues. For example, examiners found that coding errors resulted in furnishers inaccurately reporting dates of first delinquency as the first day of the statement cycle following the consumer's missed payment, rather than 30 days after the missed payment due date. Examiners also found that auto

[14] 15 U.S.C. 1681s–2(a)(2).

[15] 15 U.S.C. 1681s–2(a)(3).

[16] 12 CFR 1022.43(e)(1).

[17] CFPB Bulletin 2014–01 (Feb. 27, 2014).

[18] 15 U.S.C. 1681s–2(a)(5).

loan furnishers reported inaccurate dates of first delinquency for accounts by reporting the dates of first delinquency as more recent than they should have been, including by changing the dates of first delinquency for accounts that remained delinquent month after month (*i.e.,* accounts for which the dates of first delinquency should not have been changed).

In response to these findings, furnishers are conducting lookbacks to identify and remediate impacted accounts and updating their policies and procedures to ensure that they report dates of first delinquency accurately.

2.2.5 Furnisher Duty Not To Furnish Information That Purports To Relate to a Consumer Upon Receipt of an Identity Theft Report

Examiners are continuing to find that furnishers are violating the FCRA's requirement that if a consumer submits an identity theft report at the address specified by the furnisher for receiving such reports stating that information maintained by that furnisher that purports to relate to the consumer resulted from identity theft, the furnisher may not furnish such information to any CRC, unless the furnisher subsequently knows or is informed by the consumer that the information is correct.[19] Specifically, in recent reviews of auto loan furnishers, examiners found that furnishers who received identity theft reports at a qualifying address continued to furnish information identified in the report before knowing or being informed by the consumer that the information was correct.

In response to these findings, furnishers are updating their policies and procedures to ensure that information subject to this requirement is not furnished prior to the completion of an investigation and determination of validity.

3. Supervisory Program Developments

3.1 Recent CFPB Supervisory Program Developments

Set forth below are select supervision program developments including advisory opinions, that have been issued regarding credit reporting since our last regular edition of *Supervisory Highlights.*

3.1.1 CFPB Issued Advisory Opinion on Fair Credit Reporting: Background Screening

On January 11, 2024, the CFPB issued an advisory opinion to affirm that, when preparing consumer reports, a CRC that reports public record information is not using reasonable procedures to assure maximum possible accuracy under the FCRA if it does not have procedures in place that: (1) prevent reporting information that is duplicative or that has been expunged, sealed, or otherwise legally restricted from public access; and (2) include any existing disposition information if it reports arrests, criminal charges, eviction proceedings, or other court filings.[20] The advisory opinion also highlights that, when CRCs include adverse information in consumer reports: (1) the occurrence of the adverse event starts the running of the reporting period for adverse items under FCRA section 605(a)(5); (2) that period is not restarted or reopened by the occurrence of subsequent events; and (3) a non-conviction disposition of a criminal charge cannot be reported beyond the seven-year period that begins to run at the time of the charge. CRCs thus must ensure that they do not report adverse information beyond the reporting period in FCRA section 605(a)(5) and must at all times have reasonable procedures in place to prevent reporting of information that is duplicative or legally restricted from public access and to ensure that any existing disposition information is included if court filings are reported.

3.1.2 CFPB Issues Advisory Opinion on File Disclosures

On January 11, 2024, the CFPB issued an advisory opinion to address certain obligations that CRCs have under section 609(a) of the FCRA.[21] The advisory opinion underscores that, to trigger a CRC's file disclosure requirement under FCRA section 609(a), a consumer does not need to use specific language, such as ''complete file'' or ''file.'' The advisory opinion also highlights the requirements regarding the information that must be disclosed to a consumer under FCRA section 609(a). In addition, the advisory opinion affirms that CRCs must disclose to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information to the CRC under FCRA section 609(a).

4. Remedial Actions

4.1 Public Enforcement Actions

The CFPB's supervisory actions resulted in and supported the below enforcement actions related to credit reporting or furnishing.

4.1.1 Toyota Motor Credit Corporation

On November 20, 2023, the CFPB issued an order against Toyota Motor Credit Corporation (Toyota Motor Credit), which is the United States-based auto-financing arm of Toyota Motor Corporation and one of the largest indirect auto lenders in the country. Toyota Motor Credit provides financing for vehicles and optional ''add-on'' products and services sold with the vehicles. These add-ons include Guaranteed Asset Protection, which can waive some of a consumer's remaining loan balance if their car is totaled, stolen or damaged when they still owe money on the loan even with car insurance, and Credit Life and Accidental Health, which is designed to pay a remaining balance if the consumer dies or becomes disabled. The CFPB found that Toyota Motor Credit violated the Consumer Financial Protection Act of 2010 by: (1) unfairly and abusively making it unreasonably difficult for consumers to cancel unwanted add-ons, including when consumers complained that dealers had forced add-ons on consumers without their consent; (2) unfairly failing to ensure consumers received refunds of unearned Guaranteed Asset Protection and Credit Life and Accidental Health premiums when they paid off their loans early or ended lease agreements early, making the products no longer of any value to consumers; and (3) unfairly failing to provide accurate refunds to consumers who canceled their vehicle service agreements as a result of flawed system logic. The CFPB also found that Toyota Motor Credit violated the FCRA and its implementing Regulation V by (1) failing to promptly correct negative information it had sent to CRCs, where the negative information was falsely reporting customer accounts as delinquent even though customers had already returned their vehicles; and (2) failing to maintain reasonable policies and procedures to ensure related payment information it sent to CRCs was accurate. The order requires Toyota Motor Credit to pay $48 million in consumer redress and a $12 million civil money penalty.[22] The order also requires Toyota Motor Credit to stop its

[19] 15 U.S.C. 1681s–2(a)(6)(B).

[20] The advisory opinion is available at: *cfpb_fair-credi-reporting-background-screening_2024–01.pdf* (*consumerfinance.gov*).

[21] The advisory opinion is available at: *cfpb_fair-credit-reporting-file-disclosure_2024–01.pdf* (*consumerfinance.gov*).

[22] The Order is available at: *cfpb_toyota-motor-credit-corporation-consent-order_2023–11.pdf* (*consumerfinance.gov*).

unlawful practices and come into compliance with the law and prohibits incentive-based employee compensation or performance measurements in relation to add-on products.

4.1.2 TransUnion, Trans Union LLC, and TransUnion Interactive, Inc.

On October 12, 2023, the CFPB issued an order against TransUnion, parent company of one of the three nationwide CRCs, and two of its subsidiaries, Trans Union LLC, and TransUnion Interactive, Inc. (collectively, TransUnion), which are headquartered in Chicago, Illinois. Security freezes and locks block certain third parties, such as lenders, from accessing consumers' credit reports to prevent a potential identity thief from obtaining new credit in those consumers' names. Starting in September 2018, Federal law has required nationwide CRCs to provide security freezes as a free service, whereas locks are a feature of certain paid products. The CFPB found that TransUnion, from as early as 2003, failed to timely place or remove security freezes and locks on the credit reports of tens of thousands of consumers who requested them, including certain vulnerable consumers; in some cases, those requests were left unmet for months or years. The CFPB found TransUnion's failure to place or remove security freezes in a timely manner occurred as a result of problems, including systems issues, that TransUnion knew about but failed to address for years. The CFPB found that TransUnion's failure to place or remove security freezes in a timely manner violated the FCRA, and TransUnion's failure to place or remove both security freezes and locks in a timely manner was unfair in violation of the Consumer Financial Protection Act of 2010. Further, the CFPB found that TransUnion engaged in deceptive acts and practices by falsely telling certain consumers that their requests had been successful when they had not. In addition, the CFPB found that from about 2016 to 2020, TransUnion failed to exclude certain consumers, including active-duty military and other potential victims of identity theft, from pre-screened solicitation lists in violation of FCRA. The CFPB's order requires TransUnion to pay $3 million to consumers in redress and $5 million in civil penalties.[23] TransUnion must also take steps to address and prevent unlawful conduct, including convening a committee to identify and address technology problems that can affect consumers.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–09712 Filed 5–2–24; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER FINANCIAL PROTECTION BUREAU

Supervisory Highlights, Issue 33, Spring 2024

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its thirty-third edition of Supervisory Highlights.

DATES: The findings in this report cover select examinations regarding mortgage servicing, that were completed from April 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

The residential mortgage servicing market exceeds $13 trillion in current outstanding balances. When servicers do not comply with the law, they impose significant costs on consumers.

The CFPB is actively monitoring the market for emerging risks during a period of increasing default servicing activity since the end of the COVID–19 pandemic emergency. The mortgage industry has grappled with many challenges during this period, including increased requests for loss mitigation, changes to housing policies and programs, and staffing issues. Violations described in prior editions of *Supervisory Highlights* raised concerns about servicers' ability to appropriately respond to consumer requests for assistance, especially consumers at risk of foreclosure. While mortgage delinquencies and foreclosure rates remain near all-time lows, this may change in the future as consumers grapple with higher levels of debt and affordability challenges due to high rates and low housing supply. Foreclosure starts have risen in recent months, increasing the risks that vulnerable consumers face.

The CFPB also continues to prioritize scrutiny of exploitative illegal fees charged by banks and financial companies, commonly referred to as ''junk fees.'' Examiners continue to find supervised mortgage servicers assessing junk fees, including unnecessary property inspection fees and improper late fees. Additionally, examiners found that mortgage servicers engaged in other unfair, deceptive, and abusive acts or practices (UDAAP) such as sending deceptive loss mitigation eligibility notices to consumers.[1] Mortgage servicers also violated several of Regulation X's loss mitigation provisions.[2]

The CFPB is currently reviewing Regulation X's existing framework to identify ways to simplify and streamline the mortgage servicing rules. The CFPB is considering a proposal to streamline the mortgage servicing rules, only if it would promote greater agility on the part of mortgage servicers in responding to future economic shocks while also continuing to ensure they meet their obligations for assisting borrowers promptly and fairly.

The findings in this report cover select examinations regarding mortgage servicing, that were completed from April 1, 2023, through December 31, 2023. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and related findings may pertain to one or more institutions.

2. Supervisory Observations

2.1 Mortgage Servicing

Examiners found that mortgage servicers engaged in UDAAPs and regulatory violations while processing payments by overcharging certain fees, failing to adequately describe fees in periodic statements, and not making timely escrow account disbursements. Additionally, as in prior editions of *Supervisory Highlights,* examiners identified persistent UDAAP and regulatory violations at mortgage servicers related to loss mitigation practices.

2.1.1 Unfair Charges for Property Inspections Prohibited by Investor Guidelines

Mortgage investors generally require servicers to perform property inspection visits for accounts that reach a specified

[23] A copy of the Consent Order is available at:*https://www.consumerfinance.gov/enforcement/actions/transunion-trans-union-llc-and-transunion-interactive-inc/.*

[1] 12 U.S.C. 5531, 5536.

[2] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

level of delinquency. Investor guidelines stipulate when servicers should complete these property inspections. Servicers pass along the cost of property inspections to the consumers; the fees for this action generally range from $10 to $50.

Examiners found that servicers engaged in unfair acts or practices by charging property inspection fees on Fannie Mae loans where such inspections were prohibited by Fannie Mae guidelines. The CFPA defines an unfair act or practice as an act or practice that: (1) causes or is likely to cause substantial injury to consumers; (2) is not reasonably avoidable by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition.[3]

Fannie Mae guidelines prohibit property inspections if the property is borrower-or tenant-occupied and one of the following applies: the servicer has established quality right party contact with the borrower within the last 30 days, the borrower made a full payment within the last 30 days, or the borrower is performing under a loss mitigation option or bankruptcy plan. Examiners found that in some instances a servicer would charge a property inspection fee on Fannie Mae loans even though the property was borrower-or tenant-occupied and the servicer had established quality right party contact within 30 days, the borrower had made a full payment within the last 30 days, or the borrower was performing under a loss mitigation option. In total, the servicers charged hundreds of borrowers' fees for property inspections that were prohibited by Fannie Mae's guidelines, causing consumers substantial injury. Consumers were unable to anticipate the property inspection fees or mitigate them because they have no influence over the servicer's practices. Charging improper fees has no benefit to consumers or competition. In response to these findings, the servicers corrected automation flaws behind some of the improper charges and implemented testing and monitoring to address the others. The servicers were also directed to identify and remediate borrowers who were charged fees contrary to investor guidelines.

2.1.2 Unfair Late Fee Overcharges

Examiners found that servicers engaged in unfair acts or practices by assessing unauthorized late fees.[4] These errors occurred for one of two reasons. First, in some instances servicers charged late fees that exceeded the amount allowed in the loan agreement. Second, in some instances servicers charged late fees even though consumers had entered into loss mitigation agreements that should have prevented late fees. Examiners found these practices constituted unfair acts or practices.

The servicers caused substantial injury to consumers when they imposed these unauthorized late fees. Consumers could not reasonably avoid the injury because they do not control how servicers calculate late fees and had no reason to anticipate that servicers would impose unauthorized late fees. Charging unauthorized late fees had no benefits to consumers or competition. In response to these findings, servicers refunded the fees and improved internal processes.

2.1.3 Failing To Waive Existing Fees Following Acceptance of COVID–19 Loan Modifications

Regulation X generally allows certain servicers to offer streamlined loan modifications made available to borrowers experiencing a COVID–19 related hardship based on the evaluation of incomplete loss mitigation applications if the modifications meet certain requirements.[5] One requirement is that the servicer ''waives all existing late charges, penalties, stop payment fees, or similar charges that were incurred on or after March 1, 2020, promptly upon the borrower's acceptance of the loan modification.'' [6]

Examiners found that servicers offered streamlined COVID–19 loan modifications but, in violation of Regulation X, failed to waive existing fees after borrowers accepted the modifications. In response to these findings, servicers are remediating consumers.

2.1.4 Failing To Provide Adequate Description of Fees in Periodic Statements

Regulation Z requires servicers to provide billing statements that include a list of all transaction activity that occurred since the last statement, including, among other things, ''a brief description of the transaction.'' [7] Examiners found that servicers failed to provide a brief description of certain fees and charges in violation of this provision when they used the general label ''service fee'' for 18 different fee types, without including any additional descriptive information. In response to these findings, the servicers implemented changes to provide more specific descriptions of each service fee.

2.1.5 Failing To Make Timely Disbursements From Escrow Accounts

Regulation X requires servicers to make timely disbursements from escrow accounts if the borrower is not more than 30 days overdue.[8] Timely disbursements are defined as payments made on or before the deadline to avoid a penalty.[9] Examiners found servicers attempted to make timely escrow disbursements, but the payments did not reach the payees. The servicers did not resend the payments until months after the initial payment attempts. Some borrowers incurred penalties due to the late payments, which the servicers only reimbursed after the borrowers complained. Because the initial payments were unsuccessful, and the second payments were late, the servicers did not make timely disbursements and violated Regulation X. In response to these findings, the servicers were directed to comply with this regulation and remediate borrowers.

2.1.6 Deceptive Loss Mitigation Eligibility Notices

Examiners found that servicers engaged in deceptive acts or practices when they sent notices to consumers representing that the consumers had been approved for a streamlined loss mitigation option even though the servicers had not yet determined whether the consumers were eligible for the option. In fact, some consumers were ultimately denied the option.

An act or practice is deceptive when: (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material.[10]

The notices were misleading because the servicers had not yet determined the consumers were eligible for the loss mitigation option. Consumers reasonably interpreted the representations to mean that the loss mitigation option was available to them. The representations were material because consumers could have made budgeting decisions on the false

[3] 12 U.S.C. 5531, 5536.

[4] Supervision previously reported a similar unfair act or practice of overcharging late fees in *Supervisory Highlights,* Issue 29 (Winter 2023), available at: *https://www.consumerfinance.gov/compliance/supervisory-highlights/*

[5] 12 CFR 1024.41(c)(vi)(A).

[6] 12 CFR 1024.41(c)(vi)(A)(5).

[7] 12 CFR. 1026.41(d)(4).

[8] 12 CFR 1024.17(k)(1).

[9] *Id.*

[10] *Consumer Financial Protection Bureau* v. *Gordon,* 819 F.3d 1179, 1192 (9th Cir. 2016).

assumption that they were approved for a loss mitigation option or were discouraged from submitting complete loss mitigation applications or taking other steps to cure their delinquencies and avoid foreclosure. In response to these findings, the servicers reviewed affected borrowers who remained delinquent to ensure they were considered for appropriate loss mitigation options.

2.1.7 Deceptive Delinquency Notices

Examiners found that servicers engaged in deceptive acts or practices when they sent notices informing certain consumers that they had missed payments and should fill out loss mitigation applications. In fact, these consumers did not need to make a payment because they were current on their payments, in a trial modification plan, or had an inactive loan (*e.g.,* loan was paid off or subject to short sale). These misrepresentations were likely to mislead consumers and it was reasonable for consumers under the circumstances to believe that the notices from their servicers were accurate. The representations were material because they were likely to influence consumers' course of conduct. For example, in response to the notice, a consumer may contact their servicer to correct the error or fill out unnecessary loss mitigation applications. In response to these findings, servicers are implementing additional policies and procedures to ensure accuracy of notices.

2.1.8 Loss Mitigation Violations

Regulation X generally requires servicers to send borrowers a written notice acknowledging receipt of their loss mitigation application and notifying the borrowers of the servicers' determination that the loss mitigation application is either complete or incomplete after receiving the application.[11] Examiners found that servicers violated Regulation X by sending acknowledgment notices to borrowers that failed to specify whether the borrowers' applications were complete or incomplete.

Additionally, after receiving borrowers' complete loss mitigation applications, Regulation X generally requires servicers to provide borrowers with a written notice stating the servicers' determination of which loss mitigation options, if any, the servicers will offer to the borrower.[12] Among other requirements, the written notice must include the amount of time the borrower has to accept or reject an offer of a loss mitigation option.[13] Examiners found that servicers violated Regulation X because the servicers did not provide timely notices stating the servicers' determination regarding loss mitigation options. The servicers were directed to enhance policies and procedures to ensure timely loss mitigation determinations. One servicer also violated Regulation X because its written notices did not provide a deadline for accepting or rejecting loss mitigation offers. In response to the finding, the servicers updated the offer letter templates to include a deadline to accept or reject the loss mitigation offer.

Finally, Regulation X requires servicers to maintain policies and procedures that are reasonably designed to ensure that they can properly evaluate borrowers who submit applications for all available loss mitigation options for which they may be eligible.[14] Examiners found that servicers violated Regulation X because they failed to maintain policies and procedures reasonably designed to achieve this objective. Specifically, the servicers did not follow investor guidelines for evaluating loss mitigation applications when they automatically denied certain consumers a payment deferral option rather than submitting the consumers' applications to the investor for review. In response to these findings, the servicers updated their policies and procedures and refunded or waived late charges and corrected negative credit reporting for impacted consumers.

2.1.9 Live Contact and Early Intervention Violations

Regulation X requires servicers to make good faith efforts to establish live contact with delinquent borrowers no later than the 36th day of delinquency.[15] Examiners found that servicers violated this provision when they failed to make good faith efforts to establish live contact with hundreds of delinquent borrowers. The servicers took corrective action which included providing remediation to harmed borrowers including refunding or waiving late fees.

Regulation X also requires servicers to provide written early intervention notices to delinquent borrowers no later than the 45th day of delinquency and again every 180 days thereafter.[16] Examiners found that servicers violated this provision when they failed to send written early intervention notices to thousands of delinquent borrowers. In response to these findings, the servicers identified and provided remediation to affected borrowers who were assessed late fees for missed payments after the 45th day of delinquency.

2.1.10 Failing To Retain Records Documenting Actions Takes on Mortgage Loan Accounts

Regulation X requires servicers to retain records documenting actions taken with respect to a borrower's mortgage loan account until one year after the date the loan was discharged or servicing of the loan was transferred to another servicer.[17] Examiners found that servicers failed to document certain actions in their servicing systems, such as establishing live contact with borrowers, in violation of this provision. In response to these findings, the servicers were directed to enhance training and monitoring to ensure compliance with this requirement.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–09713 Filed 5–2–24; 8:45 am]

BILLING CODE 4810–AM–P

[11] 12 CFR 1024.41(b)(2)(i)(B). This notice is only required if the servicer receives a loss mitigation application 45 days or more before a foreclosure sale.

[12] 12 CFR 1024.41(c)(1). This notice is only required if the servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale.

[13] 12 CFR 1024.41(c)(1)(ii).

[14] 12 CFR 1024.38(b)(2)(v).

[15] 12 CFR 1024.39(a).

[16] 12 CFR 1024.39(b)(1).

[17] 12 CFR 1024.38(c)(1).

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 8, 2024–3:30 p.m.

PLACE: The meetings will be held remotely, and in person at 4330 East West Highway, Bethesda, Maryland 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Briefing Matter

FY 2024 Midyear Review

To attend remotely, please use the following link: *https://cpsc.webex.com/cpsc/j.php?MTID=m6d40a3231e2b6f93a08fda74c53af1fe.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: May 1, 2024.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2024–09804 Filed 5–1–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Committee and Quarterly Board Meetings

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda, time, and instructions to access the National Assessment Governing Board's (hereafter referred to as the Board or Governing Board) standing committee meetings and quarterly Governing Board meeting. This notice provides information to members of the public who may be interested in attending the meetings and/or providing written comments related to the work of the Governing Board. The meetings will be held either in person and/or virtually, as noted below. Members of the public must register in advance to attend the meetings virtually. A registration link will be posted on the Governing Board's website, *www.nagb.gov,* five (5) business days prior to each meeting.

DATES: The Quarterly Board Meeting will be held on the following dates:

- May 16, 2024, from 8:15 a.m. to 6:00 p.m., ET.
- May 17, 2024, from 9:00 a.m. to 2:15 p.m., ET.

ADDRESSES: Hotel AKA, 625, First Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Angela Scott, Designated Federal Officer (DFO) for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–7502, fax: (202) 357–6945, email: *Angela.Scott@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.* Notice of the meetings is required under section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees). The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work. Standing committee meeting agendas and meeting materials will be posted on the Governing Board's website, *www.nagb.gov,* no later than five (5) business days prior to the meetings. Minutes of prior standing committee meetings are available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Standing Committee Meetings:

Monday, May 6, 2024

Nominations Committee (Virtual)

5:00 p.m.–6:30 p.m. (ET), Open Session

The Nominations Committee will meet in open session on Monday, May 6, 2024, from 5:00 p.m.–6:30 p.m. The committee will review and discuss the rating guidelines for nominees, updates to the descriptions of Board membership categories, and updates to questions on the Board member application.

Wednesday, May 16, 2024

Executive Committee (In-Person Meeting)

8:15 a.m.–8:45 a.m. (ET) Open Session

The Executive Committee will meet in open session on Thursday, May 16, 2024, from 8:15 a.m.–8:45 a.m. to discuss the Strategic Vision update.

Assessment Development Committee (In-Person Meeting)

4:00 p.m.–6:00 p.m. (ET) Open Session

The Assessment Development Committee will meet in open session on Thursday, May 16, 2024, from 4:00 p.m.–6:00 p.m. From 4:00 p.m. to 4:45 p.m., the committee will discuss lessons learned from the update of the 2028 NAEP Science Framework. From 4:45 p.m. to 5:30 p.m., the committee will review considerations for the Assessment Framework Development Policy and Procedures manual. The committee will receive an update on the Social Studies Content Advisory Group from 5:30 p.m. to 5:45 p.m., and from 5:45 p.m. to 6:00 p.m., the committee will have an open discussion on other committee work.

Committee on Standards, Design and Methodology (In-Person Meeting)

4:00 p.m.–6:00 p.m. (ET) Open Session

The Committee on Standards, Design and Methodology (COSDAM) will meet in open session on Thursday, May 16, 2024, from 4:00 to 6:00 p.m. From 4:00 p.m.–4:55 p.m., the committee will discuss inappropriate and appropriate interpretations of NAEP Achievement Levels for inclusion in a NAEP Achievement Levels Validity argument, a report currently under development. The group will then summarize prior discussions regarding practical significance of NAEP score differences in preparation for a joint session with the Reporting and Dissemination (R&D) committee. From 5:00 p.m.–6:00 p.m., COSDAM will join the R&D committee for an open session regarding shared goals towards NAEP analysis and reporting that improves interpretation of NAEP score changes and subgroup differences. COSDAM and the R&D committee will describe their perspectives and build a plan for collaborative activity.

Reporting and Dissemination Committee (In-Person Meeting)

4:00 p.m.–6:00 p.m. (ET) Open Session

The R&D committee will meet in open session on Thursday, May 16, 2024, from 4:00 p.m. to 6:00 p.m. From 4:00 p.m.–5:00 p.m., the committee will discuss progress made on implementing

the Governing Board's communications strategy and will then transition to a discussion about how to improve private school participation rates in NAEP. From 5:00 p.m.–6:00 p.m., the R&D committee will meet in joint session with COSDAM, as noted in the previous section.

Quarterly Governing Board Meeting

The plenary sessions of the Governing Board's May 2024 quarterly meeting will be held on the following dates and times:

Thursday, May 16, 2024

9:00 a.m.–6:00 p.m. (ET) (Hybrid Meeting), Open Session

On Thursday, May 16, 2024, the plenary session of the quarterly Governing Board meeting will convene in open session from 9:00 a.m.–6:00 p.m. From 9:00–9:15 a.m., Beverly Perdue, Chair of the Governing Board, will welcome members, followed by a motion to approve the meeting agenda for the May 16–17, 2024, quarterly Governing Board meeting and the minutes from the February 29–March 1, 2024, Governing Board meeting. From 9:15 a.m. to 9:45 a.m., Lesley Muldoon, Governing Board Executive Director, will provide remarks. From 9:45 a.m. to 10:45 a.m., Chair Perdue and Executive Director Muldoon will lead a discussion about NAGB's legislative authority. From 10:45 a.m. to 11:00 a.m., Chair Perdue will recommend the Board form an Ad Hoc Committee on Generative Artificial Intelligence (AI) and discuss the Chair's proposed charge to the committee outlining its responsibilities to recommend policy guidelines for the responsible use of in NAEP. The Board will take action to approve the charge and form the Ad Hoc Committee. From 11:00 a.m. to 12:00 p.m., the Board will hear and respond to a presentation on AI and Large-Scale Assessment: Perspectives from PISA. The Board will receive an update and discuss Strategic Vision 2030 from 12:15 p.m. to 1:15 p.m. Following a ten-minute transitional break, the Board will convene in small groups from 1:25 p.m. to 2:30 p.m. to discuss the draft Strategic Vision 2023 document. Following a fifteen-minute transitional break, the Board will reconvene in general session from 2:45–3:45 p.m. to debrief on the small group discussions. The Board's standing committees will meet from 4:00 p.m. to 6:00 p.m. The Thursday, May 16, 2024, session of the Governing Board meeting will adjourn at 6:00 p.m.

Friday, May 17, 2024

9:00 a.m.–12:30 p.m. (ET) (Hybrid Meeting), Open Session

12:45 p.m.–2:15 p.m. (ET) (Hybrid Meeting), Closed Session

On Friday, May 17, 2024, the Governing Board will convene in open session from 9:00 a.m.–10:00 a.m. to hear perspectives from student representatives from State Boards of Education on learning and assessment. From 10:00 a.m. to 10:30 a.m., the Governing Board will receive an update on work of each standing committee. Peggy Carr, NCES Commissioner, will provide an update from 10:30 a.m. to 10:45 a.m., followed by an update and discussion on the 2024 NAEP Administration from 10:45 a.m. to 11:45 a.m. From 11:45 a.m. to 12:15 p.m., Board members will engage in open discussion. From 12:15 p.m. to 12:30 p.m., there will be a preview of activities planned for the August 2024 meeting. After a break from 12:30 p.m. to 12:45 p.m., the Board will meet in closed session to receive an update on the NAEP budget and contracts from Peggy Carr, Commissioner, NCES, and Dan McGrath, Delegated Authority of Associate Commissioner, NCES. This session must be closed because discussions pertain to the federal budget and acquisition process. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b.

The Friday, May 17, 2024, session of the meeting will adjourn at 2:15 p.m.

Instructions for Accessing and Attending the Meetings

Registration: Members of the public may attend the May 16–17, 2024, meetings of the full Governing Board either in person or virtually. A link to the final meeting agenda and information on how to register for virtual attendance for the open sessions will be posted on the Governing Board's website, *www.nagb.gov,* no later than five (5) business days prior to the meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its standing committees may be submitted to the attention of the DFO no later than close of business on May 10, 2024. Written comments may be submitted either via email to *Angela.Scott@ed.gov* or in hard copy to the address listed above. Written comments should reference the relevant agenda item.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009, the public may inspect the meeting materials, which will be posted no later than five (5) business days prior to each meeting, at *www.nagb.gov.* The public may also inspect the meeting materials and other Governing Board records at 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing *Angela.Scott@ed.gov* to schedule an appointment. The official verbatim transcripts of the open meeting sessions will be available for public inspection no later than 30 calendar days following each meeting and will be posted on the Governing Board's website. Requests for the verbatim transcriptions may be made via email to the DFO.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice by close of business on May 10, 2024.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2024–09695 Filed 5–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0066]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Teacher and School Leader Incentive Program Application (1894–0001)

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, (202) 453–6136.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher and School Leader Incentive Program Application (1894–0001).

OMB Control Number: 1810–0758.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments *Total Estimated Number of Annual Responses:* 100.

Total Estimated Number of Annual Burden Hours: 8,700.

Abstract: This is a request for extension under the streamlined discretionary grant application (1894–0001) so that the TSL program can collect applications for the future competitions. Authorized in sections 2211–2213 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), the Teacher and School Leader Incentive Program (TSL) supports efforts of local educational agencies (LEAs) and States to focus on use and improvements in human capital management systems (HCMSs) and sustainable performance-based compensation systems (PBCSs), especially in high-need schools, to increase the effectiveness of teachers, principals, and other school leaders and thereby increase student achievement.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 30, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–09642 Filed 5–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0067]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Postsecondary Success Recognition Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before JULY 2, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0067. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jennifer Engle, 202–987–0420.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how

might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: U.S. Department of Education Postsecondary Success Recognition Program.

OMB Control Number: 1840–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 150.

Total Estimated Number of Annual Burden Hours: 1,500.

Abstract: This recognition program is administered by the Office of Postsecondary Education in the U.S. Department of Education (Department). The purpose of this program is to recognize institutions that serve as engines of economic mobility by supporting all students to complete affordable credentials of value that prepare them well to participate in the workforce, their communities, and our democracy. For this recognition program, the Department considers postsecondary success to include providing access to an affordable education including to under served populations; supporting students through to completion of credentials of value; and helping students navigate to career pathways that improve their lives through economic mobility. This program does not include financial compensation nor guarantee financial compensation in the future.

Dated: April 30, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–09675 Filed 5–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Transformative Research in the Education Sciences and Using Longitudinal Data To Support State Education Policymaking Grant Programs

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for the Education Research Grant Programs, Assistance Listing Numbers (ALNs) 84.305S and 84.305T. This notice relates to the approved information collection under OMB control number 4040–0001.

DATES: The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the Requests for Applications (RFAs) that are posted at the following website: *https://ies.ed.gov/funding.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular research competition is listed in the chart at the end of this notice, as well as in the relevant RFA and application package.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: In awarding research grants, the Institute of Education Sciences (IES) intends to provide national leadership in expanding knowledge and understanding of (1) education outcomes for all learners from early childhood education through postsecondary and adult education, and (2) employment and wage outcomes when relevant (such as for those engaged in career and technical, postsecondary, or adult education). The IES research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners. These interested individuals include parents, educators, learners, researchers, and policymakers. In carrying out its grant programs, IES provides support for programs of research in areas of demonstrated national need.

Competitions in This Notice:

The IES National Center for Education Research (NCER) is announcing two competitions—one competition in each of the following areas: using longitudinal data to support State education policymaking and transformative research in the education sciences.

Using Longitudinal Data to Support State Education Policymaking (ALN 84.305S). Under this competition, NCER will only consider applications that address State agencies' use of their State's education longitudinal data systems to identify and reduce opportunity and achievement gaps for learners from prekindergarten through adult education.

Transformative Research in the Education Sciences (ALN 84.305T). Through this program, IES seeks to support innovative research that has the potential to make dramatic advances towards solving seemingly intractable problems and challenges in the education field and/or to accelerate the pace of conducting education research to facilitate major breakthroughs. For the FY 2025 competition, the Transformative Research in the Education Sciences grant program will focus on accelerating learning and reducing persistent education inequities by leveraging evidence-based principles from the learning sciences, coupled with advanced technology to create high-reward, scalable technology solutions.

Multiple Submissions: You may submit applications to more than one of the FY 2025 research grant programs offered through the Department, including those offered through IES as well as those offered through other offices and programs within the Department. You may submit multiple applications to each IES grant program announced here as long as they address different key issues, programs, or policies. However, you may submit a given application only once for the IES FY 2025 grant competitions, meaning you may not submit the same application or similar applications to multiple grant programs within IES, to multiple topics within a grant competition, or multiple times within the same topic. If you submit multiple similar applications, IES will determine whether and which applications will be accepted for review and/or will be eligible for funding.

In addition, if you submit the same or similar application to IES and to another funding entity within or external to the Department and receive funding for the non-IES application prior to IES scientific peer review of applications,

you must withdraw the same or similar application submitted to IES, or IES may otherwise determine you are ineligible to receive an award. If reviews are happening concurrently, IES staff will consult with the other potential funder to determine the degree of overlap and which entity will provide funding if both applications are being considered for funding.

Exemption from Proposed Rulemaking: Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Program Authority: 20 U.S.C. 9501 *et seq.*

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)-(c), 75.219, 75.220, 75.221, 75.222, 75.230, 75.250(a), and 75.708. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to these competitions.

II. Award Information

Types of Awards: Discretionary grants and cooperative agreements.

Fiscal Information: Although Congress has not yet enacted an appropriation for FY 2025, IES is inviting applications for these competitions now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. IES may announce additional competitions later in 2024.

Estimated Range of Awards: See chart at the end of this notice. The size of the awards will depend on the scope of the projects proposed.

Estimated Number of Awards: In previous years, IES has awarded 3 to 7 grants under each of these competitions. The number of awards made under each competition will depend on the quality of the applications received for that competition and the availability of funds.

Note: The Department is not bound by any estimates in this notice.

Project Period: See chart at the end of this notice.

III. Eligibility Information

1. *Eligible Applicants:* For the Using Longitudinal Data to Support State Education Policymaking (ALN 84.305S) grant program, eligible applications must include the eligible State agency or State postsecondary system responsible for the education issue, program, or policy to be examined. Eligible State agencies include the State educational agency (SEA) responsible for the State's K–12 sector as well as other State agencies responsible for other specific education sectors such as prekindergarten, career and technical education, postsecondary education, and adult education. In addition, a State postsecondary system may serve as the eligible State agency. Eligible State agencies may apply alone, or in conjunction with research organizations such as universities and research firms, and/or with other appropriate organizations (such as other State agencies or local educational agencies).

For the Transformative Research in the Education Sciences (ALN 84.305T) grant program, eligible applicants are organizations that have the demonstrated ability and capacity to conduct rigorous research and development. Eligible applicants include, but are not limited to, institutions of higher education and non-profit, for-profit, public, or private entities. Eligible applications must include research, product development, and education agency partners. The research partner must be an organization that has the ability and capacity to conduct rigorous research and development. The product development partner must be an organization that has experience developing and scaling products. Eligible education agency partners include:

- State education agencies such as departments, boards, and commissions that oversee early learning, elementary, secondary, postsecondary, and/or adult education. The term ''State education agencies'' includes U.S. Territories' education agencies and Tribal educational agencies.
- Local educational agencies, which are primarily public school districts and may also include county or city agencies that have primary responsibility for prekindergarten or adult education. Individual schools, including those that are recognized as a local educational agency, or groups of schools that do not form a school district are not eligible to apply as the education agency partner.
- Intermediate districts (sometimes called service districts) that provide services to multiple districts but do not have decision-making authority over implementing programs and policies cannot serve as the agency partner.
- Community college districts.
- State and city postsecondary systems. The postsecondary system must apply as the agency partner. Individual postsecondary institutions may not apply as the agency partner.
- In places where State or local educational agencies do not oversee adult education, the adult education providers, defined as ''eligible providers'' (*e.g.,* community-based organizations, institutions of higher education, public or non-profit agencies, libraries) under Title II of the Workforce Innovation and Opportunity Act (WIOA: *https://www.gpo.gov/fdsys/pkg/PLAW-113publ128/pdf/PLAW-113publ128.pdf*), can serve as the agency partner.

Applications that include non-public organizations that oversee or administer schools (*e.g.,* certain charter or education management organizations) must also include, as an agency partner, the State or local educational agency with oversight of the schools these non-public organizations manage.

2. a. *Cost Sharing or Matching:* The Using Longitudinal Data to Support State Education Policymaking (ALN 84.305S) grant program does not require cost sharing or matching.

The Transformative Research in the Education Sciences (ALN 84.305T) grant program requires cost sharing or matching. For this program, by the beginning of Year 2, each grant recipient must secure matching funds in an amount equal to 10 percent of the total funds provided under the grant in the form of cash or in-kind contributions through a cost-sharing agreement. Specifically, continuation funding in Years 2 and 3 will be contingent upon the establishment of a cost sharing agreement and the inclusion of a revised budget and budget narrative that includes cost sharing funds in the first-year annual report. The cost sharing partner must be an organization that has

experience developing and scaling technology products.

b. *Indirect Cost Rate Information:* Both programs described in this notice use an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under these competitions may award subgrants—to directly carry out project activities described in its application—to the following types of entities: nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs*, which contain requirements and information on how to submit an application.

2. *Other Information:* Information regarding program and application requirements for the competitions will be contained in the currently available IES Application Submission Guide and in the NCER Request for Applications (RFA)s, which will be available on or before May 6, 2024, on the IES website at: *https://ies.ed.gov/funding/*. The application packages for these competitions will also be available on or before May 6, 2024.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Dates and Times:* The deadline date for transmittal of applications for each competition is indicated in the chart at the end of this notice and in the RFAs for the competitions.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at *https://ies.ed.gov/director/sro/peer_review/application_review.asp*.

For the 84.305S competition, peer reviewers will evaluate the significance of the application, the quality of the research plan, the applicability and availability of the data to be analyzed, and the quality of the plans to disseminate and use the findings in State decision-making. These criteria are described in greater detail in the RFA.

For the 84.305T competition, peer reviewers will evaluate the significance of the transformative solution, research approach, deliverables and metrics plan, personnel, resources, and dissemination.

For all IES competitions, applications must include budgets no higher than the relevant maximum award as set out in the relevant RFA. IES will not make an award exceeding the maximum award amount as set out in the relevant RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, IES may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, IES also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under these competitions, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under these competitions to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials

produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual meeting of up to three days for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by IES. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by IES under 34 CFR 75.118. IES may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* To evaluate the overall success of its education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing, math, science, and social studies as well as outcomes that reflect students' successful progression through the education system, such as attendance; course and grade completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Employment and earnings outcomes include hours of employment, job stability, and wages and benefits, and may be measured in addition to student academic outcomes.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, IES considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether a grantee is in compliance with the IES policy regarding public access to research; and if IES has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, IES also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the relevant program contact person listed in **FOR FURTHER INFORMATION CONTACT**, as well as in the relevant RFA and application package, individuals with disabilities can obtain this document and a copy of the RFA in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*.

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Matthew Soldner,

Acting Director, Institute of Education Sciences.

INSTITUTE OF EDUCATION SCIENCES

ALN and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
84.305S Using Longitudinal Data to Support State Education Policymaking.	May 6, 2024	August 15, 2024	$100,000 to $333,333	Up to 3 years	*Haigen.Huang@ed.gov.*
84.305T Transformative Research in the Education Sciences.	May 6, 2024	September 12, 2024	$300,0000 to $1,250,000 ...	Up to 3 years	*Erin.Higgins@ed.gov.*

[FR Doc. 2024–09666 Filed 5–2–24; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a second notice inviting applications for new awards for fiscal year (FY) 2024 for CSP CMO Grants, Assistance Listing Number (ALN) 84.282M. The Department issued its first notice inviting applications for new CSP CMO Grants on September 26, 2023, and the competition closed on January 5, 2024. FY 2023 funds that were available through March 31, 2024, were used to fund grants awarded under the first notice, and FY 2024 funds will be used to fund grants awarded under this second notice. This second notice relates to the approved information collection under OMB control number 1810–0767.

DATES:

Applications Available: May 3, 2024.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by June 3, 2024. Applicants that do not meet this deadline may still apply.

Deadline for Transmittal of Applications: June 27, 2024.

Deadline for Intergovernmental Review: August 26, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application meeting via webinar to provide technical assistance to prospective applicants. Detailed information regarding this webinar will be provided at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-grants-for-replications-and-expansion-of-high-quality-charter-schools/.*

Note: For prospective new applicants unfamiliar with grantmaking at the Department, please consult our funding basics resource at *https://www2.ed.gov/fund/grant/about/discretionary/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Laura Montas-Brown, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 453–7654. Email: *CMOCompetition2024@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CSP CMO Grant program (ALN 84.282M) is authorized under title IV, part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) (20 U.S.C. 7221–7221j). Through CSP CMO Grants, the Department awards grants to *charter management organizations (CMOs)* [1] on a competitive basis to enable them to *replicate* or *expand* one or more *high-quality charter schools.* Grant funds may be used to significantly increase the enrollment of, or add one or more grades to, an existing high-quality charter school or to open one or more new *charter schools* or new campuses of a high-quality charter school based on the educational model of an existing high-quality charter school. Charter schools that receive financial assistance through CSP CMO Grants provide elementary or secondary education programs, or both, and may also serve students in *early childhood education programs* or postsecondary students, consistent with the terms of their charter.

Background: The major purposes of the CSP are to expand opportunities for all students, particularly for *children with disabilities, English learners,* and other traditionally *underserved students,* to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other *public* schools; aid States in providing facilities support to charter schools; support efforts to strengthen the charter school authorizing process; and support quality, accountability, and transparency in the operational performance of all *authorized public chartering agencies,* including State educational agencies (SEAs) and local educational agencies (LEAs) (see section 4301 of the ESEA).

''Raise the Bar: Lead the World'' (RTB) is the Department's call to action to all stakeholders to transform pre-kindergarten through postsecondary education and unite around *evidence-based* strategies that advance educational equity and excellence for all students.[2] When we raise the bar in education, all our Nation's students will be able to build the skills to thrive inside and outside of school. As part of the RTB initiative, the Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness.[3] This competition advances several RTB strategies, most notably those intended to deliver a comprehensive and rigorous education for every student and provide every student with a pathway to multilingualism.

Further, in July 2022, the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria for this program (87 FR 40406) (2022 NFP), which supplements the program statute and notice of final priorities, requirements, definitions, and selection criteria for CSP CMO Grants published in the **Federal Register** in November 2018 (83 FR 61532) (2018 NFP). The 2018 NFP and 2022 NFP are intended to help ensure the creation, replication, and expansion of high-quality charter schools.

This notice includes three competitive preference priorities—one from the CSP statute, one from the 2018 NFP, and one from the 2022 NFP—and two invitational priorities. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse,

[1] Terms defined in this notice are italicized the first time each term is used.

[2] *https://www.ed.gov/raisethebar/.*

[3] The six strategies of Raise the Bar include: accelerating learning, developing a well-rounded education, eliminating the educator shortage, investing in mental health, ensuring every student has a postsecondary pathway, and promoting a pathway to multilingualism.

and equitable learning opportunities, which is consistent with the RTB initiative and the Department's goals for all public schools. To that end, the first competitive preference priority is a statutory priority from section 4305(b)(5)(A) of the ESEA that promotes racially and socioeconomically diverse student bodies. The second competitive preference priority is from the 2018 NFP and encourages the replication and expansion of high-quality charter schools that serve high school students, including educationally disadvantaged students, and prepares them for postsecondary education. The third competitive preference priority is from the 2022 NFP and promotes high-quality educator- and community-centered charter schools to support underserved students, including through meaningful and ongoing engagement with current or former teachers and other educators.

The first invitational priority is designed to encourage collaboration between charter schools and traditional public schools or traditional school districts that benefit students and families across schools. These types of collaborations can support improved outcomes for students in both charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, and developing principal pipeline programs. The second invitational priority for this competition, which complements the first competitive preference priority, encourages high-quality charter schools to create pathways to multilingualism for students, particularly underserved students.[4] High-quality multilingual programming provides English learners and native English speakers with the opportunity to become bilingual and biliterate and may support Native American language education and preservation. It also celebrates the assets of English learners while supporting English language acquisition and promoting academic excellence. Using invitational priorities allows the Department to encourage beneficial collaborations and pathways to multilingualism that can better prepare all students for a global society and economy.

Priorities: This notice includes three competitive preference priorities and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 1 is from section 4305(b)(5)(A) of the ESEA. Competitive Preference Priority 2 is from the 2018 NFP. Competitive Preference Priority 3 is from the 2022 NFP.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities.

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 7 points to an application that meets Competitive Preference Priority 1, up to an additional 7 points to an application that meets Competitive Preference Priority 2, and up to an additional 7 points to an application that meets Competitive Preference Priority 3, depending on how well the application meets one or more of these priorities.

An applicant must identify on the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority for an application that fails to clearly identify the competitive preference priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. An application may receive a total of up to 21 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Racially and Socioeconomically Diverse Student Bodies (up to 7 points).

Under this priority, applicants must propose to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies. (section 4305(b)(5)(A) of the ESEA)

Competitive Preference Priority 2—High School Students (up to 7 points).

Under this priority, applicants must propose to—

(a) Replicate or expand high-quality charter schools to serve high school students, including *educationally disadvantaged students;*

(b) Prepare students, including educationally disadvantaged students, in those schools for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests;

(c) Provide support for students, including educationally disadvantaged students, who graduate from those schools and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution; and

(d) Propose one or more project-specific *performance measures,* including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a CSP CMO Grant must provide data that are responsive to the measure(s), including *performance targets,* in its annual performance reports to the Department.

(e) For purposes of this priority, postsecondary education institutions include *institutions of higher education,* as defined in this notice, and one-year training programs that meet the requirements of section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA). (2018 NFP)

Competitive Preference Priority 3—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students (up to 7 points).

(a) Under this priority, an applicant must propose to open a new charter school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other *educators;* and

(2) Using a community-centered approach that includes an assessment of *community assets,* informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use

[4] Kotok, Stephen, and David DeMatthews. ''Challenging School Segregation in the Twenty-First Century: How Districts Can Leverage Dual Language Education to Increase School and Classroom Diversity.'' Clearing House: A Journal of Educational Strategies, Issues and Ideas 91.1 (2018): 1–6.

and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school. (2022 NFP)

Invitational Priorities: For FY 2024, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Collaborations Between Charter Schools and Traditional Public Schools or Districts That Benefit Students and Families Across Schools.

(a) The Secretary is particularly interested in funding applications that propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, that is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and that includes implementation of one or more of the following—

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for children with disabilities.

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners.

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, the grantee provides evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Invitational Priority 2—Promoting Pathways to Multilingualism.

The Secretary is particularly interested in funding applications that propose to replicate or expand high-quality charter schools with multilingual programming that is centered on the needs and assets of the community the schools serve and is designed to provide students, particularly underserved students, with pathways to multilingualism through any of the following—

(a) Dual language programs that offer academic instruction in two languages and are designed to enroll both English learners and native English speakers on an equitable basis and ensure all students become bilingual and biliterate in both languages.

(b) A mission and focus on supporting Native American language education and development, such as through dual language programs or other instructional models and teaching methods that reflect and preserve Native American language, culture, and history.

(c) A mission and focus on meeting the unique educational needs and celebrating the assets of English learners using evidence-based practices to support English language acquisition and promote academic excellence.

(d) Other innovative or evidence-based strategies to promote multilingualism, including approaches to recruit, support, and retain multilingual educators.

Definitions: The following definitions are from sections 4310 (20 U.S.C. 7221i) and 8101 (20 U.S.C. 7801) of the ESEA, 34 CFR 77.1, the 2018 NFP, and the 2022 NFP.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the *baseline* for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary

to authorize or approve a charter school. (section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight. (section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a *developer* as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution; [5]

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which *parents* choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (section 4310(2) of the ESEA)

Note: Pursuant to the definition of authorized public chartering agency in section 4310(1) of the ESEA, for a school to qualify as a charter school under section 4310(2) and receive Federal CSP funds, the entity that issues the charter or performance contract must be an SEA, LEA, or other public entity with authority pursuant to State law to approve a charter school.

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as ''emotional disturbance''), orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. (section 8101(4) of the ESEA)

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities. (2022 NFP)

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (section 4310(5) of the ESEA)

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution. (2022 NFP)

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is (A) a State prekindergarten program; (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA; or (C) a program operated by an LEA. (ESEA section 8101(16))

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant

[5] The Department will apply this element of the definition of ''charter school'' consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 582 U.S. 449 (2017), *Espinoza* v. *Montana Department of Revenue,* 140 S. Ct. 2246 (2020), and *Carson* v. *Makin,* 142 S. Ct. 1987 (2022).

students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2018 NFP)

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty. (2022 NFP)

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (section 8101(20) of the ESEA)

Evidence-based, when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that—

(1) Demonstrates a statistically significant effect on improving student outcomes or other *relevant outcomes* based on—

(i) Strong evidence from at least one well-designed and well-implemented experimental study;

(ii) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(iii) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(2)(i) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(ii) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention. (section 8101(21) of the ESEA)

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school. (section 4310(7) of the ESEA)

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (section 4310(8) of the ESEA)

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. (2018 NFP)

Logic model (also referred to as theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare). (section 8101(38) of the ESEA)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Public as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal government. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law. (section 4310(9) of the ESEA)

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner.

(5) A child or student with a disability.

(6) A *disconnected youth.*

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level. (2022 NFP)

Application Requirements: Applications for CSP CMO Grant funds must address the following application requirements. These requirements are from sections 4303(f)(1)[6] and 4305(b)(3) of the ESEA, the 2018 NFP, and the 2022 NFP. The Department will not fund an application that does not meet each application requirement. The source of each requirement is provided in parentheses following each requirement.

In addressing the application requirements, applicants must clearly identify which application requirement they are addressing. An applicant must respond to application requirement (a) in a stand-alone section of the application or in an appendix. For all other application requirements, an applicant may choose to respond to each requirement separately or in the context of the applicant's responses to the selection criteria in section V.1 of this notice.

Applications for funding under the CSP CMO Grant program must—

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out, including—

(1) A description of how the applicant will ensure that charter schools receiving funds under this program meet the educational needs of their students, including children with disabilities and English learners (section 4303(f)(1)(A)(x) of the ESEA); and

(2) A description of how the applicant will ensure that each charter school receiving funds under this program has considered and planned for the transportation needs of the school's students (section 4303(f)(1)(E) of the ESEA);

(b) For each charter school currently operated or managed by the applicant, provide—

(1) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(2) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available 4-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(3) Information on any significant compliance and management issues encountered within the last 3 school years by any school operated or managed by the eligible entity, including in the areas of student safety and finance (section 4305(b)(3)(A) of the ESEA);

(c) Describe the educational program that the applicant will implement in each charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used (section 4305(b)(3)(B)(ii) of the ESEA);

(d) Demonstrate that the applicant currently operates or manages more than one charter school. For purposes of this program, multiple charter schools are considered to be separate schools if each school—

(1) Meets each element of the definition of charter school under section 4310(2) of the ESEA; and

(2) Is treated as a separate school by its authorized public chartering agency and the State in which the charter school is located, including for purposes of accountability and reporting under title I, part A of the ESEA (2018 NFP);

(e) Provide information regarding any compliance issues, and how they were resolved, for any charter schools operated or managed by the applicant that have—

(1) Closed;

(2) Had their charter(s) revoked due to problems with statutory or regulatory compliance, including compliance with sections 4310(2)(G) and (J) of the ESEA; or

(3) Had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (2018 NFP);

(f) Provide a complete *logic model* for the grant project. The logic model must include the applicant's objectives for replicating or expanding one or more high-quality charter schools with funding under this program, including the number of high-quality charter schools the applicant proposes to replicate or expand (2018 NFP);

(g) If the applicant currently operates, or is proposing to replicate or expand, a single-sex charter school or coeducational charter school that provides a single-sex class or extracurricular activity (collectively referred to as a ''single-sex educational program''), demonstrate that the existing or proposed single-sex educational program is in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its implementing regulations, including 34 CFR 106.34 (2018 NFP);

(h) Describe how the applicant currently operates or manages the high-quality charter schools for which it has presented evidence of success and how the proposed replicated or expanded charter schools will be operated or managed, including the legal relationship between the applicant and its schools. If a legal entity other than the applicant has entered or will enter into a performance contract with an authorized public chartering agency to operate or manage one or more of the applicant's schools, the applicant must also describe its relationship with that entity (2018 NFP);

(i) Describe how the applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each replicated or expanded charter school, including in the area of school governance (2018 NFP);

(j) Describe the lottery and enrollment procedures that will be used for each replicated or expanded charter school if more students apply for admission than can be accommodated, including how any proposed weighted lottery complies with section 4303(c)(3)(A) of the ESEA (2018 NFP);

(k) Describe how the applicant will ensure that all eligible children with disabilities receive a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act (2018 NFP);

(l) Describe how the proposed project will assist educationally disadvantaged students in mastering challenging State academic standards (2018 NFP);

(m) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities (2018 NFP);

[6] Per section 4305(c) of the ESEA, CSP CMO Grants have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, the Department has replaced the term ''State entity'' with ''applicant'' in the requirements that derive from section 4303.

(n) Provide the applicant's most recent independently audited financial statements prepared in accordance with generally accepted accounting principles (2018 NFP);

(o) Describe the applicant's policies and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools (2018 NFP);

(p) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter schools to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived, or otherwise not apply, to such schools (2018 NFP);

(q) Provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following—

(1) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students, or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(2) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(3) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socioeconomically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school because the charter school would be located in a racially or socioeconomically segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(i) Why it is unlikely to establish and maintain a racially and socioeconomically diverse student body at the proposed charter school;

(ii) How the anticipated racial and socioeconomic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) The anticipated impact of the proposed charter school on the racial and socioeconomic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(4) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following—

(i) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(ii) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(iii) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(5) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including holding enrollment and recruitment events on weekends or during nonstandard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(6) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(7) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(8) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (1) would not hamper, delay, or negatively affect any desegregation efforts in the local community in which the charter school would be located or in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools; and (2) to ensure that the proposed charter school would not otherwise increase racial or socioeconomic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school (2022 NFP);

(r) For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(1) A copy of the existing contract with the for-profit management

organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(3) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(4) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization);

(5) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(6) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP); and

(s) Provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application. (2022 NFP)

Assurances: Each applicant for a CSP CMO Grant must provide the following assurances. These assurances are from sections 4303(f)(2) and 4305(b)(3)(C) of the ESEA and the 2022 NFP. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide assurances that—

(a) The grantee will support charter schools in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA. (section 4303(f)(2)(B) of the ESEA)

(b) The grantee will ensure that each charter school receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(1) Information on the educational program;

(2) Student support services;

(3) Parent contract requirements (as applicable), including any financial obligations or fees;

(4) Enrollment criteria (as applicable); and

(5) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (section 4303(f)(2)(G) of the ESEA)

(c) The eligible entity has sufficient procedures in effect to ensure timely closure of low-performing or financially mismanaged charter schools and clear plans and procedures in effect for the students in such schools to attend other high-quality schools. (section 4305(b)(3)(C) of the ESEA)

(d) Each charter school it funds has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization or its related entities exercises full or substantial administrative control over the charter school and, thereby, the CSP project. (2022 NFP)

(e) Any management contract between a charter school that the applicant funds and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization. (2022 NFP)

(f) Each charter school that the applicant funds will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department, including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding; the duration, roles, and responsibilities of the management organization; the steps the charter school will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization; and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school and a list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close. (2022 NFP)

(g) Each charter school that the applicant funds will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program). (2022 NFP)

(h) Each charter school that the applicant funds will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socioeconomic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socioeconomic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above. (2022 NFP)

(i) Each charter school that the applicant funds will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP)

(j) Each applicant must provide an assurance that, within 120 days of the date of the grant award notification (GAN), the grantee will post on its website:

(1) A list of the charter schools slated to receive CSP funds, including the following for each school:

(i) The name, address, and grades served.

(ii) A description of the educational model.

(iii) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(iv) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(v) The grant (redacted as necessary).

(2) As applicable for CMO grants, such a list must be updated at least annually and provide the anticipated number of charter schools that will receive CSP planning funds before securing a facility. (2022 NFP)

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, a grantee may request a waiver from the Department under section 4303(d)(5) to enable the grantee to amend its approved application to extend the 18-month planning period prescribed by section 4303(d)(1)(B). Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section 4310(2) of the ESEA, provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. A grantee also may request approval from the Department, as appropriate, to amend its approved application and budget to cover additional planning costs that it may incur due to an

unexpected delay in the charter approval process.

Program Authority: Title IV, part C of the ESEA, as amended.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2018 NFP. (e) The 2022 NFP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $92,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000 to $20,000,000 per year.

Estimated Average Size of Awards: $2,500,000 per year.

Maximum Award: See Reasonable and Necessary Costs in section III.4 for information regarding the maximum amount of funds that may be awarded per charter school.

Estimated Number of Awards: 15–20.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (section 4303(d)(1)(B) of the ESEA)

III. Eligibility Information

1. *Eligible Applicants:* CMOs. Eligible applicants may apply individually or as part of a group or consortium.

Note: Under 34 CFR 75.51, an applicant may show that it is a nonprofit organization by any of the following means: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be used to replicate or expand a high-quality charter school (34 CFR 75.101 and 75.104(b)).

For this competition, the maximum limit of grant funds that may be used to replicate or expand a single charter school is $2,000,000.

In accordance with 2 CFR 200.404, applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

5. *Other CSP Grants:* A charter school that previously received funds for replication or expansion under this program, or that has been awarded a subgrant or grant for opening or preparing to operate a new charter school, replication, or expansion under the CSP Grants to State Entities (SE Grants) program (ALN 84.282A) or CSP Grants to Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants) program (ALNs 84.282B and 84.282E), may not receive funds under this grant to carry out the same activities (see 2 CFR 200.403). However, such a charter school may be eligible to receive funds through a CSP CMO Grant awarded under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that is included in an approved application for funding under this competition is ineligible to receive a subgrant or grant to carry out the same activities under the CSP SE Grant program (ALN 84.282A) or CSP Developer Grant program (ALNs 84.282B and 84.282E), including opening and preparing for the operation of a new charter school or replicated high-quality charter school or expanding a high-quality charter school (2 CFR 200.403).

6. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of

Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Grantees under this program must use the grant funds to replicate or expand the charter school model or models for which the applicant has presented evidence of success. Specifically, grant funds must be used to carry out allowable activities, as described in section 4305(b)(1) of the ESEA. In addition, grant funds must be used to carry out one or more of the activities described in section 4303(h), which include—

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the eligible applicant's planning period, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel;

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials);

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction);

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school;

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment; and

(f) Providing for other appropriate, non-sustained costs related to the replication or expansion of high-quality charter schools when such costs cannot be met from other sources.

Further, within the context of opening and preparing for the operation of one or more replicated high-quality charter schools or expanding one or more high-quality charter schools, a portion of grant funds may be used for appropriate, non-sustained costs associated with the expansion or improvement of the grantee's oversight or management of its charter schools, provided that (i) the specific charter schools being replicated or expanded under the grant are the intended beneficiaries of such expansion or improvement; (ii) such expansion or improvement is intended to improve the grantee's ability to manage or oversee the charter schools being replicated or expanded under the grant; and (iii) the costs cannot be met from other sources (20 U.S.C. 7221b(h) and 7221d(b)(1)). In order to use grant funds for this purpose, an applicant must describe how the proposed costs are necessary to meet the objectives of the project and reasonable in light of the overall cost of the project (2 CFR 200.403).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The project narrative is where you, the applicant, address the priorities, selection criteria, and application requirements that peer reviewers use to evaluate your application. We recommend that you (1) limit the project narrative to no more than 60 pages, and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; any request to waive requirements and the justification; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the project narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name, a contact person's name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210, the 2018 NFP, and the 2022 NFP. The maximum possible score for addressing all of the selection criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application for a CSP CMO Grant, the Secretary considers the following criteria:

(a) *Quality of the Eligible Applicant and Adequacy of Resources (up to 30 points).*

In determining the quality of the eligible applicant and the adequacy of resources, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments, annual student attendance and retention rates, and, where applicable and available, student academic growth, high school graduation rates, college attendance rates, and college persistence rates) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (up to 15 points). (2018 NFP)

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory

requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (up to 5 points). (2018 NFP)

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (up to 5 points). (2018 NFP)

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support (up to 5 points). (34 CFR 75.210)

(b) *Quality of the Needs Analysis (up to 25 points).*

In determining the quality of the needs analysis, the Secretary considers the following factors:

(1) The extent to which the needs analysis demonstrates that the proposed charter school will address the needs of all students served by the charter school, including underserved students; will ensure equitable access to high-quality learning opportunities; and demonstrates sufficient demand for the charter school (up to 10 points). (2022 NFP)

(2) The extent to which the needs analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of underserved students and their families (up to 10 points). (2022 NFP)

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis, including in the academic, financial, organizational, and operational performance of the charter school (up to 5 points). (2022 NFP)

(c) *Quality of the Project Design and Evaluation Plan for the Proposed Project (up to 10 points).*

In determining the quality of the project design and evaluation plan for the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework (up to 2 points). (34 CFR 75.210)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the proposed project, as described in the applicant's logic model, and that will produce quantitative and qualitative data by the end of the grant period (up to 6 points). (2018 NFP)

(3) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 2 points). (34 CFR 75.210)

(d) *Quality of the Management Plan (up to 35 points).*

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 6 points). (34 CFR 75.210)

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 6 points). (34 CFR 75.210)

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points). (34 CFR 75.210)

(4) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 6 points). (2022 NFP)

(5) The adequacy of the applicant's plan to make all programmatic decisions (up to 6 points). (2022 NFP)

(6) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 6 points). (2022 NFP)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Uniform Guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an

objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a GAN; or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* (a) For the purposes of Department reporting under 34 CFR 75.110, the Secretary has established two performance indicators: (1) the number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors during each year of the project. The meeting may be held virtually or in person at a location to be determined in the continental United States. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition must participate in all technical assistance offerings required by the CSP Office, including project

directors' meetings and other on-site and virtual gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the performance period.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2024–09614 Filed 5–2–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of an open virtual meeting.

SUMMARY: This notice announces an open virtual meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 22, 2024; 1 p.m. to 3 p.m. EDT.

ADDRESSES: Information for viewing the livestream of the meeting will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Melissa A. Edwards, Designated Federal Officer, PCAST, Email: *PCAST@ostp.eop.gov;* Phone: (202) 881–9018.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Melissa A. Edwards. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

Tentative Agenda: PCAST may discuss the future of research and actions and activities spurred by previous published PCAST reports. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Public Participation: The meeting is open to the public. The meeting will be held virtually for members of the public. It is the policy of PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on May 22, 2024, at the time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes. To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 12 p.m. EDT on May 15, 2024. To accommodate as many speakers as possible, the time for public comments will be limited to two minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council. Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12 p.m. EDT on May 15, 2024, so that the comments can be made available to the PCAST members for their consideration prior to this meeting. PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Minutes: Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

Signing Authority: This document of the Department of Energy was signed on April 26, 2024, by Alyssa Petit, Acting Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 30, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–09664 Filed 5–2–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA invites public comment on the proposed three-year extension, with changes, to the Uranium Data Program (UDP) as required under the Paperwork Reduction Act of 1995. The UDP consists of three surveys: Form EIA–851A Domestic Uranium Production Report (Annual), which

collects annual data from the U.S. uranium industry on uranium milling and processing, uranium feed sources, uranium mining, employment, drilling, expenditures, and uranium reserves; Form EIA–851Q Domestic Uranium Production Report (Quarterly), which collects monthly uranium production data that is reported on a quarterly basis; and Form EIA–858 Uranium Marketing Annual Survey, which collects annual data from the U.S. uranium market on uranium contracts and deliveries, inventories, enrichment services purchased, uranium in fuel assemblies, feed deliveries to enrichers, and unfilled market requirements for the current year and the following ten years.

DATES: Comments on this information collection must be received no later than June 3, 2024. 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: If you need additional information, contact Tim Shear, U.S. Energy Information Administration, telephone (202) 586–0403, or by email at *tim.shear@eia.gov.* The forms and instructions are available on EIA's website at *www.eia.gov/survey/.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0160;

(2) *Information Collection Request Title:* Uranium Data Program;

(3) *Type of Request:* Three-year extension with change;

(4) *Purpose:* Uranium Data Program (UDP) collects data on domestic uranium supply and demand activities, including production, exploration and development, trade, purchases and sales available to the U.S. The users of these data include Congress, Executive Branch agencies, the nuclear and uranium industry, electric power industry, and the public. Form EIA–851A data is published in EIA's Domestic Uranium Production Report—Annual, at *https://www.eia.gov/uranium/production/annual/* . Form EIA–851Q data is published in EIA's Domestic Uranium Production Report—Quarterly at *https://www.eia.gov/uranium/production/quarterly/.* Form EIA–858 data is published in EIA's Uranium Marketing Annual Report at *https://www.eia.gov/uranium/marketing/* and Domestic Uranium Production Report—Annual at *https://www.eia.gov/uranium/production/annual/.*

(4a) Changes to Information Collection: There is a 6 hour increase in the total estimated burden across all three surveys. Due to the continued downturn in the uranium landholding/exploration/production sectors, EIA–851A had four fewer respondents which reduced the burden hours by 20. The addition of one trader/broker on the EIA–858 survey will result in 26 additional burden hours. The larger burden estimate of the EIA–858 survey (26 burden hours) compared to the EIA–851A survey (5 burden hours) results in 26 additional EIA–858 hours against a reduction of 20 hours on the EIA–851A survey (4 fewer respondents by 5 hours per response) for a total net burden gain of six hours across all three surveys. The number of respondents for the Form EIA–851A has decreased from 30 to 26. The number of respondents for the Form EIA–851Q has remained at 11. The number of respondents for the Form EIA–858 has increased from 61 to 62. Total annual burden hours across all uranium surveys will increase slightly from 1,769 hours to 1,775 hours;

(5) *Annual Estimated Number of Respondents:* 99;

(6) *Annual Estimated Number of Total Responses:* 132;

(7) *Annual Estimated Number of Burden Hours:* 1775;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained during the normal course of business. The cost of the burden hours is estimated to be $161,809 (1,775 burden hours times $91.16 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining, and providing this information.

Statutory Authority: 15 U.S.C. 772(b), 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on April 29, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–09647 Filed 5–2–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1804–000]

Clearwater Wind III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Clearwater Wind III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 20, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09687 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Subcommittee and Standard Drafting Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Organization Registration and Certification Subcommittee Meeting: Hybrid

Southwest Power Pool Offices, 201 Worthen Drive, Little Rock, AR 72223

Attendees may also attend the meeting through WebEx.

May 1, 2024 | 8:00 a.m.–10 a.m. Central

Further information regarding this meeting may be found at: *https://www.nerc.com/comm/CCC/Organization%20Registration%20and%20Certification%20Sub1/Organization%20Registration%20and%20Certification%20Subcommittee%20(ORCS)%20Meeting%20Agenda%20Package%20-%20May%201,%202024.pdf.*

North American Electric Reliability Corporation: Project 2021–04 Modifications to PRC–002—Phase II Standard Drafting Team Meeting, WebEx

May 6, 2024 | 1:00 p.m.–3:00 p.m. Eastern

Further information regarding these meetings and how to join remotely may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR24–2–000 North American Electric Reliability Corporation

For further information, please contact Leigh Anne Faugust (202) 502–6396 or *leigh.faugust@ferc.gov.*

Dated: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09682 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7271–002]

Owensboro Municipal Utilities; Notice of Application for Surrender of Conduit Exemption Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of conduit exemption.

b. *Project No:* 7271–002.

c. *Date Filed:* April 16, 2024.

d. *Applicant:* Owensboro Municipal Utilities.

e. *Name of Project:* Elmer Smith Hydroelectric Project.

f. *Location:* The project is located at the discharge point of the Elmer Smith Generation Station, on the Ohio River in Davies County, Kentucky. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tim Lyons, General Manager, Owensboro Municipal Utilities, 270–691–4233.

i. *FERC Contact:* Marybeth Gay, (202) 502–6125, *Marybeth.gay@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* May 28, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–7271–002. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The exemptee requests to surrender the exemption for the Elmer Smith Hydroelectric Project. The exemptee states that on June 1, 2020, it retired the Elmer Smith Generating Station, including its circulating water system. As a result, the hydroelectric plant no longer had a water source. Following the plant's retirement, the exemptee began decommissioning the station, including the removal of electrical equipment within the hydroelectric facility. The decommissioning did not result in any adverse impacts to water quality or negatively affect environmental, recreational, or historic properties. As proposed, the hydroelectric structures would remain in place, as well as the plant discharge flume for potential future use. The project is fully within the exemptee's property limits, and the exemptee intends to maintain ownership of the land for the foreseeable future.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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: April 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09604 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–42–000.

Applicants: Hunterstown Gen Holdings, LLC, Kestrel Acquisition, LLC.

Description: Hunterstown Gen Holdings, LLC et. al. submit response to 04/05/2024 letter requesting additional information and request for shortened comment period and expeditious action re 01/16/2024 Application.

Filed Date: 4/24/24.

Accession Number: 20240424–5271.

Comment Date: 5 p.m. ET 5/6/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–168–000.

Applicants: Kimmel Road Solar, LLC.

Description: Kimmel Road Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/29/24.

Accession Number: 20240429–5190.

Comment Date: 5 p.m. ET 5/20/24.

Docket Numbers: EG24–169–000.

Applicants: BCD 2024 Fund 3 Lessee, LLC.

Description: BCD 2024 Fund 3 Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/29/24.

Accession Number: 20240429–5192.

Comment Date: 5 p.m. ET 5/20/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–105–000.

Applicants: Payton Solar, LLC v. PJM Interconnection, L.L.C.

Description: Complaint of Payton Solar, LLC v. PJM Interconnection, L.L.C.

Filed Date: 4/26/24.

Accession Number: 20240426–5205.

Comment Date: 5 p.m. ET 5/10/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1437–002.

Applicants: Eagle Point Power Generation LLC.

Description: Eagle Point Power Generation LLC submits informational report in advance of an internal corporate transaction that will alter the upstream ownership.

Filed Date: 4/1/24.

Accession Number: 20240401–5672.

Comment Date: 5 p.m. ET 5/3/24.

Docket Numbers: ER15–1905–016.

Applicants: Amazon Energy LLC.

Description: Notice of Change in Status of Amazon Energy LLC.

Filed Date: 4/26/24.

Accession Number: 20240426–5389.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER23–1048–003.

Applicants: Lockhart ESS, LLC.

Description: Notice of Non-Material Change in Status of Lockhart ESS, LLC.

Filed Date: 4/26/24.

Accession Number: 20240426–5387.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1271–001.

Applicants: Alton Post Office Solar, LLC.

Description: Tariff Amendment: Resp to Deficiency Ltr & Requests for Confidential Treatment & Expedited Action to be effective 4/17/2024.

Filed Date: 4/29/24.

Accession Number: 20240429–5134.

Comment Date: 5 p.m. ET 5/20/24.

Docket Numbers: ER24–1272–001.

Applicants: Foxglove Solar Project, LLC.

Description: Tariff Amendment: Resp to Deficiency Ltr & Requests for Confidential Treatment & Expedited Action to be effective 4/17/2024.

Filed Date: 4/29/24.

Accession Number: 20240429–5138.

Comment Date: 5 p.m. ET 5/20/24.

Docket Numbers: ER24–1848–000.

Applicants: Portland General Electric Company.

Description: Compliance filing: PGE Order Nos. 2023 2023–A Compliance Filing to be effective 11/2/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5308.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1849–000.

Applicants: Atrisco Solar SF LLC.

Description: 205(d) Rate Filing: Lease Agreement between Atrisco Solar and Atrisco Solar SF to be effective 5/1/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5316.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1850–000.

Applicants: Atrisco BESS SF LLC.
Description: 205(d) Rate Filing: Lease Agreement between Atrisco Energy Storage LLC and Atrisco BESSSF to be effective 5/1/2024.
Filed Date: 4/26/24.
Accession Number: 20240426–5320.
Comment Date: 5 p.m. ET 5/17/24.
Docket Numbers: ER24–1851–000.
Applicants: New England Power Company.
Description: 205(d) Rate Filing: 2024–04–26 Filing of Small Generator Interconnection Agmt with Ampersand Gilman to be effective 4/5/2024.
Filed Date: 4/26/24.
Accession Number: 20240426–5322.
Comment Date: 5 p.m. ET 5/17/24.
Docket Numbers: ER24–1852–000.
Applicants: Tampa Electric Company.
Description: 205(d) Rate Filing: Emergency Interchange Service Schedule A&B–2024 to be effective 5/1/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5004.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1853–000.
Applicants: Puget Sound Energy, Inc.
Description: Compliance filing: Order 2023–A Compliance—Annexes A and B to be effective 12/31/9998.
Filed Date: 4/29/24.
Accession Number: 20240429–5055.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1854–000.
Applicants: Southwestern Public Service Company, Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: SPS Formula Rate Revisions to Incorporate Changes Accepted in ER24–1267 to be effective 1/1/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5181.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1855–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 3761R2 KEPCO NITSA NOA to be effective 4/1/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5187.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1856–000.
Applicants: PacifiCorp.
Description: Tariff Amendment: Termination of UAMPS Const Agmt Lehi North Substation to be effective 7/3/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5191.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1857–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 205(d) Rate Filing: 2024–04–29 SA 4279 Ameren IL-Fresh Air Energy II GIA (J1422) to be effective 4/17/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5200.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1858–000.
Applicants: AEP Texas Inc.
Description: 205(d) Rate Filing: AEPTX-Portside Energy Center Generation Interconnection Agreement to be effective 4/5/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5211.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1859–000.
Applicants: AEP Texas Inc.
Description: 205(d) Rate Filing: AEPTX-Charter Oak Storage Generation Interconnection Agreement to be effective 4/5/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5225.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1860–000.
Applicants: Duke Energy Florida, LLC.
Description: 205(d) Rate Filing: DEF-Shady Hills Amended and Restated LGIA SA 230 to be effective 4/26/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5240.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1861–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: Compliance filing: American Electric Power Service Corporation submits tariff filing per 35: AEP submits Informational Filing about Att. 1 of ILDSA, SA No. 1336 to be effective N/A.
Filed Date: 4/29/24.
Accession Number: 20240429–5269.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1862–000.
Applicants: Kimmel Road Solar, LLC.
Description: Baseline eTariff Filing: Kimmel Road Solar, LLC MBR Tariff to be effective 6/29/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5278.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1863–000.
Applicants: BCD 2024 Fund 3 Lessee, LLC.
Description: Baseline eTariff Filing: BCD 2024 Fund 3 Lessee, LLC MBR Tariff to be effective 6/29/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5283.
Comment Date: 5 p.m. ET 5/20/24.
Docket Numbers: ER24–1864–000.
Applicants: Hardy Hills Solar Energy LLC.
Description: 205(d) Rate Filing: Revision to Market Based Rate Tariff to be effective 6/28/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5287.
Comment Date: 5 p.m. ET 5/20/24.

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: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09690 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–536–000]

Eastern Shore Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Worcester Resiliency Upgrade Project

The staff of the Federal Energy Regulatory Commission (FERC or

Commission) has prepared an environmental assessment (EA) for the Worcester Resiliency Upgrade Project, proposed by Eastern Shore Natural Gas Company (Eastern Shore) in the above-referenced docket. Eastern Shore requests authorization to construct and operate facilities in Somerset, Wicomico, and Worcester counties, Maryland, and Sussex County, Delaware.

Eastern Shore proposes to install five liquified natural gas (LNG) storage vessels and LNG vaporizers in Worcester County, Maryland, approximately 1.1 miles of 10-inch-diameter pipeline looping in Sussex County, Delaware and Wicomico County, Maryland, upgrades to an existing pressure control station in Sussex County, Delaware, and upgrades to three existing meter and regulating stations in Sussex County, Delaware and Worcester and Somerset Counties, Maryland. The Worcester Resiliency Upgrade Project would store approximately 475,000 gallons of LNG, equivalent to 39,627 Dekatherms, and provide 14,000 Dekatherms per day of corresponding peak firm natural gas transportation service. According to Eastern Shore, its project would enhance the resiliency of Eastern Shore's system.

The EA assesses the potential environmental effects of the construction and operation of the Worcester Resiliency Upgrade Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

The Department of Transportation Pipeline and Hazardous Materials Safety Administration participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

Specifically, the proposed Project includes construction and operation of five new facilities and upgrades to four existing facilities in Sussex County, Delaware, and Wicomico, Worcester, and Somerset Counties, Maryland including:

- Bishopville Facility, Worcester County, Maryland: construct a 10.6-acre LNG storage and vaporization facility situated within a rural 135-acre parcel that includes five 100,000-gallon horizontal storage vessels, with vaporization equipment and pumping systems to convert LNG to vapor for pipeline transport;
- Bishopville Tie-in, Worcester County, Maryland: construct 0.4 mile of 8-inch-diameter pipeline to connect the Bishopville Facility to an Eastern Shore's existing Milford pipeline;
- Millsboro Controller Upgrade, Sussex County, Delaware: upgrade existing station to install two new control valve runs to provide pressure and directional control;
- Millsboro Tie-in, Sussex County, Delaware: construct 0.4 mile of 10-inch-diameter pipeline extension to connect the upgraded Millsboro Controller to the Eastern Shore's existing Milford pipeline;
- Berlin Meter and Regulator (M&R) Upgrade, Worcester County, Maryland: replace approximately 350 feet of existing belowground 3-inch tie-in with a new 6-inch tie-in;
- Thompson M&R Upgrade, Somerset County, Maryland: upgrade existing M&R station, replacing the existing meters;
- Selbyville M&R Upgrade, Sussex County, Delaware: replace existing M&R station with new meter and regulator facilities;
- Delmar Receiver, Wicomico County, Maryland: install new aboveground Rupture Mitigation Valve (RMV) and In-line Inspection (ILI) Receiver and an access road located at the new connection between the Delmar Loop and the Parkesburg Line at the southern end of the Delmar Loop collocated east of US Route 13 (US 13); and
- Delmar Loop, Wicomico County, Maryland and Sussex County, Delaware: construct 1.1 miles of 10-inch diameter looping natural gas pipeline collocated with an existing Eastern Shore pipeline and US 13.

The Commission mailed a copy of the *Notice of Availability of the Environmental Assessment for the Worcester Resiliency Upgrade Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP23–536). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00pm Eastern Time on May 28, 2024.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–536–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting

Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.*

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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.*

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: April 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09597 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1816–000]

High River Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of High River Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 20, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09686 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–200–000]

Carlsbad Gateway, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on April 19, 2024, Carlsbad Gateway, LLC (Carlsbad Gateway), 100 Congress, Suite 2200, Austin Texas 78701, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Carlsbad Gateway's blanket certificate issued in Docket No. CP18–538–000, for authorization to construct and operate approximately 20 miles of 20-inch-diamter lateral pipeline and associated interconnect and meter station originating at the tailgate of Targa Resources' Red Hills Processing Plant in Lea County, New Mexico, and terminating at an interconnection with the Agua Blanca Pipeline in Loving County, Texas (Lea County Expansion Project). The project will allow Carlsbad Gateway to transport 350,000 dekatherms per day. The estimated cost for the project is $35 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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*). From the Commission's Home Page on the internet, this information is available on eLibrary.

The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Liza Evans, Senior Counsel, WhiteWater Midstream, LLC, 100 Congress, Suite 200, Austin, Texas 78701, by phone at (281) 380–4849, or by email at *liza@wwm-llc.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on June 28, 2024. How to file protests, motions to intervene, and comments is explained below.

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.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is June 28, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is June 28, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 28, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–200–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–200–000.

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 method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Liza Evans, Senior Counsel, WhiteWater Midstream, LLC, 100 Congress, Suite 200, Austin, Texas 78701, or by email at *liza@wwm-llc.com.*

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09688 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following hybrid meetings:

North American Electric Reliability Corporation: Member Representatives Committee Meeting:

NERC DC Office, 1401 H Street NW, Suite 410, Washington, DC 20005

In person attendance is limited to NERC's Board of Trustees, the Member Representative Committee, and NERC staff.

May 8, 2024 | 3:30 p.m.–5:30 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/gov/bot/MRC/AgendaHighlightsnad Minutes2013/MRC-Agenda-Package-May-08-2024.pdf.*

North American Electric Reliability Corporation: Board of Trustees Meeting:

NERC DC Office, 1401 H Street NW, Suite 410, Washington, DC 20005

In person attendance is limited to NERC's Board of Trustees, the Member Representative Committee, and NERC staff.

May 9, 2024 | 9:00 a.m.–10:30 a.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: *https://www.nerc.com/gov/bot/AgendahighlightsandMintues2013/BoardofTrusteesAgendaPackage-May92024.pdf.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket Nos. RR24–2–000 North American Electric Reliability Corporation, RD24–5–000 Cold Weather Reliability Standards

For further information, please contact Chanel Chasanov, 202–502–8569, or *chanel.chasanov@ferc.gov.*

Dated: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09683 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1832–000]

North Fork Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of North Fork Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 20, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09685 Filed 5–2–24; 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: RP24–692–000.

Applicants: Portland Natural Gas Transmission System.

Description: 4(d) Rate Filing: Administrative Clean-Up to be effective 6/1/2024.

Filed Date: 4/25/24.
Accession Number: 20240425–5256.
Comment Date: 5 p.m. ET 5/7/24.
Docket Numbers: RP24–693–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: 4(d) Rate Filing: Non-Conforming—Atlantic Sunrise—EQT to be effective 5/1/2024.
Filed Date: 4/26/24.
Accession Number: 20240426–5106.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–694–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: 4(d) Rate Filing: List of Non-Conforming Service Agreements (ASR_Mitsui rls to EQT) to be effective 5/30/2024.
Filed Date: 4/26/24.
Accession Number: 20240426–5131.
Comment Date: 5 p.m. ET 5/8/24.

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: April 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09596 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at The Solar Energy Industries Association's Clean Energy Security and Reliability Forum

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following forum:

The Solar Energy Industries Association's (SEIA) Clean Energy Security and Reliability Forum:

George R Brown Convention Center, 1001 Avenida De Las Americas, Houston, TX 77010

May 15, 2024 | 12:00 p.m.–5:00 p.m. Central

May 16, 2024 | 8:00 a.m.–3:00 p.m. Central

Further information regarding this forum may be found at: *https://na.eventscloud.com/website/68177/.*

The discussions at the above forum, which is open to the public, may address matters at issue in the following Commission proceedings:

Docket Nos. RR24–2–000 North American Electric Reliability Corporation, RD24–5–000 Cold Weather Reliability Standards

For further information, please contact Chanel Chasanov, 202–502–8569, or *chanel.chasanov@ferc.gov.*

Dated: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09684 Filed 5–2–24; 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: PR24–66–000.
Applicants: The East Ohio Gas Company.
Description: 284.123(g) Rate Filing: Operating Statement of The East Ohio Gas Company 4/1/2024 to be effective 4/1/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5125.
Comment Date: 5 p.m. ET 5/20/24.
284.123(g) Protest: 5 p.m. ET 6/28/24.
Docket Numbers: RP24–695–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Operational Imbalances and Cash Out Activity Report for 2023 of Cameron Interstate Pipeline, LLC.
Filed Date: 4/26/24.
Accession Number: 20240426–5210.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–696–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Operational Transactions Report of Cameron Interstate Pipeline, LLC.
Filed Date: 4/26/24.
Accession Number: 20240426–5212.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–697–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Annual Report of Penalty Revenues of Cameron Interstate Pipeline, LLC.
Filed Date: 4/26/24.
Accession Number: 20240426–5215.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–698–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Transportation Imbalance Report of Cameron Interstate Pipeline, LLC.
Filed Date: 4/26/24.
Accession Number: 20240426–5231.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–699–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: IT Revenue Sharing Report of Cameron Interstate Pipeline, LLC.
Filed Date: 4/26/24.
Accession Number: 20240426–5243.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–700–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: 4(d) Rate Filing: Negotiated Rates—Duke Energy FL to be effective 6/1/2024.
Filed Date: 4/29/24.
Accession Number: 20240429–5052.
Comment Date: 5 p.m. ET 5/13/24.
Docket Numbers: RP24–701–000.
Applicants: EQT Energy, LLC,Equinor Natural Gas LLC.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of EQT Energy, LLC, et al.
Filed Date: 4/26/24.
Accession Number: 20240426–5355.
Comment Date: 5 p.m. ET 5/8/24.
Docket Numbers: RP24–702–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 4.29.24 Negotiated Rates—Koch Energy

Services, LLC R–7755–07 to be effective 5/1/2024.

Filed Date: 4/29/24.

Accession Number: 20240429–5106.

Comment Date: 5 p.m. ET 5/13/24.

Docket Numbers: RP24–703–000.

Applicants: Enable Gas Transmission, LLC.

Description: 4(d) Rate Filing: Amended NRA Filing—CERC to be effective 5/1/2024.

Filed Date: 4/29/24.

Accession Number: 20240429–5151.

Comment Date: 5 p.m. ET 5/13/24.

Docket Numbers: RP24–704–000.

Applicants: Enable Gas Transmission, LLC.

Description: 4(d) Rate Filing: Cancel CERC Agreements to be effective 5/1/2024.

Filed Date: 4/29/24.

Accession Number: 20240429–5154.

Comment Date: 5 p.m. ET 5/13/24.

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: RP20–1042–004.

Applicants: Northern Natural Gas Company.

Description: Compliance filing: 20240429 Operational Purchase and Sales Report to be effective N/A.

Filed Date: 4/29/24.

Accession Number: 20240429–5166.

Comment Date: 5 p.m. ET 5/13/24.

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 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: April 29, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09689 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–1841–000.

Applicants: TransCanada Power Marketing Ltd.

Description: Tariff Amendment: Notice of Cancellation—Former TC Ironwood Reactive Supply to be effective 4/26/2024.

Filed Date: 4/25/24.

Accession Number: 20240425–5239.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–1842–000.

Applicants: Unitil Power Corp.

Description: Unitil Power Corp. submits Statement of all billing transactions under the Amended Unitil System Agreement for the period 01/01/2023 to 12/31/2023.

Filed Date: 4/25/24.

Accession Number: 20240425–5271.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–1843–000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: Certificates of Concurrence ANPP Hassayampa with Sun Streams to be effective 12/9/2019.

Filed Date: 4/26/24.

Accession Number: 20240426–5105.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1844–000.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2024–04–26 CORE (fka IREA)—Bergen Park—E&P—432—NOC to be effective 4/27/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5162.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1845–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 921 to be effective 3/27/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5181.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1846–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Service Agreement FERC No. 915 to be effective 3/27/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5190.

Comment Date: 5 p.m. ET 5/17/24.

Docket Numbers: ER24–1847–000.

Applicants: Sierra Pacific Power Company, Nevada Power Company.

Description: Compliance filing: Sierra Pacific Power Company submits tariff filing per 35: Order No. 2023 (RM22–14) Compliance Filing to be effective 7/1/2024.

Filed Date: 4/26/24.

Accession Number: 20240426–5222.

Comment Date: 5 p.m. ET 5/17/24.

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: April 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09594 Filed 5–2–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Falcon and Amistad Projects—Rate Order No. WAPA–216

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order extending firm power formula rate.

SUMMARY: The extension of the Colorado River Storage Project Management Center's (CRSP MC) existing Falcon and Amistad projects' firm power formula rate has been confirmed, approved, and placed into effect on an interim basis. The existing formula rate under Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate is set to expire on June 7, 2024. This rate extension makes no change to the existing formula rate and extends it through June 7, 2029.

DATES: The extended formula rate under Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate will be placed into effect on an interim basis on June 8, 2024.

FOR FURTHER INFORMATION CONTACT: Rodney G. Bailey, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, P.O. Box 1800 South Rio Grande Drive, Montrose, CO 81401, or email: *CRSPMC-rate-adj@wapa.gov,* or Tamala D. Gheller, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, (970) 240–6545, or email: *gheller@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western Area Power Administration (WAPA) published a **Federal Register** notice (Proposed FRN) on January 26, 2024 (89 FR 5226), proposing to extend the existing formula rate under Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate. The Proposed FRN also initiated a 30-day public consultation and comment period. The consultation and comment period ended on February 26, 2024, and the CRSP MC received no comments on the proposed formula rate extension.

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This extension is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and Department of Energy rate extension procedures set forth in 10 CFR part 903.[1]

Following review of the CRSP MC's proposal, Rate Order No. WAPA–216 is hereby confirmed, approved, and placed into effect on an interim basis. This extends, without adjustment, the existing Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate through June 7, 2029. WAPA will submit Rate Order No. WAPA–216 and the extended rate schedule to FERC for confirmation and approval on a final basis.

DEPARTMENT OF ENERGY

ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION

In the Matter of: Western Area Power Administration, Extension for the Falcon and Amistad Projects' Firm Power Formula Rate, Rate Order No. WAPA–216

Order Confirming, Approving, and Placing the Falcon and Amistad Projects' Firm Power Formula Rate Into Effect on an Interim Basis

The formula rate in Rate Order No. WAPA–216 is established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[1]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Western Area Power Administration (WAPA) Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator. This extension is issued under Redelegation Order No. S3–DEL–WAPA1–2023 and DOE rate extension procedures set forth in 10 CFR part 903.[2]

Background

On June 20, 2019, FERC approved and confirmed Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate under Rate Order No. WAPA–186 on a final basis for a 5-year period through June 7, 2024.[3] This rate schedule applies to firm energy sales. Details about the rate schedule and the formula rate are viewable on Colorado River Storage Project Management Center's (CRSP MC) website at: *www.wapa.gov/about-wapa/regions/crsp/rates/rate-order-216.* The rate continues the formula-based methodology that includes an annual update to the data in the rate formula, which provides adequate revenue to recover annual expenses, including interest expense, and repay capital investments within allowable time periods. This formula rate ensures repayment within the cost recovery criteria set forth in DOE Order RA 6120.2.

Discussion

In accordance with 10 CFR 903.23(a), the CRSP MC filed a notice in the **Federal Register** on January 26, 2024, proposing to extend, without adjustment, Rate Schedule Falcon and

[1] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[1] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the projects involved.

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[3] *Order Confirming and Approving Rate Schedule on a Final Basis,* FERC Docket No. EF19–3–000, 167 FERC ¶ 62,187 (2019).

Amistad Projects' Firm Power Formula Rate under Rate Order No. WAPA–216.[4] The CRSP MC determined it was not necessary to hold public information or public comment forums on the proposed formula rate extension but provided a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. The consultation and comment period ended on February 26, 2024, and the CRSP MC received no comments on the proposed formula rate extension.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA has determined that this action fits within the following categorical exclusion listed in appendix B to subpart D of 10 CFR 1021.410: B4.3 (Electric power marketing rate changes). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment. A copy of the categorical exclusion determination is available on CRSP MC's website at: *www.wapa.gov/about-wapa/regions/crsp/about-crsp/environment/*. Look for file titled, ''Falcon-Amistad Projects Rate Extension—(CX Determination 2024–2029).''

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The provisional formula rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–216, which extends the existing firm power formula rate under Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate through June 7, 2029. The rate will remain in effect on an interim basis until: (1) FERC confirms and approves of this extension on a final basis; (2) a subsequent rate is confirmed and approved; or (3) such rate is superseded.

[4] 89 FR 5226 (2024).

Signing Authority

This document of the Department of Energy was signed on April 29, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 30, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate

United States Department of Energy
Western Area Power Administration

Colorado River Storage Project Management Center

Falcon and Amistad Projects

Firm Power Formula Rate Calculation (Approved Under Rate Order No. WAPA–186)

Effective: The first day of the first full billing period beginning on or after June 8, 1983, through June 7, 1988, or until superseded by another formula, whichever occurs earlier. Note: Extension of this firm power formula rate, for 5-year increments, was first approved by the Federal Power Commission, predecessor of the Federal Energy Regulatory Commission (FERC), on August 12, 1977. FERC has subsequently approved the firm power formula rate on July 20, 1988, September 29, 1993, June 7, 1998, January 31, 2005, December 17, 2009, April 9, 2015, and June 20, 2019, for service through June 7, 2024. [Note: This rate schedule was extended by Rate Order No. WAPA–216 through June 7, 2029.]

Available: In the area served by the Falcon and Amistad Projects (Projects).

Applicable: To preference customers who are under contract with Western Area Power Administration (WAPA) to receive electric service from the Projects.

Formula Rate: The existing formula rate provides sufficient revenue to recover annual expenses, interest, and capital replacements within the cost recovery criteria set forth in DOE Order RA 6120.2. Annual expenses generally include operational expenses, such as salaries and benefits as well as incidental equipment costs. Equipment replacements and maintenance beyond recurring activities are considered capital replacements; these costs, along with the initial federal investment in the Projects, are amortized with interest and repaid to the U.S. Department of the Treasury. A reconciliation of estimates to actual expenses is accomplished at the end of the rate period, and any differences are included in the following year's revenue requirement.

Billing: WAPA bills the South Texas Electric Cooperative, the sole customer that takes service from the Projects, on a monthly basis. Each monthly charge is equal to one twelfth of the Projects' annual rate installment, rounded to the penny.

[FR Doc. 2024–09665 Filed 5–2–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0058; FRL–11681–03–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients March 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 3, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0058, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov*. The mailing address is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

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).

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

A. Notice of Receipt—New Active Ingredients

File Symbol: 524–AAA. *Docket ID number:* EPA–HQ–OPP–2024–0138. *Applicant:* Bayer CropScience, LP, 800 North Lindbergh Blvd., St. Louis, MO 63167. *Product name:* MON 95275. *Active ingredient: Brevibacillus laterosporus* Mpp75Aa1.1 protein and the genetic material (vector PVZMIR525664) necessary for its production in corn event MON 95275; *Bacillus thuringiensis Vpb4Da2* protein and the genetic material (vector PV–ZMIR525664) necessary for its production in corn event MON 95275; and dsRNA transcript comprising a DvSnf7.1 inverted repeat sequence derived from *Diabrotica virgifera,* and the genetic material (vector PV–ZMIR525664) necessary for its production in corn event MON 95275 *Proposed use:* Plant-incorporated protectant. *Contact:* BPPD.

File Symbol: 93167–E. *Docket ID number:* EPA–HQ–OPP–2024–0133. *Applicant:* Oxitec Ltd. 71, Innovation Drive, Milton Park, Abingdon, Oxfordshire OX14 4RQ, United Kingdom. *Product name:* Friendly™ Aedes aegypti. *Active ingredient:* Tetracycline Trans-Activator Variant (tTAV–OX5034) protein and the genetic material (from vector pOX5034) necessary to produce the protein *in vivo. Proposed use:* Insecticide. *Contact:* BPPD.

File Symbol: 93350–U. *Docket ID number:* EPA–HQ–OPP–2024–0125. *Applicant:* Lepidext, Inc. 1122 Oak Hill Drive, Suite 150, Lexington, KY 40505. *Product name:* InsterusHZ Moths. *Active ingredient: Helicoverpa zea* nudivirus 2 isolate 90DR71 at 0.0000015%. *Proposed use:* Insecticide. *Contact:* BPPD.

File Symbol: 71771–RA. *Docket ID number:* EPA–HQ–OPP–2024–0136. *Applicant:* Plant Health Care, Inc. 242 South Main Street, Suite 216, Holly Springs, NC 27540. *Product name:* PHC 68949. *Active ingredient:* PDHP 68949 at 1 percent. *Proposed use:* Nematicide/plant growth regulator. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 29, 2024.

Kimberly Smith,

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

[FR Doc. 2024–09692 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–124]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 22, 2024 10 a.m. EST

Through April 29, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240075, Final, USAF, MS, T–7A Recapitalization at Columbus Air Force Base, Mississippi, Review Period Ends: 06/03/2024, Contact: Ms. Chinling Chen 210–652–4400.

EIS No. 20240076, Final, USFS, CA, Tahoe National Forest Over-Snow Vehicle Use Designation, Review Period Ends: 06/03/2024, Contact: John Brokaw 530–478–6187.

EIS No. 20240077, Final Supplement, NRC, TX, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 60, Regarding License Renewal of Comanche Peak Nuclear Power Plant, Review Period Ends: 06/03/2024, Contact: Tam Tran 301–415–3617.

Amended Notice

EIS No. 20240072, Draft, NRC, MN, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 26, Second Renewal Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1, Comment Period Ends: 06/10/2024, Contact: Jessica Umana 301–415–5207.

Revision to FR Notice Published 04/19/2024; Extending the Comment Period from 06/03/2024 to 06/10/2024.

Dated: April 29, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024–09654 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0154; FRL–11873–01–OCSPP]

Pesticide Product Registration; Receipt of Application for New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application proposing to register new uses for a new pesticide product containing a currently registered active ingredient. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

DATES: Comments must be received on or before June 3, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0154, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

II. Registration Application

EPA has received an application to register new uses for a new pesticide product containing a currently registered active ingredient. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt of this application and an opportunity to comment on the information provided below as well as the current proposed labeling associated with this application. Notice of receipt of this application does not imply a decision by the Agency on this application.

File Symbol: 264–REUR. *Docket ID number:* EPA–HQ–OPP–2024–0154. *Applicant:* Bayer CropScience LP, 800 N Lindbergh Blvd., St. Louis, MO 63167. *Active ingredient:* Dicamba. *Product type:* Herbicide. *Proposed use:* Dicamba-tolerant cotton and dicamba-tolerant soybeans. *Contact:* RD.

This proposed new use has been coded as an R170, additional food use, which carries a PRIA 5 statutory review time of 17 months from the date that the action gets in-processed. Because EPA expects a large stakeholder interest in this application, EPA also included Bayer CropScience's current proposed labeling associated with the application, in *https://www.regulations.gov,* Docket ID EPA–HQ–OPP–2024–0154.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 29, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024–09609 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11922–01–OW]

Notice of Public Listening Session of the Environmental Financial Advisory Board (EFAB) Water Reuse Tax Incentive Workgroup

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public listening session.

SUMMARY: The Environmental Protection Agency (EPA) announces a public listening session via a webcast of the Environmental Financial Advisory Board (EFAB) Water Reuse Tax Incentive Workgroup. The listening session will be held in real-time via webcast and public comments may be provided in writing in advance. Please see **SUPPLEMENTARY INFORMATION** for further details. The purpose of the listening session will be for the EFAB to solicit public comment to inform its formulation of recommendations to the EPA on the public benefit of a potential Federal investment tax credit to support private investment in water reuse and recycling systems. An investment tax credit would focus on encouraging investment in equipment at privately owned industrial facilities to enable the use of municipally provided recycled water and/or enable onsite treatment and reuse of different sources of water within an industrial facility. The Board seeks public comment on how a potential investment tax credit could be structured to achieve the maximum public benefit and minimize any externalities or unintended consequences, and how that structure may differ for industrial onsite reuse versus industrial use of treated recycled water. The listening session will be conducted fully virtual via webcast.

DATES: The listening session will be held on May 21, 2024, from 1 p.m. to 2:30 p.m. Eastern Time.

ADDRESSES: *Webcast:* Information to access the webcast will be provided upon registration in advance of the listening session.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the listening session may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to *efab@epa.gov.* General information concerning the EFAB is available at *www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to the EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within the EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public listening session via a webcast to solicit public comment to inform its formulation of the recommendations to the EPA on the public benefit of a potential Federal investment tax credit to support private investment in water reuse and recycling systems. An investment tax credit would focus on encouraging investment in equipment at privately owned industrial facilities to enable the use of municipally provided recycled water and/or enable onsite treatment and reuse of different sources of water within an industrial facility. The Board seeks public comment on how a potential investment tax credit could be structured to achieve the maximum public benefit and minimize any externalities or unintended consequences, and how that structure may differ for industrial onsite reuse versus industrial use of treated recycled water.

Registration for the Listening Session: To register for the listening session, please visit *www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the listening session must register by May 20, 2024, to attend via webcast. Pre-registration is strongly encouraged. In the event the listening session cannot be held, an announcement will be made on the EFAB website at *www.epa.gov/waterfinancecenter/efab* and all registered attendees will be notified.

Availability of Listening Session Materials: Listening session materials, including the agenda and briefing materials, will be available on the EPA's website at *www.epa.gov/waterfinancecenter/efab.*

Procedures for Providing Public Input: Public comment for consideration by the EPA's Federal advisory committees has a different purpose from public comment provided to the EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to the EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to the EPA.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public listening session will be limited to three minutes each. Persons interested in providing oral statements at the May 2024 listening session should register in advance and provide notification, as noted in the registration confirmation, by May 17, 2024, to be placed on the list of registered speakers. Those providing oral statements may also submit supplementary written statements per the instructions below.

Written Statements: Written statements should be received by May 17, 2024, so that the information can be made available to the EFAB for its consideration prior to the listening session. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the listening session and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the listening session to allow as much time as possible to process your request.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2024–09667 Filed 5–2–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0332; FR ID 217735]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 2, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0332.

Title: Section 76.614, Cable Television System Regular Monitoring, and Section 76.1706, Signal Leakage Logs and Repair Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3.895 respondents and 3,895 responses.

Estimated Hours per Response: .0167–0.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 2,338 hours.

Total Annual Cost: No cost.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 302 and 303 of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 76.1706 require cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to 47 CFR 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–09670 Filed 5–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0669; FR ID 217402]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 2, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 8,250 responses.

Estimated Time per Response: 30 minutes (0.5 hours).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden to Respondents: 4,125 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 76.946 states that cable operators that advertise rates for basic service and cable programming service tiers shall be required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber. On March 14, 2024, the Commission adopted a new rule requiring cable and satellite TV providers to specify the ''all-in'' price clearly and prominently for video programming service in their promotional materials and on subscribers' bills. *See All-In Pricing for Cable and Satellite Television Service,* MB Docket No. 23–203, FCC 24–29 (rel. March 19, 2024). The information collection requirements of the new rule, 47 CFR 76.310, may overlap with the information collection requirements of this rule.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–09672 Filed 5–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 217651]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the

quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 2, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 76.310, Truth in Billing and Advertising.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 400 respondents and 54,000,400 responses.

Estimated Hours per Response: 0.0001 hours–0.5 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: No cost.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303, 316, 335(a), 552(b), and 562.

Needs and Uses: The information collection requirements adopted in FCC 24–29 are as follows:

47 CFR 76.310 requires truth in billing and advertising:

47 CFR 76.310(a) requires cable operators and direct broadcast satellite (DBS) providers to state an aggregate price for the video programming that they provide as a clear, easy-to-understand, and accurate single line item on subscribers' bills, including on bills for legacy or grandfathered video programming service plans. If a price is introductory or limited in time, cable and DBS providers shall state on subscribers' bills the date the price ends, by disclosing either the length of time that a discounted price will be charged or the date on which a time period will end that will result in a price change for video programming, and the post-promotion rate 60 and 30 days before the end of any introductory period. Cable operators and DBS providers may complement the aggregate line item with an itemized explanation of the elements that compose that single line item.

47 CFR 76.310(b) requires cable operators and DBS providers that communicate a price for video programming in promotional materials to state the aggregate price for the video programming in a clear, easy-to-understand, and accurate manner. If part of the aggregate price for video programming fluctuates based upon service location, then the provider must state where and how consumers may obtain their subscriber-specific ''all-in'' price (for example, electronically or by contacting a customer service or sales representative). If part or all of the aggregate price is limited in time, then the provider must state the post-promotion rate, as calculated at that time, and the duration of each rate that will be charged. Cable operators and DBS providers may complement the aggregate price with an itemized explanation of the elements that compose that aggregate price. The requirement in this paragraph (b) shall not apply to the marketing of legacy or grandfathered video programming service plans that are no longer generally available to new customers. For purposes of this section, the term ''promotional material'' includes communications offering video programming to consumers such as advertising and marketing.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–09677 Filed 5–2–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Tuesday, April 30, 2024.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Special Review Committee of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities within its authority to act on behalf of the Federal Deposit Insurance Corporation. In calling the meeting, the Special Review Committee determined, by the unanimous vote of Director Jonathan P. McKernan and Director Michael J. Hsu (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2),(c)(6), and (c)(9)(b) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2),(c)(6), and (c)(9)(b)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated: April 30, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–09731 Filed 4–30–24; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 5:30 p.m. on Tuesday, April 30, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Michael J. Hsu (Acting Comptroller of the Currency) seconded by Director Jonathan P. McKernan, and concurred in by Chairman Martin J. Gruenberg, Vice Chairman Travis J. Hill, and Director Rohit Chopra (Director, Consumer Financial Protection Bureau), that Corporation business required its

consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(6), and (c)(9)(B)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 30th day of April, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–09752 Filed 5–1–24; 11:15 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2024–0001]

Availability of Three Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comments on drafts of three updated toxicological profiles: acrolein, n-hexane, and naphthalene. This action is necessary as this is the opportunity for members of the public and organizations to submit comments on drafts of the profiles. The intended effect of this action is to ensure that the public can note any pertinent additional information or reports on studies about the health effects caused by exposure to the substances covered in these three profiles for review.

DATES: Written comments must be received on or before May 3, 2024.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2024–0001 by either of the methods listed below. Do not submit comments by email. ATSDR does not accept comments by email.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 4770 Buford Highway, Mail Stop S106–5, Atlanta, GA 30341–3717. Attn: Docket No. ATSDR–2024–0001.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Farhana Rahman, Agency for Toxic Substances and Disease Registry, Office of Innovation and Analytics, 4770 Buford Highway, Mail Stop S106–5, Atlanta, GA 30341–3717; Email: *ATSDRToxProfileFRNs@cdc.gov;* Phone: 770–488–1369 or 1–800–232–4636.

SUPPLEMENTARY INFORMATION: ATSDR has prepared drafts of three updated toxicological profiles based on current understanding of the health effects and availability of new studies and other information since their initial release. All toxicological profiles issued as ''Drafts for Public Comment'' represent the result of ATSDR's evidence-based evaluations of the available literature to provide important toxicological information on priority hazardous substances to the public and health professionals. ATSDR considers key studies for these substances during the profile development process, using a systematic review approach. To that end, ATSDR is seeking public comments and additional information or reports on studies about the health effects of these substances for review and potential inclusion in the profiles. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile.

Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding the hazardous substances most commonly found at facilities on the CERCLA National Priorities List. Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances (also called the Substance Priority List (SPL)). This list identifies 275 hazardous substances that ATSDR has determined pose the most significant potential threat to human health. The SPL is available online at *http://www.atsdr.cdc.gov/SPL.* ATSDR is also mandated to revise and publish updated toxicological profiles, as necessary, to reflect updated health effects and other information.

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B)); to respond to requests for health consultations (CERCLA section 104(i)(4); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency (CERCLA section 104(i)(6); 42 U.S.C. 9604(i)(6)).

Availability

The draft toxicological profiles and interaction profile are available online at *http://www.regulations.gov,* Docket No. ATSDR–2024–0001 and at *http://www.atsdr.cdc.gov/ToxProfiles.*

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. ATSDR will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. If you submit comments with reference to studies that are not publicly available such as unpublished research, those studies must be attached with your comment for review. Otherwise ATSDR may be unable to respond to

portions of your comment referencing any material that is not publicly available. Do not submit comments by email. ATSDR does not accept comments by email.

Donata Green,

Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2024–09662 Filed 5–2–24; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10844]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 2, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10844 Small Biotech Exception and Biosimilar Delay Information Collection Request (ICR) for Initial Price Applicability Year 2027

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Small Biotech Exception and Biosimilar Delay Information Collection Request (ICR) for Initial Price Applicability Year 2027; *Use:* Under the authority in sections 11001 and 11002 of the Inflation Reduction Act of 2022 (Pub. L. 117–169), the Centers for Medicare & Medicaid Services (CMS) is implementing the Medicare Drug Price Negotiation Program, codified in sections 1191 through 1198 of the Social Security Act (the Act). The Information Collection Request Forms for the Small Biotech Exception and Biosimilar Delay Information Collection Request for Initial Price Applicability Year 2027 must be submitted to CMS before CMS establishes the selected drug list for initial price applicability year 2027.

Small Biotech Exception: In accordance with section 1192(d)(2) of the Act, the term ''negotiation-eligible drug'' excludes, with respect to the initial price applicability years 2026, 2027, and 2028, a qualifying single source drug that meets the requirements for the exception for small biotech drugs (the ''Small Biotech Exception,'' or ''SBE''). This information is required in order for CMS to accurately identify whether a given drug meets the criteria for the Small Biotech Exception in accordance with section 1192(d)(2) of the Act. To ensure that only covered Part D drugs that meet the requirements for the SBE are excluded from the term ''negotiation-eligible drug,'' a manufacturer that seeks the SBE for its covered Part D drug (''Submitting Manufacturer'') must submit information to CMS about the company and its products in order for the drug to be considered for the exception. If the Submitting Manufacturer seeks the SBE for a covered Part D drug it acquired after December 31, 2021, the Submitting Manufacturer must also submit information related to the separate entity that had the Medicare Coverage Gap Discount Program agreement for the drug on December 31, 2021. If the Submitting Manufacturer was acquired by another entity after December 31, 2021, the Submitting Manufacturer must provide information regarding that acquiring entity for CMS to assess whether the acquisition triggers the limitation at section 1192(d)(2)(B)(ii) of the Act.

Biosimilar Delay: In accordance with section 1192(f)(1)(B) of the Act, the manufacturer of a biosimilar biological product (''Biosimilar Manufacturer'' of a ''Biosimilar'') may submit a request, prior to the selected drug publication date, for CMS' consideration to delay the inclusion of a negotiation-eligible drug that includes the reference product for the Biosimilar (such a negotiation-eligible drug is herein referred to as a

''Reference Drug'') on the selected drug list for a given initial price applicability year (the ''Biosimilar Delay''). This information is required in order for CMS to accurately determine if a drug meets the criteria for the Biosimilar Delay for initial price applicability year 2027 in accordance with section 1192(f) of the Act. To ensure that the delay of selection and negotiation of biologics is only applied if there is a high likelihood of biosimilar market entry that meets the requirements for the Biosimilar Delay, a Biosimilar Manufacturer that seeks the Biosimilar Delay must submit information to CMS related to the Biosimilar. This information includes identifying information for the Biosimilar and the Reference Drug; the licensure status of the Biosimilar; attestations that the Biosimilar Manufacturer is not the same or treated as the same entity as the Reference Manufacturer, that the Biosimilar Manufacturer and the Reference Manufacturer (who is the manufacturer of the Reference Drug) have not entered into an agreement that requires or incentivizes the Biosimilar Manufacturer to submit the Biosimilar Delay, or directly or indirectly restricts the quantity of the Biosimilar that may be sold in the United States over a specified period of time; and documentation specified under section 1192(f)(3) of the Act to demonstrate there is a high likelihood of Biosimilar market entry within two years of the statutorily-defined selected drug publication date for initial price applicability year 2027. *Form Number:* CMS–10844 (OMB control number: 0938–1443); *Frequency:* Once; *Affected Public:* Private sector, Business or other for-profit; *Number of Respondents:* 25; *Number of Responses:* 25; *Total Annual Hours:* 415. (For policy questions regarding this collection contact Elisabeth Daniel at 667–290–8793.)

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–09699 Filed 5–2–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Lifestyle Intervention for Late-midlife Adults.

Date: May 29, 2024.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue (#213), Bethesda, MD 20814, (301) 827–4588, *janetta.lun@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09629 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Stimulating Access to Research in Residency (StARR) Applications.

Date: June 5, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Dr., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; BRAIN Initiative-Related Research Education: Short Courses (R25).

Date: June 14, 2024.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Dr., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; Secondary Data Analysis (R21) Applications.

Date: June 25, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Dr., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09627 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—D Review of IMSD, G–RISE and PREP Applications.

Date: June 13–14, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, Maryland 20892 (In-Person and Virtual).

Contact Person: Sonia Ivette Ortiz-Miranda, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301–402–9448, *sonia.ortiz-miranda@nih.gov*.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—C Review of IMSD, G–RISE and PREP Applications.

Date: June 20–21, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel, Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, Maryland 20892 (In-Person and Virtual).

Contact Person: Sonia Ivette Ortiz-Miranda, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301–402–9448, *sonia.ortiz-miranda@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 30, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09671 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals/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 Dental and Craniofacial Research Special Emphasis Panel; CROMS Contract Review.

Date: May 30, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Dental & Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Campbell, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892, 301–827–4603, *christopher.campbell@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Award for Sustaining Outstanding Achievement in Research (SOAR).

Date: June 13, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental & Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Campbell, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental & Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892, 301–827–4603, *christopher.campbell@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09638 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: May 29–30, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: May 29–30, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Behavioral Neuroendocrinology, Neuroimmunology, Rhythms, and Sleep Study Section.

Date: May 30–31, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue NW, Washington, DC 20037.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Mental and Behavioral Health Study Section.

Date: May 30–31, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, *kurtian@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: May 30–31, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensory-Motor Neuroscience Study Section.

Date: May 30–31, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alena Valeryevna Savonenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 594–3444, *savonenkoa2@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Biobehavioral Medicine and Health Outcomes Study Section.

Date: June 3–4, 2024.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Mark A Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, (301) 402–4128, *mark.vosvick@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09601 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Study Section.

Date: June 6–7, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy North Bethesda, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Michael Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09637 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Study Section.

Date: June 14, 2024.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, 301–219–3400, *luis.dettin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09602 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Epidemiology Cohorts (U01).

Date: June 4, 2024.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Priya Srinivasan, Ph.D., Scientific Review Officer, Resource and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850, 240–276–5619, *priya.srinivasan@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–12: NCI Clinical and Translational Cancer Research.

Date: June 14, 2024.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Viktoriya Sidorenko, Ph.D., Scientific Review Officer, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W526, Rockville, Maryland 20850, 240–276–5073, *viktoriya.sidorenko@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–C.

Date: June 17–18, 2024

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, *mike.lindquist@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational Cancer Research.

Date: June 21, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–7869, *robert.gahl@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–8: NCI Clinical and Translational Cancer Research.

Date: June 25, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Priya Srinivasan, Ph.D., Scientific Review Officer, Resource and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Rockville, Maryland 20850, 240–276–5619, *priya.srinivasan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 29, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09639 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on May 30, 2024. The topic for this meeting will be ''Artificial Intelligence in Diabetes Precision Medicine: Real world data, real world opportunities and challenges''. The meeting is open to the public.

DATES: The meeting will be held on May 30, 2024 from 12:00 p.m. to 3:30 p.m. EDT.

ADDRESSES: The meeting will be held via the Zoom online video conferencing platform. For details, and to register, please contact *dmicc@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, which will be posted when available, see the DMICC website, *https://www.niddk.nih.gov/about-niddk/advisory-coordinating-committees/diabetes-mellitus-interagency-coordinating-committee-dmicc?dkrd=lgdmn0022,* or contact Dr. William Cefalu, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Democracy 2, Room 6037, Bethesda, MD 20892, telephone: 301–435–1011; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 42 U.S. Code 285c–3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The May 30, 2024 DMICC meeting will focus on ''Artificial Intelligence in Diabetes Precision Medicine: Real world data, real world opportunities and challenges.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the

meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, *https://www.niddk.nih.gov/about-niddk/advisory-coordinating-committees/diabetes-mellitus-interagency-coordinating-committee-dmicc?dkrd=lgdmn0022*.

William T. Cefalu,

Director, Division of Diabetes, Endocrinology, and Metabolic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, and Metabolic Diseases, National Institutes of Health.

[FR Doc. 2024–09591 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Analytical Chemistry and Stability Testing of Treatment Drugs for Substance Use Disorders.

Date: June 6, 2024.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sudhirkumar Udhavrao Yanpallewar, M.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *sudhirkumar.yanpallewar@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Seeking Products to Address Social Needs Impacting Substance Use Disorders (SUD).

Date: June 10, 2024.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09640 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting is devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine and will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 27–28, 2024.

Closed: June 27, 2024, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Closed: June 28, 2024, 8:30 a.m. to 9:15 a.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Contact Person: Dianne Babski, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–827–4279, *babskid@mail.nih.gov*.

Open: June 28, 2024, 9:15 a.m. to 10:30 a.m.

Agenda: NLM Directors' Report.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

Closed: June 28, 2024, 10:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (In-Person Meeting).

In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice at least 10 days in advance of the meeting.

Information is also available on the Institute's/Center's home page: *https://www.nlm.nih.gov/medline/medline_about_lstrc.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library

Assistance, National Institutes of Health, HHS).

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09631 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Study Section.

Date: June 13–14, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, *kazuyo.kegan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09636 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Research to Increase Implementation of Substance Use Preventive Services.

Date: May 22, 2024.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Developing Digital Therapeutics for Substance Use Disorders.

Date: June 25, 2024.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shareen Amina Iqbal, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *shareen.iqbal@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09600 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Non-Pharmacological Clinical Trials.

Date: June 3, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Engineering and Optimization of Molecular Technologies for Functional Dissection of Neural Circuits (UM1).

Date: June 4, 2024.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 29, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09635 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Grant Applications.

Date: June 27, 2024.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Boulevard, Room: 7111, Bethesda, MD 20892–2542, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09632 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Lipids and Synuclein in Synucleinopathy.

Date: June 6, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09630 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, May 07, 2024, 10:30 a.m. to May 07, 2024, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, which was published in the **Federal Register** on March 28, 2024, FR Doc. 2024–06612, 89 FR 21526.

This notice is being amended to change the open session start and end time from 12:45 p.m.–05:00 p.m. to 01:00 p.m.–4:45 p.m. The meeting date, closed session time, and location will stay the same. The meeting is partially closed to the public.

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09603 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Population Sciences/Member Conflict.

Date: July 2, 2024.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Chi-Tso Chiu, Ph.D., Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, National Institute of Health, 6710B Rockledge Drive, Room 2137D, Bethesda, MD 20892, (240) 961–0342, *chiuc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 29, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09628 Filed 5–2–24; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Study Section Clinician Scientist Training Grant Application Review.

Date: May 20–21, 2024.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Marriott Union Square, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST–1 Member Conflict SEP.

Date: May 20, 2024.

Time: 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Marriott Union Square, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: April 29, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09599 Filed 5–2–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Formation of a Subcommittee of the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given of the formation of a subcommittee of the Center for Substance Abuse Prevention National Advisory Council (CSAP NAC) to be known as the *Substance Use Prevention Workforce.* The subcommittee reports to the CSAP NAC, and of its findings, which are further deliberated by the CSAP NAC. The expected lifespan of the subcommittee is approximately one year. It is estimated that subcommittee meetings will occur approximately on a monthly basis via web conference.

FOR FURTHER INFORMATION CONTACT: Michelle McVay, Designated Federal Official; Substance Abuse and Mental Health Service Administration, CSAP National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail); telephone: (202) 407–2154; email: *michelle.mcvay@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The CSAP NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA; and the Director, CSAP, concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities. Information about future public CSAP NAC meetings and a roster of Council members may be obtained either by accessing the CSAP Council's website at *https://www.samhsa.gov/about-us/advisory-councils,* or by contacting Michelle McVay.

Dated: April 29, 2024.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2024–09633 Filed 5–2–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0068; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by June 3, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0068.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0068.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0068; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Washington University in St. Louis, St. Louis, MO; Permit No. PER9889816

The applicant requests a permit to import biological samples derived from deceased wild tufted gray langur (*Semnopithecus priam*) from Sri Lanka for the purpose of scientific research. This notification is for a single import.

Applicant: Lincoln Park Zoo, Chicago, IL; Permit No. PER10046934

The applicant requests a permit to export two captive-born Diana monkey (*Cercopithecus diana*) to London Zoo for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: University of Georgia, Aiken, SC; Permit No. PER9690714

The applicant requests authorization to import biological samples collected from wild cheetah (*Acinonyx jubatus*) and brown hyena (*Parahyaena brunnea*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Smithsonian National Zoo and Conservation Biology Institute, Washington, DC; Permit No. PER10025295

The applicant requests authorization to re-export biological samples derived from one captive-born giant panda (*Ailuropoda melanoleuca*) for the purpose of scientific research. This notification is for a single re-export.

Applicant: B. Bryan Preserve, LLC, Point Arena, CA; Permit No. PER9997177

The applicant requests to renew and amend their captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Black rhinoceros	*Diceros bicornis.*
Bontebok	*Damaliscus pygarus pygargus.*
Grevy's zebra	*Equus grevyi.*
Hartmann's mountain zebra.	*Equus zebra hartmannae.*

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *https://www.regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–09674 Filed 5–2–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-37887; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 27, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 20, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 27, 2024. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

IOWA

Carroll County

Graham Park Historic District, North Grant Road, Carroll, SG100010399

KANSAS

Marshall County

Vermillion United Methodist Church, 300 Silver Street, Vermillion, SG100010392

NEW YORK

New York County

Metro North Plaza, 307 East 101st Street, 345 East 101st Street, 310 102nd Street, Manhattan, SG100010393

Ontario County

Gorham, William W., House, 5266 Parrish Street Extension, Canandaigua, SG100010386

OKLAHOMA

Canadian County

St. John's Evangelical Lutheran Church, 408 Colorado Ave., Okarche, SG100010406

Kiowa County

Lone Wolf School, 1001 7th Street, Lone Wolf, SG100010405

Oklahoma County

Clyde's Supermarket and T.G.&Y, 1100 N Walker Ave. and 429 NW 10th St., Oklahoma City, SG100010404

OREGON

Linn County

Cumberland Presbyterian Church, 1400 Santiam Road SE, Albany, SG100010391

Polk County

Dallas Downtown Historic District, Generally bounded by Washington, Church, Oak, and Jefferson Streets, Dallas, SG100010387

PUERTO RICO

Moca Municipality

Hacienda Enriqueta, Carretera Estatal PR–125, Km. 0.9, Moca vicinity, SG100010389

Ponce Municipality

Casa Ricardo Ruiz Mari (Development of Playa de Ponce Ward, 1800–1960 MPS), Calle Arias #14, Playa de Ponce, MP100010382

Puente Rio lnabón (Historic Bridges of Puerto Rico MPS), Carretera Num. 1, Km. 120.4, Ponce, MP100010383

Iglesia Cristiana, 110 Luis Muñoz Rivera Street, Santa Isabel, SG100010384

SOUTH CAROLINA

Dillon County

Latimer High and Elementary School, 122 Latimer Street, Latta, SG100010400

Greenwood County

State Theatre, 110 Main Street, Greenwood, SG100010398

SOUTH DAKOTA

Pennington County

South Dakota Stockgrowers Association Building, 426 St. Joseph St., Rapid City, SG100010394

TEXAS

Travis County

Charles Umlauf House and Studio, Address Restricted, Austin, SG100010381

WASHINGTON

King County

Wenberg, Dr. Johan and Louise, House, 5360 232nd Avenue SE, Issaquah, SG100010385

Spokane County

Moldenhauer, Dr. Hans & Rosaleen, House, 808 S Lincoln St., Spokane, SG100010388

An additional documentation has been received for the following resource(s):

ARIZONA

Pima County

Sunshine Mile Historic District (Additional Documentation), Broadway Blvd. between Euclid & Country Club Rds., Tucson, AD100005229

Rincon Heights Historic District (Additional Documentation), Roughly bounded by 6th St., Broadway Blvd., Campbell & Fremont Aves., Tucson, AD12001190

OREGON

Multnomah County

Hotel Alma (Additional Documentation) (Downtown Portland, Oregon MPS), 303 SW 12th Avenue, Portland, AD09000706

TENNESSEE

Blount County

Anderson Hall (Additional Documentation), Maryville College campus, Maryville, AD75001732

Fayette County

Immanuel Church (Additional Documentation), 35 2nd Street, La Grange, AD72001239

Montgomery County

Clarksville Federal Building (Additional Documentation), 200 S 2nd Street, Clarksville, AD72001246

Rutherford County

Ready, Charles, House (Additional Documentation), 1990 Readyville Street, Readyville, AD73001828

Shelby County

First Baptist Church (Additional Documentation), 379 Beale Ave., Memphis, AD71000833

Tri-State Bank (Additional Documentation), 386 Beale St., Memphis, AD71000836

Germantown Baptist Church (Additional Documentation), 2216 Germantown Rd., Germantown, AD75001786

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2024–09680 Filed 5–2–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Criminal Justice Information Services Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by section 10 of the FACA.

DATES: The APB will meet in open session from 8:30 a.m. until 5 p.m. on June 5–6, 2024.

ADDRESSES: The meeting will take place at the Sheraton Hotel, 500 Canal St., New Orleans, LA 70130; telephone: 504–525–2500. The CJIS Division is offering a blended participation option that allows for individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. Please see details in the supplemental information.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. David R. Akers, Program Analyst, Advisory Process Management Office, Law Enforcement Engagement and Data Sharing Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email: *agmu@leo.gov;* telephone: 304–625–0283.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Via phone bridge number to participate in a listen-only mode or in person, which are required to check-in at the meeting registration desk.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than May 29, 2024. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2024–09641 Filed 5–2–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 26, 2024, the Department of Justice lodged a proposed Agreement and Order Regarding Fourth Modification of Consent Decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States* v. *French Limited, Inc., et al.,* original case No. H–89–2544 (new case No. 4:89–cv–2544).

The original Consent Decree, entered by the Court on March 7, 1990, resolved the United States' claims, on behalf of the United States Environmental Protection Agency (EPA), against eighty-six (86) Settling Defendants under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.,* for contamination at the French Limited Superfund Site located near Crosby, Texas (the Site). Pursuant to the 1990 Consent Decree, Settling Defendants are obligated to perform response activities at the Site as selected by EPA in a Record of Decision signed on March 24, 1988, or have resolved their Site liability through a cash payment. Certain Settling Defendants known as the French Limited Trust Group (Group) remain responsible for ongoing work under the 1990 Consent Decree.

In response to new information, and after notice and consideration of public comments on its proposal, on September 30, 2014, EPA revised the groundwater remedy for the Site through an Amendment to the Record of decision. The proposed Agreement and Order Regarding Fourth Modification of Consent Decree is between the United States and the sixteen Settling Defendants who are signatories to that Agreement and Order and would modify the Consent Decree to reflect the revised work requirements of the 2014 ROD Amendment, provide for the reimbursement to EPA of certain EPA response costs, and provide for the disbursement to members of the working Group of funds received by EPA in a Bankruptcy Settlement payment for the Site.

The publication of this notice opens a period for public comment on the proposed Agreement and Order Regarding Fourth Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *French Limited, Inc., et al.,* Case No. H–89–2544, D.J. Ref. No. 90–11–3–46A. 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.

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 Agreement and Order Regarding Fourth Modification of 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 Agreement and Order, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–09711 Filed 5–2–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 29, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States and the State of Ohio* v. *Sunoco Pipeline, L.P. et al.,* Civil Action No. 1:24–cv–00238–SJD.

The complaint filed in the above matter alleges that Defendants Sunoco Pipeline L.P. and Mid-Valley Pipeline Company violated the Clean Water Act when crude oil escaped from a ruptured pipeline and flowed into waters of the United States. 33 U.S.C. 1321(b)(3). The crude oil contaminated the waters and caused damage to natural resources in violation of the Oil Pollution Act. 33 U.S.C. 2702(a) and (b). The proposed settlement resolves the claims in the complaint and requires payment of a civil penalty of $550,000 and a payment of $1,250,000 to compensate for harm to natural resources.

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 the State of Ohio* v. *Sunoco Pipeline, L.P. et al.,* D.J. Ref. Nos. 90–5–1–1–11543 and 90–5–1–1–11543/1. 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.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://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 address provided above for submitting comments.

Laura Thoms,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–09707 Filed 5–2–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Resource Justification Model (RJM)

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Resource Justification Model (RJM).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 2, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Miriam Thompson by telephone at (202) 693–3226 (this is not a toll-free number), or by email at *Thompson.Miriam@dol.gov.* For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Unemployment Insurance, Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210; by email: *Thompson.Miriam@dol.gov;* or by fax (202) 693–2874.

FOR FURTHER INFORMATION CONTACT: Miriam Thompson by telephone at (202) 693–3223 (this is not a toll-free number) or by email at *Thompson.Miriam@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

The collection of actual Unemployment Insurance (UI) administrative cost data from states' accounting records and projected expenditures for upcoming years is accomplished through the RJM data collection instrument. The data collected consist of program expenditures and hours worked by state staff, broken out by functional activity, for the most recently completed Federal fiscal year. These actual cost data, in combination with projected workloads, are used by ETA's UI administrative resource allocation model to distribute states' UI program administration funds. Section 303(a)(6) of the Social Security Act authorizes this information collection.

This information collection is subjected 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 it is approved by 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 penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0430.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; 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).

Agency: DOL–ETA.

Type of Review: Extension without revision.

Title of Collection: Resource Justification Model (RJM).

Form: Main and Crosswalk Worksheets.

OMB Control Number: 1205–0430.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Annually.

Total Estimated Annual Responses: 159.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 5,380.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–09710 Filed 5–2–24; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 43 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *travisd@arts.gov,* or call 202–682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The Upcoming Meetings Are

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 4, 2024; 11:30 a.m. to 1:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 4, 2024; 12:00 p.m. to 2:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 4, 2024; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 4, 2024; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 5, 2024; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 5, 2024; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 6, 2024; 12:00 p.m. to 2:00 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 6, 2024; 3:00 p.m. to 5:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: June 10, 2024; 2:00 p.m. to 4:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 11, 2024; 11:30 a.m. to 1:30 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: June 11, 2024; 2:00 p.m. to 4:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 12, 2024; 11:30 a.m. to 1:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 12, 2024; 12:00 p.m. to 2:00 p.m.

Artist Communities (review of applications): This meeting will be closed.

Date and time: June 12, 2024; 2:00 p.m. to 4:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 12, 2024; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 12, 2024; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 13, 2024; 11:30 a.m. to 1:30 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 13, 2024; 12:00 p.m. to 2:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: June 13, 2024; 2:30 p.m. to 4:30 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: June 13, 2024; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 17, 2024; 12:00 p.m. to 2:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: June 17, 2024; 1:00 p.m. to 3:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 17, 2024; 3:00 p.m. to 5:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: June 18, 2024; 1:00 p.m. to 3:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: June 18, 2024; 3:30 p.m. to 5:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2024; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 20, 2024; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 24, 2024; 12:00 p.m. to 2:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 24, 2024; 3:00 p.m. to 5:00 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 25, 2024; 12:00 p.m. to 2:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 25, 2024; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 25, 2024; 1:30 p.m. to 3:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 25, 2024; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 25, 2024; 3:00 p.m. to 5:00 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 26, 2024; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 26, 2024; 1:30 p.m. to 3:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 26, 2024; 2:30 p.m. to 4:30 p.m.

Design (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 11:30 a.m. to 1:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 12:00 p.m. to 2:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 1:30 p.m. to 3:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: June 27, 2024; 3:00 p.m. to 5:00 p.m.

Dated: April 30, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024–09719 Filed 5–2–24; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for STEM Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the U.S. National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for STEM Education (#1119) (Hybrid Meeting).

Date and Time:

May 29, 2024; 9:30 a.m.–5:30 p.m. (EDT).

May 30, 2024; 9:30 a.m.–2:00 p.m. (EDT).

Place: U.S. National Science Foundation, 2415 Eisenhower Avenue, Rooms E2020/E2030, Alexandria, VA 22314 (Hybrid).

All visitors may attend this meeting in-person or virtually. To attend, all visitors must register at least 48 hours before the meeting using the following link: *https://nsf.zoomgov.com/webinar/register/WN_yAvM_J3bTyierkuVhFDppw*.

The final meeting agenda will be posted to the EDU Advisory Committee website at: *https://www.nsf.gov/edu/advisory.jsp*.

Type of Meeting: Open.

Contact Person: Mr. Keaven M. Stevenson, U.S. National Science Foundation, 2415 Eisenhower Avenue, Room C11001, Alexandria, VA 22314; Telephone: (703) 292–8600/email: (*kstevens@nsf.gov*).

Summary of Minutes: Minutes and meeting materials will be available on the EDU Advisory Committee website at: *https://www.nsf.gov/edu/advisory.jsp* or can be obtained from Dr. Bonnie A. Green, U.S. National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8600/email: (*bongreen@nsf.gov*).

Purpose of Meeting: To provide advice to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda: Meeting Theme: Rural and Remote Communities: Examining Ways to Unleash STEM Education and Workforce Opportunities.

Wednesday, May 29, 2024, 9:30 a.m.–5:30 p.m. (EDT)

- Welcoming Remarks: EDU Advisory Committee Chair and Assistant Director
- Session 1: Understanding Rural STEM Education and Workforce Development
- Session 2: Voices from the Field:The Impact of NSF/EDU Investments
- Session 3: Principal Investigators' Panel:Rural STEM Education and Workforce Development
- Session 4: Breakout Discussion:Unleashing Opportunities in Rural and Remote Communities
- Closing Remarks: EDU Advisory Committee Chair and Assistant Director

Thursday, May 30, 2024, 9:30 a.m.–2:00 p.m. (EDT)

- Session 5: Rural STEM Education and Workforce Development Across EDU Divisions
- Session 6: Pulling it all Together to Unleash Opportunities in STEM Education
- Discussion: EDU Advisory Committee along with NSF Chief Operating Officer
- Closing Remarks: EDU Advisory Committee Chair and Assistant Director

Dated: April 30, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–09673 Filed 5–2–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 6, 13, 20, 27, and June 3, 10, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of May 6, 2024

There are no meetings scheduled for the week of May 6, 2024.

Week of May 13, 2024—Tentative

There are no meetings scheduled for the week of May 13, 2024.

Week of May 20, 2024—Tentative

There are no meetings scheduled for the week of May 20, 2024.

Week of May 27, 2024—Tentative

There are no meetings scheduled for the week of May 27, 2024.

Week of June 3, 2024—Tentative

Tuesday, June 4, 2024

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Angie Randall: 301–415–6806)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Friday, June 7, 2024

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Robert Krsek: 301–415–1766)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of June 10, 2024—Tentative

There are no meetings scheduled for the week of June 10, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 1, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–09845 Filed 5–1–24; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–250 and CP2024–256; MC2024–251 and CP2024–257; MC2024–252 and CP2024–258; MC2024–253 and MC2024–259; MC2024–254 and CP2024–260; MC2024–255 and CP2024–261]

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:* May 6, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633,

[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).

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).:* MC2024–250 and CP2024–256; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 227 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 6, 2024.

2. *Docket No(s).:* MC2024–251 and CP2024–257; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 63 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 6, 2024.

3. *Docket No(s).:* MC2024–252 and CP2024–258; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage & Parcel Select Contract 6 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 6, 2024.

4. *Docket No(s).:* MC2024–253 and CP2024–259; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 228 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 6, 2024.

5. *Docket No(s).:* MC2024–254 and CP2024–260; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 229 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 6, 2024.

6. *Docket No(s).:* MC2024–255 and CP2024–261; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 230 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 6, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–09605 Filed 5–2–24; 8:45 am]

BILLING CODE 7710–FW–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20301 and #20302; Washington Disaster Number WA–20008]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Washington

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4775–DR), dated 04/28/2024.

Incident: Severe Winter Storms, Straight-Line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 01/05/2024 through 01/29/2024.

DATES: Issued on 04/28/2024.

Physical Loan Application Deadline Date: 06/27/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 01/28/2025.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/28/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clallam, Clark, Cowlitz, Ferry, Grays Harbor, Island, Jefferson, King, Klickitat, Lewis, Mason, Okanogan, Pacific, Skagit, Skamania, Wahkiakum, and the Confederated Tribes of the Colville Reservation.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 203019 and for economic injury is 203020.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator Office of Disaster Recovery & Resilience.

[FR Doc. 2024–09598 Filed 5–2–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. Unless waived, the Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice.

DATES: Submit comments on or before July 2, 2024.

ADDRESSES: Send all comments to, Robert Camacho, Financial and Loan Specialist, Office of Financial Assistance, *robert.camacho@sba.gov,* Small Business Administration.

FOR FURTHER INFORMATION CONTACT: Robert Camacho, Financial and Loan Specialist, Office of Financial Assistance, (817) 661–0317 *robert.camacho@sba.gov,* Small Business Administration, or Curtis B.

Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The SBA Form 3513 has been used for physical and Economic Injury Disaster Loans (EIDL), including COVID loans. Going forward, this form will eventually be used for determining fraud for non-COVID disaster loans only.

As authorized by the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Paycheck Protection Program and Health Care Enhancement Act, and the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Small Business Administration (SBA) provided COVID–19 Economic Injury Disaster Loans to provide working capital for small businesses, private nonprofits, and small agricultural enterprises who suffered substantial economic injury as a result of the Coronavirus pandemic. SBA received more than 16 million loan applications during the pandemic and a small percentage of those applications may have been a result of identity theft.

To ensure SBA is taking the appropriate action for any individuals who have indicated they have been the victim of identity theft, the individual will need to provide an affidavit to SBA indicating no involvement in the filing of the loan application, and that they did not receive or have knowledge of who received the loan funds. The information will be collected from those individuals (or their representative) who, without their knowledge or authorization, had an application submitted to SBA's Office of Capital Access (OCA) utilizing their personal information. OCA will review the information contained in the affidavit to determine whether there was identity theft involved, and if so, OCA will take the necessary steps to stop all billing statements, release any collateral filings, and to ensure that loan information will not be publicly reported in the name of the identity theft victim. In addition, this affidavit will be provided to the Office of Inspector General and other enforcement agencies in any legal action as necessary.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0418.

(1) Title: Economic Injury Disaster Loan (EIDL) Application Declaration of Identify Theft COVID–19.

Description of Respondents: Individuals who have identified and attest to potential identity theft.

Form Number: SBA Form 3513.

Total Estimated Annual Responses: 60,000.

Total Estimated Annual Hour Burden: 15,000.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–09681 Filed 5–2–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20299 and #20300; Kansas Disaster Number KS–20004]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Kansas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–4774–DR), dated 04/28/2024.

Incident: Severe Winter Storm.

Incident Period: 01/08/2024 through 01/16/2024.

DATES: Issued on 04/28/2024.

Physical Loan Application Deadline Date: 06/27/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 01/28/2025.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/29/2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Butler, Chase, Cloud, Edwards, Ford, Geary, Gray, Hodgeman, Morris, Osage, Ottawa, Pawnee, Shawnee, Stafford, Trego, Wabaunsee.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20299B and for economic injury is 203000.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–09595 Filed 5–2–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20278 and #20279; PENNSYLVANIA Disaster Number PA–20003]

Administrative Declaration of a Disaster for the State of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania dated 04/29/2024.

Incident: Flooding.

Incident Period: 04/11/2024 through 04/12/2024.

DATES: Issued on 04/29/2024.

Physical Loan Application Deadline Date: 06/28/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 01/29/2025.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street

SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allegheny

Contiguous Counties:

Pennsylvania: Armstrong, Beaver, Butler, Washington, Westmoreland

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 202786 and for economic injury is 202790.

The State which received an EIDL Declaration is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–09617 Filed 5–2–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12393]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Ka Ula Wena: Oceanic Red'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Ka Ula Wena: Oceanic Red'' at the Bernice Pauahi Bishop Museum, Honolulu, Hawai'i, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–09718 Filed 5–2–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12389]

Cultural Property Advisory Committee; Notice of Meeting; Correction

ACTION: Notice, correction.

SUMMARY: The Department of State published a document in the **Federal Register** of April 24, 2024, concerning the announcement of the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (''the Committee''). The document did not contain the docket number needed for general comments on *www.regulations.gov.*

DATES: The Committee will meet virtually from June 4–6, 2024, from 9:00 a.m. to 5:00 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (771) 204–4765; (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 24, 2024, in FR Doc. 2024–08710, on page 31246, correct the **SUPPLEMENTARY INFORMATION** caption to read:

Participation: The public may participate in, or observe, the virtual open session on June 4, 2024, from 2:00 p.m. to 3:00 p.m. (EDT). More information below.

The Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (''the Act''). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of Ukraine seeking import restrictions on archaeological and ethnological materials, the proposed extension of an agreement with the Government of the Hashemite Kingdom of Jordan, and the proposed extension of an agreement with the Government of the Republic of Ecuador. In addition, the Committee will undertake a continuing review of the effectiveness of other cultural property agreements and emergency actions currently in force.

The Open Session: The public can observe the virtual open session on June 4, 2024. Registered participants may provide oral comments for up to a maximum of five (5) minutes each. The Department provides specific instructions on how to observe or provide oral comments at the open session at *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-june-4-6-2024.*

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, by May 27, 2024. Written comments are not required to make an oral comment during the open session.

Written Comments: The Committee will review written comments if received by 11:59 p.m. (EDT) on May 27, 2024. Written comments may be submitted in two ways, depending on

whether they contain confidential information:

☐ *General Comments:* For general comments, use *https://www.regulations.gov,* enter the docket [DOS–2024–0015], and follow the prompts.

☐ *Confidential Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''Ukraine,'' ''Ecuador,'' and/or ''Jordan'' in the subject line.

☐ *Disclaimer:* The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: *https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-june-4-6-2024.* Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via regulations.gov are not private and are posted at *https://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–09612 Filed 5–2–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12388]

Notice of Renewal of the Advisory Committee on International Law Charter; Notice of Meeting

The Department of State has renewed the charter of the Advisory Committee on International Law. The Committee is composed of former Legal Advisers of the Department of State and up to 30 individuals appointed by the Legal Adviser or, if that position is vacant, a Deputy Legal Adviser. Through the Committee, the Department of State will continue to obtain the views and advice of outstanding members drawn from a cross section of the legal profession. The Committee follows procedures prescribed by the Federal Advisory Committee Act (FACA). Its meetings are open to the public unless a determination is made in accordance with the FACA and 5 U.S.C. 552b(c) that a meeting or portion of a meeting should be closed to the public. Notice of each meeting will be published in the **Federal Register** at least 15 days prior to the meeting, unless extraordinary circumstances require shorter notice.

Notice of Open Meeting

A meeting of the Department of State's Advisory Committee on International Law will take place on Friday, May 31, 2024, from 9:30 a.m. to 3:45 p.m. at the George Washington University Law School, Michael K. Young Faculty Conference Center, 716 20th St. NW, 5th Floor, Washington, DC. Acting Legal Adviser Richard Visek will chair the meeting, which will be open to the public up to the capacity of the meeting room. The meeting will include discussions on the development of purported new rights and implied obligations under international human rights law; trends in international dispute settlement, including discussion of cases before the International Civil Aviation Organization and the International Court of Justice; and obligations related to the facilitation of humanitarian access under international law.

Members of the public who wish to attend should contact the Office of the Legal Adviser by May 24, at *rangchitm@state.gov* or (202) 240–1662 and provide their name, professional affiliation (if any), and phone number. Priority for in-person seating will be given to members of the Advisory Committee, and remaining seating will be reserved based upon when persons contact the Office of the Legal Adviser. Individuals who wish to attend virtually may request a link to the virtual meeting platform. Attendees who require reasonable accommodation should make their requests by May 24. Requests received after that date will be considered but might not be possible to accommodate.

FOR FURTHER INFORMATION CONTACT: Tara M. Rangchi, Executive Director, Advisory Committee on International Law, Department of State, at 202–240–1662 or *RangchiTM@state.gov.*

Tara M. Rangchi,

Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 2024–09610 Filed 5–2–24; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 541 (Sub-No. 4X)]

Portland & Western Railroad, Inc.—Abandonment Exemption—in Washington County, Or.

Portland & Western Railroad, Inc. (PNWR), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 264 feet of rail line extending between milepost 27.84 and milepost 27.79 in Banks, Or. (the Line).[1] The Line traverses through U.S. Postal Service Zip Code 97106.

PNWR has certified that: (1) no local freight traffic has moved over the Line during the past two years; (2) because the Line is not a ''through line,'' there is no overhead traffic that would need to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2]

[1] PNWR states that it owns a perpetual freight easement for the Line and that the underlying property is owned by the Oregon Department of Transportation (ODOT).

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and

this exemption will be effective on June 2, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by May 13, 2024.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by May 23, 2024.

All pleadings, referring to Docket No. AB 541 (Sub-No. 4X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PNWR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

If the verified notice contains false or misleading information, the exemption is void ab initio.

PNWR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by May 10, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PNWR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by PNWR's filing of a notice of consummation by May 3, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: April 30, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2024–09708 Filed 5–2–24; 8:45 am]

BILLING CODE 4915–01–P

demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions on Interstate 10 Corridor Study: State Route 202L to State Route 387 in Maricopa County and Pinal County, Arizona

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project Interstate 10 Corridor Study: State Route 202L to State Route 387 in Maricopa County and Pinal County, Arizona (AZ). The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before September 30, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 202–6050, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8 a.m. to 4:30 p.m. (mountain standard time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 356–2893, email: *POBrien@azdot.gov.*

SUPPLEMENTARY INFORMATION: Effective April 16, 2019, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: Interstate 10 Corridor Study: State Route 202L to State Route 387 in Maricopa County and Pinal County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)—approved on March 28, 2024, and in other documents in the administrative record. The EA and other project records are available by contacting ADOT at the addresses provided above. Project information is also available online at: *https://i10wildhorsepasscorridor.com/corridor-planning*.

This notice applies to all ADOT and other relevant Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Water:* Clean Water Act 33 U.S.C. 1251–1387.

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2024–09643 Filed 5–2–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0061]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PROXIMITY (SAIL); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0061 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0061 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0061, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PROXIMITY is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: California, Florida. Base of Operations: San Diego, CA.

Vessel Length and Type: 42′ Sail Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0061 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0061 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such

confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09652 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0059]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: E.G.A. (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0059 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0059 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0059, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel E.G.A. is:

Intended Commercial Use of Vessel: Requester intends to offer recreational passenger charters in Florida.

Geographic Region Including Base of Operations: Florida. Base of Operations: Hernando Beach, FL.

Vessel Length and Type: 35′ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0059 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0059 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is

ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09649 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0064]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FANTASEA (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0064 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0064 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0064, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FANTASEA is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters in Fort Lauderdale.

Geographic Region Including Base of Operations: Florida. Base of Operations: Fort Lauderdale, FL.

Vessel Length and Type: 63.4′ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0064 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES.** Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0064 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09650 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0063]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BLUE WAVES (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0063 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0063 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0063, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BLUE WAVES is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: Florida. Base of Operations: Miami, FL.

Vessel Length and Type: 66.7′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024–0063 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0063 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09648 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0060]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LEAF CHASER (SAIL); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0060 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0060 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0060, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LEAF CHASER is:

Intended Commercial Use of Vessel: Requester intends to offer charters.

Geographic Region Including Base of Operations: Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida, Puerto Rico, California, Oregon, Washington. Base of Operations: New York, NY.

Vessel Length and Type: 45′ Sail Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0060 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0060 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09651 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0065]

Request for Comments on the Renewal of a Previously Approved Information Collection: Title XI Obligation Guarantees

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0018 (Title XI Obligations Guarantees) will be used to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees. This collection is being updated to include minor changes to the instructions to streamline the data collection process through electronic submission capability. There is also a reduction in the public burden since the last renewal. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments must be submitted on or before July 2, 2024.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2024–0065 through one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *www.regulations.gov* including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

FOR FURTHER INFORMATION CONTACT: David Gilmore, Director, 202–366–2118, Office of Marine Financing, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *TDavid.gilmore@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Title XI Obligations Guarantees—46 CFR part 298.

OMB Control Number: 2133–0018.

Type of Request: Extension With Change of a Previously Approved Collection.

Abstract: In accordance with 46 U.S.C. chapter 537, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses: 5.

Estimated Hours per Response: 150.

Annual Estimated Total Annual Burden Hours: 750.

Frequency of Response: Once Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09668 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0062]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TODAY'S OFFICE (MOTOR); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0062 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0062 and follow the instructions for submitting comments.
- Mail or Hand Delivery: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0062, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel TODAY'S OFFICE is:

Intended Commercial Use of Vessel: Requester intends to offer charters.

Geographic Region Including Base of Operations: Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida. Base of Operations: Haley's Marine, East Hampton, NY.

Vessel Length and Type: 34′ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0062 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0062 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–09653 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2024–0049]

Opportunities and Challenges of Artificial Intelligence (AI) in Transportation; Request for Information

AGENCY: Department of Transportation (DOT)

ACTION: Notice; Request for Information (RFI).

SUMMARY: The U.S. Department of Transportation's Advanced Research Projects Agency—Infrastructure (ARPA–I) is seeking input from interested parties on the potential applications of artificial intelligence (AI) in transportation, as well as emerging challenges and opportunities in creating and deploying AI technologies in applications across all modes of transportation. The purpose of this Request for Information (RFI) is to obtain input from a broad array of stakeholders on AI opportunities, challenges and related issues in transportation pursuant to Executive Order (E.O.) 14110 of October 30, 2023 entitled ''Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence''.

DATES: Written submissions must be received within 60 days of the publication of this RFI.

ADDRESSES: Please submit any written comments to Docket Number DOT–OST–2024–0049 electronically through the Federal eRulemaking Portal at *https://regulations.gov.* Go to *https://regulations.gov* and select ''Department of Transportation (DOT)'' from the agency menu to submit or view public comments. Note that, except as provided below, all submissions received, including any personal information provided, will be posted without change and will be available to the public on *https://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI, please email *ARPA-I@dot.gov.* You may also contact Mr. Timothy A. Klein, Director, Technology Policy and Outreach, Office of the Assistant Secretary for Research and Technology (202–366–0075) or by email at *timothy.klein@dot.gov.*

SUPPLEMENTARY INFORMATION: Advances in artificial intelligence (AI) bring significant potential benefits and risks, and they have the potential to transform American society with deep implications for safety, access, equity and resilience in the transportation sector. Virtually all aspects of transportation and mobility—from the design, construction, operation, and maintenance of physical infrastructure systems to the operation of the digital infrastructure that underpins and enables the movement of people and goods—will likely be impacted by the deployment of AI tools and applications.Beyond the direct impact of the technology itself, AI has the potential to reshape how individuals, communities, corporations, governments, and other users interact with the transportation network in ways that are difficult to anticipate. In recognition of AI's rapidly evolving

capabilities and implications across all facets of government, society and our economy, the Biden Administration issued Executive Order (E.O.) 14110 on *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* on October 30, 2023. In section 8, ''Protecting Consumers, Patients, Passengers, and Students'', under Sub-section (c), the E.O. directs the U.S. Department of Transportation to ''promote the safe and responsible development and use of AI in the transportation sector, in consultation with relevant agencies''. Paragraph (iii) under sub-section (c) further requires that ARPA–I ''explore the transportation-related opportunities and challenges of AI—including regarding software-defined AI enhancements impacting autonomous mobility ecosystems''.

This RFI seeks information that will assist ARPA–I and the U.S. Department of Transportation (DOT) in carrying out their responsibilities under section 8 (c)(iii) of E.O. 14110 noted above.

About ARPA–I

The *Advanced Research Projects Agency—Infrastructure (ARPA–I)* is an agency within DOT (see *https://www.transportation.gov/arpa-i*) that Congress established ''to support the development of science and technology solutions that overcomes long-term challenges and advances the state of the art for United States transportation infrastructure.'' (Pub. L. 117–58, section 25012, November 15, 2021; 49 U.S.C. 119). ARPA–I is modeled after the Defense Advanced Research Projects Agency (DARPA) within the U.S. Department of Defense and the Advanced Research Projects Agency-Energy (ARPA–E) within the U.S. Department of Energy. ARPA–I offers a once-in-a-generation opportunity to improve our nation's transportation infrastructure, both physical and digital, and supports DOT's strategic goals of Safety, Economic Strength and Global Competitiveness, Equity, Climate and Sustainability, and Transformation. ARPA–I focuses on developing and implementing technologies, rather than developing policies and processes or providing regulatory support. ARPA–I has a single overarching goal and focus: to fund external innovative advanced research and development (R&D) programs that develop new technologies, systems, and capabilities to improve transportation infrastructure in the United States.

The aims of ARPA–I include ''lowering the long-term costs of infrastructure development, including costs of planning, construction, and maintenance; reducing the lifecycle impacts of transportation infrastructure on the environment, including through the reduction of greenhouse gas emissions; contributing significantly to improving the safe, secure, and efficient movement of goods and people; promoting the resilience of infrastructure from physical and cyber threats; and ensuring that the United States is a global leader in developing and deploying advanced transportation infrastructure technologies and materials.'' (Pub. L. 117–58, section 25012, November 15, 2021; 49 U.S.C. 119). Funding the development and use of AI technologies to address these challenges is expected to be a key future activity of ARPA–I.

Federal Activities on AI Most Closely Related to DOT's Work

E.O. 14110 directs agencies all across government, including the Department of Transportation, to take a wide range of actions that will help ensure the United States leads the way in seizing AI's promise and managing its risks. This work includes actions to manage AI's safety and security risks, promote innovation and competition, advance equity and civil rights, protect Americans' privacy, stand up for consumers and workers, and more. Beyond E.O. 14110, the Federal Government has also fostered and funded work to advance the responsible development of AI and machine learning (ML) for decades. Examples of such work range from early work conducted by the Department of Defense's Advanced Research Projects Agency (now DARPA) to ongoing efforts summarized in the 2023 Update to the National Artificial Intelligence Research and Development Strategic Plan, led by the White House Office of Science and Technology Policy (OSTP).

In general, Federal investments in and other support for basic and applied research in AI in transportation are critical to achieving national priorities and build on applied AI research across the Federal government. Foundational research into and application of AI has been supported by the National Science Foundation (NSF), the Department of Defense (DOD), the Department of Energy (DOE), the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA), the National Institute of Standards and Technology (NIST), and the National Aeronautics and Space Administration (NASA). Ongoing AI research at these agencies with high relevance to DOT priorities include developing effective methods for human-AI collaboration, ensuring the safety and security of AI-based systems, developing shared public datasets and environments for AI training and testing, measuring, and evaluating AI-based systems through standards and benchmarks.

DOT Activities on AI

AI approaches are being applied to a range of activities and efforts across DOT; this section provides a brief, non-comprehensive overview.

Operating administrations within DOT have developed and implemented many uses of AI. These range from use of AI and ML technologies to streamline transportation operations (*e.g.,* weather prediction, routing and scheduling, transit automation), to research projects addressing safety (*e.g.,* driver behavior classification, passenger safety, incident risk assessment, grade crossing safety video analytics), to tools for rapid analysis of text and component schematic data submissions, and to perform real-time asset management to maintain a state of good repair. AI and ML tools may have applications across all of DOT's operating administrations, with many actively exploring uses including the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Great Lakes St. Lawrence Seaway Development Corporation (GLS), National Highway Traffic Safety Administration (NHTSA), Maritime Administration (MARAD), and Pipeline and Hazardous Materials Safety Administration (PHMSA).

The Intelligent Transportation System Joint Program Office (ITS JPO) within DOT has established the AI for ITS Program, recognizing the promise that AI offers for achieving significant benefits in transportation safety, mobility, efficiency, equity, accessibility, productivity, and resilience, while achieving reductions to individual and societal costs, emissions, and other negative environmental impacts. Currently, ITS JPO is developing AI-enabled ITS Capability Maturity Model and Readiness Checklists, and the Application of the NIST AI Risk Management Framework for ITS. ITS JPO published a review of AI for ITS in October 2022.

Two DOT initiatives that include the application of AI to serve the Department's policy priorities are being led by the Office of the Assistant Secretary for Research and Technology (OST–R). The U.S. DOT Intersection Safety Challenge (*https://its.dot.gov/isc/*) is a prize-based competition that is

exploring how a combination of advanced sensing, perception, path planning and prediction, and AI-based decision making can help to improve intersection safety for vulnerable road users. The Complete Streets Artificial Intelligence (CSAI) Small Business Innovative Research (SBIR) program (*https://its.dot.gov/csai/*) is a multi-phase effort to develop powerful new decision-support tools for public agencies to assist in the siting, design, and deployment of streets and road networks that prioritize safety, efficiency, and connectivity.

Additional AI-related activities at OST–R include extramural research conducted at a number of University Transportation Centers, work at the Highly Automated Systems Safety Center of Excellence, technology demonstration projects through the SMART Grants Program, and research at the U.S. DOT Volpe Center.

Similarly, consistent with E.O. 14110, the Department's internal Non-Traditional and Emerging Transportation Technology (NETT) Council has work underway to identify use cases across the various operating administrations and share observations and potential implications for the use of AI throughout the existing transportation system. Finally, the Transforming Transportation Advisory Committee (TTAC) and the Advanced Aviation Advisory Committee (AAAC) have been directed by Secretary Buttigieg to provide insights on the Department's approach to AI and make recommendations for this technology's integration into operational advancements, in a manner that anticipates AI's benefits, while safeguarding against its negative impacts.

Potential Development and Uses of AI in Transportation

This section provides illustrative use cases to help respondents to this RFI consider the breadth of potential uses of AI in transportation, including physical infrastructure, digital infrastructure, operations, and many other aspects.

Many of the fundamental components of AI technologies and AI tools developed in other domains will be directly applicable to AI in transportation, from algorithmic advances, foundational model development, machine learning, deep learning techniques, and AI assurance methods to methods for ensuring cybersecurity, model transparency and trustworthiness.

As the Federal government has emphasized, there are substantial ethical, legal, and societal risks and potential adverse effects surrounding the application of AI across society. Minimizing risks and adverse effects through developing trustworthy AI and enhancing trust in human-AI interactions, reducing bias in data, protecting privacy, and developing robust AI systems, standards, and frameworks will be integral to ensuring the effective incorporation of these new technologies into transportation and mobility systems.

This RFI employs the meaning of ''artificial intelligence'' or ''AI'' as used in E.O. 14110 and set forth in 15 U.S.C. 9401(3): ''a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.'' ARPA–I defines ''Digital Infrastructure'' as the sensing, computation, automation, networking, connectivity, data management, analysis, optimization, control and virtual elements that underpin our physical transportation infrastructure. Beyond transportation-specific use cases, AI also has the potential to increase operational efficiencies for DOT's own internal core business, regulatory, and permitting functions, including such applications as analyzing consumer complaints, compiling and summarizing public comments, streamlining permitting and application processes and more.

Potential areas for funded AI research and development at DOT will span all modes of transportation and mobility and could include:

- Enhancing the safety of pedestrians and vulnerable road users at roadway intersections through technologies such as ML and deep learning for computer vision, perception, sensor fusion, real-time decision making and warning systems,
- Real-time AI-based decision support tools, optimization and control of wide area traffic systems and transit operations,
- Autonomous mobility systems and vehicles on roads and rails, in the air, and on water (AI-intensive computation hardware and its design are beyond the scope of this RFI),
- Optimization of road traffic management systems and signalized intersections in cities and towns across timescales from seconds or minutes to hours, including such elements as variable speed limit control, queue detection and prediction, and wrong-way driving detection,
- Optimization of equitable curb management in urban areas,
- Transportation systems management and operations (TSMO) optimization and control,
- Use of AI to assess traveler behavior and preferences across modes,
- Real-time monitoring of transit rail systems for maintenance assessment and state of good repair,
- Real-time monitoring of transit facilities for incident risk analysis,
- Air traffic control optimization for large-scale aviation operations facilitated by AI,
- Development and operation of secure complementary position, navigation, and timing (PNT) systems using AI-based recognition and utilization of signals of opportunity,
- AI assessment and assurance tools, methods and frameworks, benchmarks, testing environments, validation and verification, and the creation of datasets for AI and AI-enabled systems across all modes of transportation,
- Automating and digitizing physical infrastructure asset management through AI to optimize planning, design, operations, construction, and maintenance, and end of life,
- Optimizing planning, design, build and permitting for infrastructure construction and repair, and reducing construction costs by incorporating best practices developed through generative AI, including natural language processing (NLP) and large language model (LLM)-based processing of existing knowledge and databases,
- Sensor output processing, sensor fusion, data analysis, and ML for analysis and control of large-scale transportation networks and systems, including remote sensing,
- Real-time control and optimization of traffic networks and signalization from the local scale to a full city or region,
- Optimization of multimodal freight and logistics networks and supply chains nationally, including commercial vehicle, marine, rail and aviation freight and logistics systems,
- Safe operation of uncrewed air systems (UAS) in emerging aviation applications,
- Developing shared mobility-on-demand (MOD) services, from AI-based dynamic route scheduling and fleet optimization for city or region-wide passenger demand using traveler decision support tools,
- Offline analysis of traffic data, transportation safety data, and emissions inventories,

• Enhancing mapping and spatial AI for real-time automation and navigation across all modes, as well as for infrastructure design, maintenance, and repair,
• AI-based robotic repair and repurposing of pipeline infrastructure, and
• AI-enhanced robotic mapping of sub-surface infrastructure and utilities for safe, efficient, and cost-effective ''dig once'' construction.

Specific Questions

This RFI seeks information that will assist ARPA–I and the U.S. Department of Transportation in carrying out responsibilities under section 8 (c)(iii) of E.O. 14110, as noted above.

DOT is providing the following specific questions to prompt feedback and comments. DOT encourages public comment on any of these questions and seeks any other information commenters believe is relevant.

DOT is requesting information from all interested entities and stakeholders, including innovators and technology developers, researchers and universities, transportation system and infrastructure owners and operators, transportation-focused groups, organizations and associations, and the public. Where appropriate, responses should include discussion of real-world applications and actual examples of AI technologies, tools, and methods currently being used or contemplated for future use in the transportation and mobility domain.

DOT is interested in receiving succinct and relevant responses to some or all of the following questions, keeping in mind the current efforts and potential use cases as described above:

Question 1: Current AI Applications in Transportation

What are the relevant current or near-term applications of AI in transportation? If applicable, describe the mode(s) of transportation that these applications cover, referencing DOT's stated priorities (including safety, climate and sustainability, equity, economic strength and global competitiveness, and transformation) that these applications support.

Question 2: Opportunities of AI in Transportation

What are the future potential opportunities in transportation that AI can facilitate? Describe the mode(s) of transportation that these opportunities cover, referencing DOT's stated priorities (including safety, climate and sustainability, equity, economic strength and global competitiveness, and transformation) as appropriate.

Question 3: Challenges of AI in Transportation

What are the current or future challenges of AI in transportation, including risks presented by the use of AI in transportation and potential barriers to its responsible adoption? Describe the mode(s) of transportation that these challenges cover, referencing DOT's stated priorities (including safety, climate and sustainability, equity, economic strength and global competitiveness, and transformation) as appropriate.

Question 4: Autonomous Mobility Ecosystems

What are the opportunities, challenges, and risks of AI related to autonomous mobility ecosystems, including software-defined AI enhancements? Describe how AI can responsibly facilitate autonomous mobility, including specifically safety considerations.

Question 5: Other Considerations in the Development of AI for Transportation

Comment on any other considerations relevant to the development, challenges, and opportunities of AI in transportation that have not been included in the questions above. These considerations may include ones such as potential priorities in transportation-specific future AI R&D funding, access to transportation datasets, the development of AI testbeds, physical and digital infrastructure needs and requirements, and workforce training and education.

Confidential Business Information

Do not submit information disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ''CBI'') to *Regulations.gov*. Comments submitted through *Regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted.

Issued in Washington, DC, on April 26, 2024.

Robert C. Hampshire,

Principal Deputy Assistant Secretary for Research and Technology and Chief Science Officer.

[FR Doc. 2024–09645 Filed 5–2–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of the Treasury, Internal Revenue Service (IRS), proposes to establish a new system of records entitled, ''Treasury/IRS 34.018, Insider Risk Management Records,'' within its inventory of records systems subject to the Privacy Act. The IRS will use this system to identify potential threats to IRS resources and information assets and facilitate management of insider threat investigations, complaints, inquiries, and counterintelligence threat detection activities. An ''insider'' is defined to include current and former employees, contractors, interns, visitors, and any other individuals who have or who had persistent authorized access to IRS assets including any IRS facility, information, equipment, network, or system. An ''insider threat'' is the threat that an insider will use his or her authorized access, wittingly or unwittingly, to do harm to the IRS mission, resources, personnel, facilities, information, equipment, networks, or systems.

DATES: Comments must be received no later than June 3, 2024. This new system of records will be effective upon publication in the **Federal Register** unless the IRS receives comments which would result in a contrary determination. The routine uses will be effective on June 3, 2024. The IRS invites written comments on the routine uses and other aspects of this system of records prior to the proposed effective date.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov* identified by docket number TREAS–DO–2024–0003. Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: New Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to

www.regulations.gov, including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kathleen Walters, Chief Risk Officer, Internal Revenue Service, Office of the Chief Risk Officer, Enterprise Risk Management, 1111 Constitution Ave NW, Washington, DC 20224–0002; *enterprise.risk.mgt@irs.gov,* telephone: (801) 612–4815.

SUPPLEMENTARY INFORMATION: The IRS has long-standing processes, controls, and systems in place to meet legal and regulatory guidance to protect agency assets including personnel, facilities, information systems, equipment, and data. To better protect these resources, the Department of Treasury established an Insider Risk Management Office, under Treasury Directive 15–70, to implement and maintain a holistic, proactive, and risk-based program to effectively deter, detect, and mitigate the risks associated with insider actions or behaviors, while protecting the privacy and civil liberties of insiders through supporting policies, procedures, and standards. The IRS established a subordinate Insider Risk Management Program, which consists of a Program Management Office, Executive Steering Committee and Working Group governance boards, and coordinated Insider Risk Management incident response operations. The Insider Risk Management program collaborates with business unit representatives to perform a comprehensive risk assessment, aiding business units in their risk prioritization efforts.

This established system will be included in Treasury's inventory of record systems. Below is the description of the Treasury/IRS 34.018, Insider Risk Management Records System of Records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

The system of records entitled ''Treasury/IRS 34.018, Insider Risk Management Records'' is published in its entirety below.

Dated: February 13, 2024.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Insider Risk Management Records. Treasury/IRS 34.018.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Enterprise Risk Management, Internal Revenue Service, 1111 Constitution Ave NW, Washington, DC 20224–0002.

SYSTEM MANAGER(S):

Chief Risk Officer, Internal Revenue Service, 1111 Constitution Ave NW, Washington, DC 20224–0002.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 26 U.S.C. 7801, Authority of Department of the Treasury; 26 U.S.C 7803, Commissioner of Internal Revenue, other officials; 18 U.S.C. 1030(a)(2)(B), Fraud and Related Activity in Connection with Computers; 44 U.S.C. 3101, Records Management by Agency Heads; General Duties; 44 U.S.C. 3551 to 3558, Federal Information Security Modernization Act of 2014; 28 U.S.C 535, Investigation of Crimes Involving Government Officers and Employees; Limitations; Treasury Order 105–20: Insider Threat Program; Treasury Order 105–22: Delegation of Authorities Concerning the Treasury Operations Security Program; Treasury Directive 15–70: Delegation of Treasury Counterintelligence and Insider Threat Functions and Programs.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain, analyze, and process records about insider risks to support holistic security analysis, case management, and incident response activities in the administration of the IRS Insider Risk Management Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees, contractors, interns, visitors, and any other individuals who have or who had persistent authorized access to IRS assets including any IRS facility, information, equipment, network, or system.

(2) Individuals who are, or have been, temporarily authorized to perform, provide, or use services in IRS facilities (either on an ongoing or occasional basis), including, but not limited to, visitors, security personnel, custodial staff, maintenance workers, food service workers, employee assistance program staff, and other non-IRS employees with access to IRS assets; witnesses and other individuals who provide statements or information to the IRS related to an insider threat inquiry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records about individuals reported to exhibit behaviors requiring analysis and consideration by Holistic Insider Risk Management's Hub Operations team as a result of exceeded risk tolerance; IRS security investigations, including authorized IT Security, Physical Security, and Personnel Security risk scoring; information systems security analysis and logs; determinations derived from information obtained in other systems; information potentially relevant to conducting insider risk management. These records include the results of the analysis and explanations of any responsive actions.

RECORDS SOURCE CATEGORIES:

IRS internal personnel and security records, external law enforcement agencies, Federal Counterintelligence and Security agencies, third party witnesses, public and social media, complainants, and informants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which the IRS collected the records, and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in their official capacity; (c) any IRS employee in their individual capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS determines that the records are relevant and necessary to the proceeding or advice sought.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) the IRS or any component thereof; (b) any IRS employee in their official capacity; (c)

any IRS employee in their personal capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS or DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to an appropriate Federal, state, local, tribal, or foreign agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(4) Disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation.

(5) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(6) Disclose information to a contractor or service provider, including an expert witness or a consultant, hired by the IRS, to the extent necessary for the performance of a contract.

(7) Disclose information to the news media as described in the IRS Policy Statement 11–94 (formerly P–1–183), News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.1.11.9.

(8) Disclose information to professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.

(9) Disclose information to a Federal, state, local, or tribal agency, or other public authority, which has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a security clearance, license, contract, grant or other benefit.

(10) To appropriate agencies, entities, and persons when (1) the Department of the Treasury or IRS suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury or IRS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or Treasury bureau(s) (including information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's or IRS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(11) To another Federal agency or Federal entity, when the Department of the Treasury or IRS 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 information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By name, Social Security Number (SSN), access/security badge number, obfuscated system-generated identifier and other electronic identification numbers, date of birth, phone number, and other unique individual identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with IRM 1.15, Records and Information Management (also see Documents 12829 and 12990).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Role based access controls are not less than those published in IRM 10.8, Information Technology (IT) Security, IRM 10.2, Physical Security Program, and IRM 10.5, Privacy and Information Protection.

RECORDS ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

This system may not be accessed for purposes of determining whether the system contains a record pertaining to a particular individual; the records are exempt under 5 U.S.C. 552a(k)(2) and (k)(5).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records maintained in this system haves been designated exempt from sections (c)(3), (d), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) (See 31 CFR 1.36).

HISTORY:

None.

[FR Doc. 2024–09698 Filed 5–2–24; 8:45 am]

BILLING CODE 4810–AK–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2024, and request for comment.

SUMMARY: The United States Sentencing Commission hereby gives notice that the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index; and the Commission requests comment regarding whether it should include in the *Guidelines Manual* as changes that may be applied retroactively to previously sentenced defendants any or all of the following amendments: Amendment 1; Part A of Amendment 3; Part B of Amendment 3; and Part D of Amendment 5. This notice sets forth the text of the amendments and the reason for each amendment, and the request for comment regarding possible retroactive application of the amendments listed above.

DATES: *Effective Date of Amendments.* The Commission has specified an effective date of November 1, 2024, for the amendments set forth in this notice.

Written Public Comment. Written public comment regarding possible retroactive application of Amendment 1, Part A of Amendment 3, Part B of Amendment 3, and Part D of Amendment 5, should be received by the Commission not later than June 21, 2024. Written reply comments, which may only respond to issues raised during the original comment period, should be received by the Commission not later than July 22, 2024. Any public

comment received after the close of the comment period, and reply comment received on issues not raised during the original comment period, may not be considered.

ADDRESSES: There are two methods for submitting written public comment and reply comments.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at *https://comment.ussc.gov.* Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs—Issue for Comment on Retroactivity.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p). Absent action of the Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) Amendments to the Sentencing Guidelines, Policy Statements, Official Commentary, and Statutory Index

Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. Notice of the proposed amendment was published in the **Federal Register** on December 26, 2023 (*see* 88 FR 89142). The Commission held public hearings on the proposed amendments in Washington, DC, on March 6–7, 2024. On April 30, 2024, the Commission submitted the promulgated amendments to the Congress and specified an effective date of November 1, 2024.

The text of the amendments to the sentencing guidelines, policy statements, commentary, and statutory index, and the reason for each amendment, is set forth below. Additional information pertaining to the amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

(2) Request for Comment on Possible Retroactive Application of Amendment 1, Part A of Amendment 3, Part B of Amendment 3, and Part D of Amendment 5

This notice sets forth a request for comment regarding whether the Commission should list in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants any or all of the following amendments: Amendment 1 (relating to acquitted conduct); Part A of Amendment 3 (relating to § 2K2.1(b)(4)(B) enhancement); Part B of Amendment 3 (relating to the interaction between § 2K2.4 and § 3D1.2(c)); and Part D of Amendment 5 (relating to enhanced penalties for drug offenders).

The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

Authority: 28 U.S.C. 994(a), (o), (p), and (u); USSC Rules of Practice and Procedure 2.2, 4.1, and 4.1A.

Carlton W. Reeves,

Chair.

(1) Amendments to the Sentencing Guidelines, Policy Statements, Official Commentary, and Statutory Index

1. *Amendment:* Section 1B1.3 is amended—

in subsection (a), in the heading, by striking ''*Chapters Two (Offense Conduct) and Three (Adjustments).*'' and inserting ''*Chapters Two (Offense Conduct) and Three (Adjustments).*—'';

in subsection (b), in the heading, by striking ''*Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence).*'' and inserting ''*Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence).*—'';

and by inserting at the end the following new subsection (c):

''(c) *Acquitted Conduct.*—Relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction.''.

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended by inserting at the end the following new Note 10:

''10. *Acquitted Conduct.*—Subsection (c) provides that relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct establishes, in whole or in part, the instant offense of conviction. There may be cases in which certain conduct underlies both an acquitted charge and the instant offense of conviction. In those cases, the court is in the best position to determine whether such overlapping conduct establishes, in whole or in part, the instant offense of conviction and therefore qualifies as relevant conduct.''.

The Commentary to § 6A1.3 is amended—

by striking ''*see also United States* v. *Watts,* 519 U.S. 148, 154 (1997) (holding that lower evidentiary standard at sentencing permits sentencing court's consideration of acquitted conduct); *Witte* v. *United States,* 515 U.S. 389, 399–401 (1995) (noting that sentencing courts have traditionally considered wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution);'' and inserting ''*Witte* v. *United States,* 515 U.S. 389, 397–401 (1995) (noting that sentencing courts have traditionally considered a wide range of information without the procedural protections of a criminal trial, including information concerning uncharged criminal conduct, in sentencing a defendant within the range authorized by statute);'';

by striking ''*Watts,* 519 U.S. at 157'' and inserting ''*Witte,* 515 U.S. at 399–401'';

and by inserting at the end of the paragraph that begins ''The Commission believes that use of a preponderance of the evidence standard'' the following: ''Acquitted conduct, however, is not relevant conduct for purposes of determining the guideline range. *See* § 1B1.3(c) (Relevant Conduct). Nonetheless, nothing in the Guidelines Manual abrogates a court's authority under 18 U.S.C. 3661.''.

Reason for Amendment: This amendment revises § 1B1.3 (Relevant

Conduct (Factors that Determine the Guideline Range)) to exclude acquitted conduct from the scope of relevant conduct used in calculating a sentence range under the federal guidelines. Acquitted conduct is unique, and this amendment does not comment on the use of uncharged, dismissed, or other relevant conduct as defined in § 1B1.3 for purposes of calculating the guideline range.

The use of acquitted conduct to increase a defendant's sentence has been a persistent concern for many within the criminal justice system and the subject of robust debate over the past several years. A number of jurists, including current and past Supreme Court Justices, have urged reconsideration of acquitted-conduct sentencing. *See, e.g., McClinton* v. *United States,* 143 S. Ct. 2400, 2401 & n.2 (2023) (Sotomayor, J., Statement respecting the denial of certiorari) (collecting cases and statements opposing acquitted-conduct sentencing). In denying certiorari last year in *McClinton,* multiple Justices suggested that it would be appropriate for the Commission to resolve the question of how acquitted conduct is considered under the guidelines. *See id.* at 2402–03; *id.* at 2403 (Kavanaugh, J., joined by Gorsuch, J. and Barrett, J., Statement respecting the denial of certiorari), *but see id.* (Alito, J., concurring in the denial of certiorari). Many states have prohibited consideration of acquitted conduct. *See id.* at 2401 n.2 (collecting cases). And, currently, Congress is considering bills to prohibit its consideration at sentencing, with bipartisan support. *See* Prohibiting Punishment of Acquitted Conduct Act of 2023, S. 2788, 118th Cong. (1st Sess. 2023); Prohibiting Punishment of Acquitted Conduct Act of 2023, H.R. 5430, 118th Cong. (1st Sess. 2023).

First, the amendment revises § 1B1.3 by adding new subsection (c), which provides that ''[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court unless such conduct also establishes, in whole or in part, the instant offense of conviction.'' This rule seeks to promote respect for the law, which is a statutory obligation of the Commission. *See* 28 U.S.C § 994(a)(2); *id.* § 991(b)(1)(A) & (B); 18 U.S.C. 3553(a)(2).

This amendment seeks to promote respect for the law by addressing some of the concerns that numerous commenters have raised about acquitted-conduct sentencing, including those involving the ''perceived fairness'' of the criminal justice system. *McClinton,* 143 S. Ct. at 2401 (Sotomayor, J., Statement respecting the denial of certiorari). Some commenters were concerned that consideration of acquitted conduct to increase the guideline range undermines the historical role of the jury and diminishes ''the public's perception that justice is being done, a concern that is vital to the legitimacy of the criminal justice system.'' *McClinton,* 143 S. Ct. at 2402–03 (Sotomayor, J., Statement respecting the denial of certiorari); *see United States* v. *Settles,* 530 F.3d 920, 924 (D.C. Cir. 2008) (expressing concern that ''using acquitted conduct to increase a defendant's sentence undermines respect for the law and the jury system''). They argue that consideration of acquitted conduct at sentencing contributes to the erosion of the jury-trial right and enlarges the already formidable power of the government, reasoning that defendants who choose to put the government to its proof ''face all the risks of conviction, with no practical upside to acquittal unless they . . . are absolved of *all* charges.'' *United States* v. *Bell,* 808 F.3d 926, 932 (D.C. Cir. 2015) (Millett, J., concurring in the denial of reh'g en banc). For these reasons, ''acquittals have long been 'accorded special weight,' distinguishing them from conduct that was never charged and passed upon by a jury,'' *McClinton,* 143 S. Ct. at 2402 (Sotomayor, J., Statement respecting the denial of certiorari (quoting *United States* v. *DiFrancesco,* 449 U.S. 117, 129 (1980))) and viewed as ''inviolate,'' *McElrath* v. *Georgia,* 601 U.S. 87, 94 (2024).

Second, the amendment adds new Application Note 10 to § 1B1.3(c), which instructs that in ''cases in which certain conduct underlies both an acquitted charge and the instant offense of conviction . . . , the court is in the best position to determine whether such overlapping conduct establishes, in whole or in part, the instant offense of conviction and therefore qualifies as relevant conduct.'' The amendment thus clarifies that while ''acquitted conduct'' cannot be considered in determining the guideline range, any conduct that establishes—in whole or in part—the instant offense of conviction is properly considered, even as relevant conduct and even if that same conduct also underlies a charge of which the defendant has been acquitted. During the amendment cycle, commenters raised questions about how a court would be able to parse out acquitted conduct in a variety of specific scenarios, including those involving ''linked or related charges'' or ''overlapping conduct'' (*e.g.,* conspiracy counts in conjunction with substantive counts or obstruction of justice counts in conjunction with substantive civil rights counts). Commission data demonstrate that cases involving acquitted conduct will be rare. In fiscal year 2022, of 62,529 sentenced individuals, 1,613 were convicted and sentenced after a trial (2.5% of all sentenced individuals), and of those, only 286 (0.4% of all sentenced individuals) were acquitted of at least one offense or found guilty of only a lesser included offense.

To ensure that courts may continue to appropriately sentence defendants for conduct that establishes counts of conviction, rather than define the specific boundaries of ''acquitted conduct'' and ''convicted conduct'' in such cases, the Commission determined that the court that presided over the proceeding will be best positioned to determine which conduct can properly be considered as part of relevant conduct based on the individual facts in those cases.

The amendment limits the scope of ''acquitted conduct'' to only those charges of which the defendant has been acquitted in federal court. This limitation reflects the principles of the dual-sovereignty doctrine and responds to concerns about administrability. The chief concern regarding administrability raised by commenters throughout the amendment cycle was whether courts would be able to parse acquitted conduct from convicted conduct in cases in which some conduct relates to both the acquitted and convicted counts. The Commission appreciates that federal courts may have greater difficulty making this determination if it involves proceedings that occurred in another jurisdiction and at different times.

Third, and finally, the amendment makes corresponding changes to § 6A1.3 (Resolution of Disputed Factors (Policy Statement)), restating the principle provided in § 1B1.3(c) and further clarifying that ''nothing in the Guidelines Manual abrogates a court's authority under 18 U.S.C. 3661.''

2. *Amendment:* Section 2B1.1(b)(1) is amended by inserting the following at the end:

''*Notes to Table:*

(A) *Loss.*—Loss is the greater of actual loss or intended loss.

(B) *Gain.*—The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.

(C) For purposes of this guideline—

(i) 'Actual loss' means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) 'Intended loss' (I) means the pecuniary harm that the defendant purposely sought to inflict; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (*e.g.,* as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

(iii) 'Pecuniary harm' means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

(iv) 'Reasonably foreseeable pecuniary harm' means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3—

by striking subparagraphs (A) and (B) as follows:

''(A) *General Rule.*—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.

(i) *Actual Loss.*—'Actual loss' means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) *Intended Loss.*—'Intended loss' (I) means the pecuniary harm that the defendant purposely sought to inflict; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (*e.g.,* as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

(iii) *Pecuniary Harm.*—'Pecuniary harm' means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

(iv) *Reasonably Foreseeable Pecuniary Harm.*—For purposes of this guideline, 'reasonably foreseeable pecuniary harm' means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

(v) *Rules of Construction in Certain Cases.*—In the cases described in subdivisions (I) through (III), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

(I) *Product Substitution Cases.*—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.

(II) *Procurement Fraud Cases.*—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correcting the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

(III) *Offenses Under 18 U.S.C. 1030.*—In the case of an offense under 18 U.S.C. 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.

(B) *Gain.*—The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.'';

inserting the following new subparagraph (A):

''(A) *Rules of Construction in Certain Cases.*—In the cases described in clauses (i) through (iii), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

(i) *Product Substitution Cases.*—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.

(ii) *Procurement Fraud Cases.*—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correcting the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

(iii) *Offenses Under 18 U.S.C. 1030.*—In the case of an offense under 18 U.S.C. 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.'';

and by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B), (C), (D), and (E), respectively.

The Commentary to § 2B2.3 captioned ''Application Notes'' is amended in Note 2 by striking ''the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud)'' and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud) and the Commentary to § 2B1.1''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''Application Note 3 of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud)'' and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud) and Application Note 3 of the Commentary to § 2B1.1''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(I) by striking ''the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud)'' and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud) and the Commentary to § 2B1.1''.

Reason for Amendment: This amendment is a result of the Commission's continued study of the *Guidelines Manual* to address case law concerning the validity and enforceability of guideline commentary. In *Stinson* v. *United States,* 508 U.S. 36, 38 (1993), the Supreme Court held that commentary ''that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.'' Following *Kisor* v. *Wilkie,* 139 S. Ct. 2400, 2415 (2019), which limited deference to executive agencies' interpretation of regulations to situations in which the regulation is ''genuinely ambiguous,'' the deference afforded to various guideline commentary provisions has been

debated and is the subject of conflicting court decisions.

Applying *Kisor,* the Third Circuit has held that Application Note 3(A) of the commentary to § 2B1.1 (Theft, Property Destruction, and Fraud) is not entitled to deference. *See United States* v. *Banks,* 55 F.4th 246 (3d Cir. 2022). Application Note 3(A) provides a general rule that ''loss is the greater of actual loss or intended loss'' for purposes of the loss table in § 2B1.1(b)(1), which increases an individual's offense level based on loss amount. In *Banks,* the Third Circuit held that ''the term 'loss' [wa]s unambiguous in the context of § 2B1.1'' and that it unambiguously referred to ''actual loss.'' The Third Circuit reasoned that ''the commentary expand[ed] the definition of 'loss' by explaining that generally 'loss is the greater of actual loss or intended loss,' '' and therefore ''accord[ed] the commentary no weight.'' *Banks,* 55 F.4th at 253, 258.

The loss calculations for individuals in the Third Circuit are now computed differently than elsewhere, where other circuit courts have uniformly applied the general rule in Application Note 3(A). The Commission estimates that before the *Banks* decision approximately 50 individuals per year were sentenced using intended loss in the Third Circuit.

To ensure consistent loss calculation across circuits, the amendment creates Notes to the loss table in § 2B1.1(b)(1) and moves the general rule establishing loss as the greater of actual loss or intended loss from the commentary to the guideline itself as part of the Notes. The amendment also moves rules providing for the use of gain as an alternative measure of loss, as well as the definitions of ''actual loss,'' ''intended loss,'' ''pecuniary harm,'' and ''reasonably foreseeable pecuniary harm,'' from the Commentary to the Notes. In addition, the amendment makes corresponding changes to the Commentary to §§ 2B2.3 (Trespass), 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions), and 8A1.2 (Application Instructions—Organizations), which calculate loss by reference to the Commentary to § 2B1.1.

While the Commission may undertake a comprehensive review of § 2B1.1 in a future amendment cycle, this amendment aims to ensure consistent guideline application in the meantime without taking a position on how loss may be calculated in the future.

3. *Amendment:*

Part A (§ 2K2.1(b)(4)(B) Enhancement)

Section 2K2.1(b)(4)(B)(i) is amended by striking ''any firearm had an altered or obliterated serial number'' and inserting ''any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye''.

The Commentary to § 2K2.1 is amended—

in Note 8(A) by striking ''if the offense involved a firearm with an altered or obliterated serial number'' and inserting ''if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye''; and by striking ''This is because the base offense level takes into account that the firearm had an altered or obliterated serial number.'';

and in Note 8(B) by striking ''regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had an altered or obliterated serial number'' and inserting ''regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye''.

Part B (Interaction Between § 2K2.4 and § 3D1.2(c))

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 4 by striking the following:

''*Weapon Enhancement.*—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. 924(c) conviction.

A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under § 2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under § 2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or § 2K2.1(b)(6)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. 922(g), the enhancement under § 2K2.1(b)(6)(B) would not apply.

In a few cases in which the defendant is determined not to be a career offender, the offense level for the underlying offense determined under the preceding paragraphs may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) (*i.e.,* the guideline range that would have resulted if the enhancements for possession, use, or discharge of a firearm had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed

the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a).'';

and inserting the following:

''*Non-Applicability of Certain Enhancements.*—

(A) *In General.*—If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. 924(c) conviction.

A sentence under this guideline also accounts for conduct that would subject the defendant to an enhancement under § 2D1.1(b)(2) (pertaining to use of violence, credible threat to use violence, or directing the use of violence). Do not apply that enhancement when determining the sentence for the underlying offense.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under § 2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or § 2K2.1(b)(6)(B) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. 844(h), § 924(c) or § 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. 922(g), the enhancement under § 2K2.1(b)(6)(B) would not apply.

(B) *Impact on Grouping.*—If two or more counts would otherwise group under subsection (c) of § 3D1.2 (Groups of Closely Related Counts), the counts are to be grouped together under § 3D1.2(c) despite the non-applicability of certain enhancements under Application Note 4(A). Thus, for example, in a case in which the defendant is convicted of a felon-in-possession count under 18 U.S.C. 922(g) and a drug trafficking count underlying a conviction under 18 U.S.C. 924(c), the counts shall be grouped pursuant to § 3D1.2(c). The applicable Chapter Two guidelines for the felon-in-possession count and the drug trafficking count each include 'conduct that is treated as a specific offense characteristic' in the other count, but the otherwise applicable enhancements did not apply due to the rules in § 2K2.4 related to 18 U.S.C. 924(c) convictions.

(C) *Upward Departure Provision.*—In a few cases in which the defendant is determined not to be a career offender, the offense level for the underlying offense determined under the preceding paragraphs may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) (*i.e.,* the guideline range that would have resulted if the enhancements for possession, use, or discharge of a firearm had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a).''.

Reason for Amendment: This amendment addresses circuit conflicts involving § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) and § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes). Part A addresses whether the serial number of a firearm must be illegible for application of the enhancement for an ''altered or obliterated'' serial number at § 2K2.1(b)(4)(B), and Part B addresses whether subsection (c) of § 3D1.2 (Groups of Closely Related Counts) permits grouping of a firearms count under 18 U.S.C. 922(g) with a drug trafficking count, where the defendant also has an 18 U.S.C. 924(c) conviction.

Part A—Section 2K2.1(b)(4)(B) Enhancement

Part A of the amendment resolves the differences in how the circuits interpret the term ''altered'' in the 4-level enhancement at § 2K2.1(b)(4)(B), which applies when the serial number of a firearm has been ''altered or obliterated.'' A circuit conflict has arisen as to whether the serial number must be illegible for this enhancement to apply and as to what test for legibility should be employed.

The Sixth and Second Circuits have adopted the naked eye test. The Sixth Circuit held that a serial number must be illegible, noting that ''a serial number that is defaced but remains visible to the naked eye is not 'altered or obliterated' under the guideline.'' *United States* v. *Sands,* 948 F.3d 709, 719 (6th Cir. 2020). The Sixth Circuit reasoned that ''[a]ny person with basic vision and reading ability would be able to tell immediately whether a serial number is legible,'' and may be less inclined to purchase a firearm without a legible serial number. *Id.* at 717. The Second Circuit followed the Sixth Circuit in holding that ''altered'' means illegible for the same reasons. *United States* v. *St. Hilaire,* 960 F.3d 61, 66 (2d Cir. 2020).

By contrast, the Fourth, Fifth, and Eleventh Circuits have upheld the enhancement where a serial number is ''less legible.'' The Fourth Circuit held that ''a serial number that is made *less* legible is made different and therefore is altered for purposes of the enhancement.'' *United States* v. *Harris,* 720 F.3d 499, 501 (4th Cir. 2013). The Fifth Circuit similarly affirmed the enhancement even though the damage did not render the serial number unreadable because ''the serial number of the firearm [ ] had been materially changed in a way that made its accurate information less accessible.'' *United States* v. *Perez,* 585 F.3d 880, 884 (5th Cir. 2009). In an unpublished opinion, the Eleventh Circuit reasoned that an interpretation where ''altered'' means illegible ''would render 'obliterated' superfluous.'' *United States* v. *Millender,* 791 F. App'x 782, 783 (11th Cir. 2019).

This amendment resolves this circuit conflict by amending the enhancement to adopt the holdings of the Second and Sixth Circuits. As amended, the enhancement applies if ''any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye.'' This amendment is consistent with the Commission's recognition in 2006 of ''both the difficulty in tracing firearms with altered and obliterated serial numbers, and the increased market for these types of weapons.'' *See* USSG, App. C, amend. 691 (effective Nov. 1, 2006). By employing the ''unaided eye'' test for legibility, the amendment also seeks to resolve the circuit split and ensure uniform application.

Part B—Grouping: § 2K2.4, Application Note 4

Part B resolves a difference among circuits concerning whether subsection (c) of § 3D1.2 (Groups of Closely Related Counts) permits grouping of a firearms count under 18 U.S.C. 922(g) with a drug trafficking count, where the defendant also has a separate count under 18 U.S.C. 924(c). Section 3D1.2 (Grouping of Closely Related Counts) contains four rules for determining whether multiple counts should group because they are closely related. Subsection (c) states that counts are grouped together ''[w]hen one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.'' The Commentary to § 3D1.2 further explains that ''[s]ubsection (c) provides that when conduct that represents a separate count, *e.g.,* bodily injury or obstruction of justice, is also a specific offense characteristic in or other adjustment to another count, the count represented by that conduct is to be grouped with the count to which it constitutes an aggravating factor.''

While there is little disagreement that the felon-in-possession and drug trafficking counts ordinarily group under § 3D1.2(c), courts differ regarding the extent to which the presence of the count under 18 U.S.C. 924(c) prohibits grouping under the guidelines. Section 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) is applicable to certain statutes with mandatory minimum terms of imprisonment (*e.g.,* 18 U.S.C. 924(c)). The Commentary to § 2K2.4 provides that ''[i]f a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense.''

The Sixth, Eighth, and Eleventh Circuits have held that such counts can group together under § 3D1.2(c) because the felon-in-possession convictions and drug trafficking convictions each include conduct that is treated as specific offense characteristics in the other offense, even if those specific offense characteristics do not apply due to § 2K2.4. *United States* v. *Gibbs,* 395 F. App'x 248, 250 (6th Cir. 2010); *United States* v. *Bell,* 477 F.3d 607, 615–16 (8th Cir. 2007); *United States* v. *King,* 201 F. App'x 715, 718 (11th Cir. 2006). By contrast, the Seventh Circuit has held that felon-in-possession and drug trafficking counts do not group under these circumstances because the grouping rules apply only after the offense level for each count has been determined and ''by virtue of § 2K2.4, [the counts] did not operate as specific offense characteristics of each other, and the enhancements in §§ 2D1.1(b)(1) and 2K2.1(b)(6)(B) did not apply.'' *United States* v. *Sinclair,* 770 F.3d 1148, 1157–58 (7th Cir. 2014).

This amendment revises Application Note 4 to § 2K2.4 and reorganizes it into three subparagraphs. Subparagraph A retains the same instruction on the non-applicability of certain enhancements; subparagraph B explains the impact on grouping; and subparagraph C retains the upward departure provision. As amended, subparagraph B resolves the circuit conflict by explicitly instructing that ''[i]f two or more counts would otherwise group under subsection (c) of § 3D1.2 (Groups of Closely Related Counts), the counts are to be grouped together under § 3D1.2(c) despite the non-applicability of certain enhancements under Application Note 4(A).''

This amendment aligns with the holdings of the majority of circuits involved in the circuit conflict. Additionally, this amendment clarifies the Commission's view that promulgation of this Application Note originally was not intended to place any limitations on grouping.

4. *Amendment:* Section 5H1.1 is amended by striking the following:

''Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration. Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).'';

and inserting the following:

''Age may be relevant in determining whether a departure is warranted.

Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration.

A downward departure also may be warranted due to the defendant's youthfulness at the time of the offense or prior offenses. Certain risk factors may affect a youthful individual's development into the mid-20's and contribute to involvement in criminal justice systems, including environment, adverse childhood experiences, substance use, lack of educational opportunities, and familial relationships. In addition, youthful individuals generally are more impulsive, risk-seeking, and susceptible to outside influence as their brains continue to develop into young adulthood. Youthful individuals also are more amenable to rehabilitation.

The age-crime curve, one of the most consistent findings in criminology, demonstrates that criminal behavior tends to decrease with age. Age-appropriate interventions and other protective factors may promote desistance from crime. Accordingly, in an appropriate case, the court may consider whether a form of punishment other than imprisonment might be sufficient to meet the purposes of sentencing.

Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).''.

Reason for Amendment: This amendment makes several revisions to § 5H1.1 (Age (Policy Statement)), which addresses the relevance of age in sentencing. Before the amendment, § 5H1.1 provided, in relevant part, that ''[a]ge (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines.''

The amendment revises the first sentence in § 5H1.1 to provide more broadly that ''[a]ge may be relevant in determining whether a departure is warranted.'' It also adds language specifically providing that a downward departure may be warranted in cases in which the defendant was youthful at the time of the instant offense or any prior offenses. In line with the Commission's statutory duty to establish sentencing policies that reflect ''advancement in knowledge of human behavior as it relates to the criminal justice process,'' 28 U.S.C. 991(b)(1)(C), this amendment reflects the evolving science and data surrounding youthful individuals, including recognition of the age-crime curve and that cognitive changes lasting into the mid-20s affect individual behavior and culpability. The amendment also reflects expert testimony to the Commission indicating that certain risk factors may contribute to youthful involvement in criminal justice systems, while protective factors, including appropriate interventions, may promote desistance from crime.

5. Amendment:

Part A (Export Control Reform Act of 2018)

The Commentary to § 2M5.1 captioned ''Statutory Provisions'' is amended by striking ''50 U.S.C. 1705; 50 U.S.C. 4601–4623'' and inserting ''50 U.S.C. 1705, 4819''.

The Commentary to § 2M5.1 captioned ''Application Notes'' is amended—

by striking Notes 1 through 4 as follows:

''1. In the case of a violation during time of war or armed conflict, an upward departure may be warranted.

2. In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

3. In addition to the provisions for imprisonment, 50 U.S.C. 4610 contains provisions for criminal fines and forfeiture as well as civil penalties. The maximum fine for individual defendants is $250,000. In the case of corporations, the maximum fine is five times the value of the exports involved or $1 million, whichever is greater. When national security controls are violated, in addition to any other sanction, the defendant is subject to forfeiture of any interest in, security of, or claim against: any goods or tangible items that were the subject of the violation; property used to export or attempt to export that was the subject of the violation; and any proceeds obtained directly or indirectly as a result of the violation.

4. For purposes of subsection (a)(1)(B), 'a country supporting international terrorism' means a country designated under section 6(j) of the Export Administration Act (50 U.S.C. 4605).'';

and by inserting the following new Notes 1, 2, and 3:

''1. *Definition.*—For purposes of subsection (a)(1)(B), 'a country supporting international terrorism' means a country designated under section 1754 of the Export Controls Act of 2018 (50 U.S.C. 4813).

2. *Additional Penalties.*—In addition to the provisions for imprisonment, 50 U.S.C. 4819 contains provisions for criminal fines and forfeiture as well as civil penalties.

3. *Departure Provisions.*—

(A) *In General.*—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

(B) *War or Armed Conflict.*—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.''.

Appendix A (Statutory Index) is amended in the line referenced to 50 U.S.C. 4610 by striking ''§ 4610'' and inserting ''§ 4819''.

Part B (Offenses Involving Records and Reports on Monetary Instruments Transactions)

Section 2S1.3(b)(2)(B) is amended by striking ''committed the offense as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period'' and inserting ''committed the offense while violating another law of the United States or as part of a pattern of unlawful activity involving more than $100,000 in a 12-month period''.

Part C (Antitrust Offenses)

The Commentary to § 2R1.1 captioned ''Statutory Provisions'' is amended by striking ''§§ 1, 3(b)'' and inserting ''§§ 1, 3(a)''.

The Commentary to § 2R1.1 captioned ''Application Notes'' is amended—

in Note 3 by inserting at the beginning the following new heading: ''*Fines for Organizations.*—'';

in Note 4 by inserting at the beginning the following new heading: ''*Another Consideration in Setting Fine.*—'';

in Note 5 by inserting at the beginning the following new heading: ''*Use of Alternatives Other Than Imprisonment.*—'';

in Note 6 by inserting at the beginning the following new heading: ''*Understatement of Seriousness.*—'';

and in Note 7 by inserting at the beginning the following new heading: ''*Defendant with Previous Antitrust Convictions.*—''.

The Commentary to § 2R1.1 captioned ''Background'' is amended by striking ''These guidelines apply'' and inserting ''This guideline applies''.

Appendix A (Statutory Index) is amended in the line referenced to 15 U.S.C. 3(b) by striking ''§ 3(b)'' and inserting ''§ 3(a)''.

Part D (Enhanced Penalties for Drug Offenders)

Section 2D1.1(a) is amended by striking paragraphs (1) through (4) as follows:

''(1) 43, if—

(A) the defendant is convicted under 21 U.S.C. 841(b)(1)(A) or (b)(1)(B), or 21 U.S.C. 960(b)(1) or (b)(2), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a serious drug felony or serious violent felony; or

(B) the defendant is convicted under 21 U.S.C. 841(b)(1)(C) or 21 U.S.C. 960(b)(3) and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a felony drug offense; or

(2) 38, if the defendant is convicted under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(3) 30, if the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a felony drug offense; or

(4) 26, if the defendant is convicted under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or'';

and by inserting the following new paragraphs (1) through (4):

''(1) 43, if (A) the defendant is convicted of an offense under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), to which the mandatory statutory term of life imprisonment applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(2) 38, if (A) the defendant is convicted of an offense under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), to which the statutory term of imprisonment of not less than 20 years to life applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(3) 30, if (A) the defendant is convicted of an offense under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5) to which the statutory maximum term of imprisonment of 30 years applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines); or (ii) such base offense level; or

(4) 26, if (A) the defendant is convicted of an offense under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5) to which the statutory maximum term of imprisonment of 15 years applies; or (B) the parties stipulate to (i) such an offense for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines); or (ii) such base offense level; or''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended—

by striking Notes 1 through 4 as follows:

''1. *Definitions.*—

For purposes of the guidelines, a 'plant' is an organism having leaves and a readily observable root formation (*e.g.,* a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).

For purposes of subsection (a), 'serious drug felony,' 'serious violent felony,' and 'felony drug offense' have the meaning given those terms in 21 U.S.C. 802.

2. '*Mixture or Substance'.*—'Mixture or substance' as used in this guideline has the same meaning as in 21 U.S.C. 841, except as expressly provided. Mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used. Examples of such materials include the fiberglass in a cocaine/fiberglass bonded suitcase, beeswax in a cocaine/beeswax statue, and waste water from an illicit laboratory used to manufacture a controlled substance. If such material cannot readily be separated from the mixture or substance that appropriately is counted in the Drug Quantity Table, the court may use any reasonable method to approximate the weight of the mixture or substance to be counted.

An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.

Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example, with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.

3. *Classification of Controlled Substances.*—Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 CFR 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 CFR 1308.13–15 is the appropriate classification.

4. *Applicability to 'Counterfeit' Substances.*—The statute and guideline also apply to 'counterfeit' substances, which are defined in 21 U.S.C. 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.'';

and inserting the following new Notes 1 through 4:

''1. *Definition of 'Plant'.*—For purposes of the guidelines, a 'plant' is an organism having leaves and a readily observable root formation (*e.g.,* a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).

2. *Application of Subsection (a).*—Subsection (a) provides base offense levels for offenses under 21 U.S.C. 841 and 960 based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.

Subsection (a)(1) provides a base offense level of 43 for offenses under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), to which the mandatory statutory term of life imprisonment applies because death or serious bodily injury resulted from the use of the controlled substance and the defendant committed the offense after one or more prior convictions for a serious drug felony, serious violent felony, or felony drug offense.

Subsection (a)(2) provides a base offense level of 38 for offenses under 21 U.S.C. 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960(b)(1), (b)(2), or (b)(3), to which the statutory minimum term of imprisonment of not less than 20 years to life applies because death or serious bodily injury resulted from the use of the controlled substance.

Subsection (a)(3) provides a base offense level of 30 for offenses under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5) to which the statutory maximum term of imprisonment of 30 years applies because death or serious bodily injury resulted from the use of the controlled substance and the defendant committed the offense after one or more prior convictions for a felony drug offense.

Subsection (a)(4) provides a base offense level of 26 for offenses under 21 U.S.C. 841(b)(1)(E) or 21 U.S.C. 960(b)(5) to which the statutory maximum term of imprisonment of 15 years applies because death or serious bodily injury resulted from the use of the controlled substance.

The terms 'serious drug felony,' 'serious violent felony,' and 'felony drug offense' are defined in 21 U.S.C. 802. The base offense levels in subsections (a)(1) through (a)(4) would also apply if the parties stipulate to the applicable offense described in those provisions for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines) or to any such base offense level.

3. *'Mixture or Substance'.*—'Mixture or substance' as used in this guideline has the same meaning as in 21 U.S.C. 841, except as expressly provided. Mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used. Examples of such materials include the

fiberglass in a cocaine/fiberglass bonded suitcase, beeswax in a cocaine/beeswax statue, and waste water from an illicit laboratory used to manufacture a controlled substance. If such material cannot readily be separated from the mixture or substance that appropriately is counted in the Drug Quantity Table, the court may use any reasonable method to approximate the weight of the mixture or substance to be counted.

An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.

Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example, with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.

4. *In General.—*

(A) *Classification of Controlled Substances.*—Certain pharmaceutical preparations are classified as Schedule III, IV, or V controlled substances by the Drug Enforcement Administration under 21 CFR 1308.13–15 even though they contain a small amount of a Schedule I or II controlled substance. For example, Tylenol 3 is classified as a Schedule III controlled substance even though it contains a small amount of codeine, a Schedule II opiate. For the purposes of the guidelines, the classification of the controlled substance under 21 CFR 1308.13–15 is the appropriate classification.

(B) *Applicability to 'Counterfeit' Substances.*—The statute and guideline also apply to 'counterfeit' substances, which are defined in 21 U.S.C. 802 to mean controlled substances that are falsely labeled so as to appear to have been legitimately manufactured or distributed.''.

Part E (''Sex Offense'' Definition in § 4C1.1 (Adjustment for Certain Zero-Point Offenders))

Section 4C1.1(b)(2) is amended by striking '' 'Sex offense' means (A) an offense, perpetrated against a minor, under''; and inserting '' 'Sex offense' means (A) an offense under''.

Reason for Amendment: This multi-part amendment responds to recently enacted legislation and miscellaneous guideline application issues.

Part A—Export Control Reform Act of 2018

Part A of the amendment amends Appendix A (Statutory Index) to reference the new statutory provisions from the Export Control Reform Act (ECRA) of 2018, enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232 (Aug. 13, 2018), to § 2M5.1 (Evasion of Export Controls; Financial Transactions with Countries Supporting International Terrorism). The ECRA repealed the Export Administration Act (EAA) of 1979 regarding dual-use export controls, previously codified at 50 U.S.C. 4601–4623. At the same time, the Act promulgated new provisions, codified at 50 U.S.C. 4811–4826, relating to export controls for national security and foreign policy purposes. Section 4819 prohibits a willful violation of the Act or attempts and conspiracies to violate any regulation, order, license, or other authorization issued under the Act, with a maximum term of imprisonment of 20 years. Section 4819 replaced the penalty provision of the repealed Act, at 50 U.S.C. 4610 (Violations), which had been referenced in Appendix A to § 2M5.1. The Commission determined that § 2M5.1 remains the most analogous guideline for the offenses prohibited under the new section 4819. As such, the amendment revises Appendix A to delete the reference to 50 U.S.C. 4610 and replaces it with a reference to 50 U.S.C. 4819, with conforming changes in the Commentary.

Part B—Offenses Involving Records and Reports on Monetary Instruments Transactions

Part B of the amendment revises the 2-level enhancement at subsection (b)(2)(B) of § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts) to better account for certain enhanced penalty provisions in subchapter II (Records and Reports on Monetary Instruments Transactions) of chapter 53 (Monetary Transactions) of title 31 (Money and Finance), United States Code (''subchapter II'').

Most substantive criminal offenses in subchapter II are punishable at 31 U.S.C. 5322 (Criminal penalties). Section 5322(a) provides a maximum term of imprisonment of five years for a simple violation. Section 5322(b) provides an enhanced maximum term of imprisonment of ten years if the offense was committed while ''violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period.'' Two additional criminal offenses in subchapter II provide substantially similar enhanced maximum terms of imprisonment, at sections 5324(d)(2) (Structuring transactions to evade reporting requirement prohibited) and 5336(h)(3)(B)(ii)(II) (Beneficial ownership information reporting requirements).

While § 2S1.3(b)(2)(B) accounted for offenses involving a ''a pattern of any illegal activity involving more than $100,000,'' the Department of Justice raised concerns that it does not address the other aggravating statutory condition of committing the offense while ''violating another law of the United States.'' Addressing these concerns, the Commission determined that an amendment to § 2S1.3(b)(2)(B) that expressly provides for this additional alternative factor more fully gives effect to the enhanced penalty provisions provided for in sections 5322(b), 5324(d)(2), and 5336(h)(3)(B)(ii)(II).

Part C—Antitrust Offenses

Part C of the amendment responds to concerns raised by the Department of Justice relating to the statutes referenced in Appendix A to § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors). In 2002, Congress amended 15 U.S.C. 3 to create a new criminal offense. *See* Section 14102 of the Antitrust Technical Corrections Act of 2002, Public Law 107–273 (Nov. 2, 2002). Prior to the Antitrust Technical Corrections Act of 2002, 15 U.S.C. 3 contained only one provision prohibiting any contract or combination in the form of trust or otherwise (or any such conspiracy) in restraint of trade or commerce in any territory of the United States or the District of Columbia. The Act redesignated the existing provision as section 3(a) and added a new criminal offense at a new section 3(b). Section 3(b) prohibits monopolization, attempts to monopolize, and combining or conspiring with another person to monopolize any part of the trade or commerce in or involving any territory of the United States or the District of Columbia. 15 U.S.C. 3(b). At the time, the Commission referenced section 3(b) in Appendix A to § 2R1.1 but did not reference section 3(a) to any guideline.

Part C of the amendment amends Appendix A and the Commentary to § 2R1.1 to replace the reference to 15 U.S.C. 3(b) with a reference to 15 U.S.C.

3(a). This change reflects the fact that § 2R1.1 is intended to apply to antitrust offenses involving agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, the type of conduct proscribed at section 3(a), and does not address monopolization offenses, the type of conduct prohibited by section 3(b).

Part D—Enhanced Penalties for Drug Offenders

Part D of the amendment clarifies that the alternative enhanced base offense levels at § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) are based on the offense of conviction, not relevant conduct. Sections 841 and 960 of title 21, United States Code, contain crimes with mandatory minimum penalties for defendants whose instant offense resulted in death or serious bodily injury and crimes with mandatory minimum penalties for defendants with the combination of both an offense resulting in death or serious bodily injury and prior convictions for certain specified offenses. The Commission received public comment and testimony that it was unclear whether the Commission intended for §§ 2D1.1(a)(1)–(a)(4) to apply only when the defendant was convicted of one of these crimes or whenever a defendant meets the applicable requirements based on relevant conduct.

The amendment resolves the issue by amending §§ 2D1.1(a)(1)–(4) to clarify that the base offense levels in those provisions apply only when the individual is convicted of an offense under sections 841(b) or 960(b) to which the applicable enhanced statutory mandatory minimum term of imprisonment applies, or when the parties have stipulated to: (i) such an offense for purposes of calculating the guideline range under § 1B1.2 (Applicable Guidelines); or (ii) such base offense level. The amendment is intended to clarify the Commission's original intent that the enhanced base offense levels apply because the statutory elements have been established and the defendant was convicted under the enhanced penalty provision provided in sections 841(b) or 960(b). The amendment also responds to comments made by the Federal Public and Community Defenders and the Department of Justice that the enhanced penalties should also apply when the parties stipulate to their application. The amendment also amends the Commentary to § 2D1.1 to add an application note explaining the applicable mandatory minimum terms of imprisonment that apply ''based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.''

Part E—''Sex Offense'' Definition in § 4C1.1 (Adjustment for Certain Zero-Point Offenders)

Part E of the amendment responds to concerns that the definition of ''sex offense'' in subsection (b)(2) of § 4C1.1 (Adjustment for Certain Zero-Point Offenders) was too restrictive because it applied only to offenses perpetrated against minors.

In 2023, the Commission added a new Chapter Four guideline at § 4C1.1 that provides a 2-level decrease from the offense level determined under Chapters Two and Three for ''zero-point'' offenders who meet certain criteria. *See* USSG App. C, amend. 821 (effective Nov. 1, 2023). The 2-level decrease applies only if none of the exclusionary criteria set forth in subsections (a)(1) through (a)(10) apply. Among the exclusionary criteria is subsection (a)(5), requiring that ''the [defendant's] instant offense of conviction is not a sex offense.'' Section 4C1.1(b)(2) defined ''sex offense'' as ''(A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subparagraphs (A)(i) through (iv) of this definition.''

The amendment revises the definition of ''sex offense'' at § 4C1.1(b)(2) by striking the phrase ''perpetrated against a minor'' to ensure that any individual who commits a covered sex offense against any victim, regardless of age, is excluded from receiving the 2-level reduction under § 4C1.1. In making this revision, the Commission determined that expanding the definition to cover all conduct in the provisions listed in the definition regardless of the victim's age was appropriate for two reasons. First, given the egregious nature of sexual assault and the gravity of the physical, emotional, and psychological harms that victims experience, the Commission determined that its initial policy determination to treat adult and minor victims differently for purposes of the 2-level reduction should be revised. Second, the Commission concluded that while some individuals would already be excluded from the 2-level reduction if they employed violence or their conduct resulted in death or serious bodily injury to the victim (conduct which is taken into account at § 4C1.1(a)(3) and (a)(4), respectively), many serious sex offenses are committed through coercion and other non-violent means and can leave lasting consequences on victims.

6. *Amendment:* Section 1B1.1(a)(6) is amended by striking ''Part B of Chapter Four'' and inserting ''Parts B and C of Chapter Four''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Frequently Used Terms Defined.*—'';

in Note 1(F) by striking ''subdivision'' and inserting ''clause'';

in Note 2 by inserting at the beginning the following new heading: ''*Definition of Additional Terms.*—''; and by striking ''case by case basis'' and inserting ''case-by-case basis'';

in Note 3 by inserting at the beginning the following new heading: ''*List of Statutory Provisions.*—'';

in Note 4 by inserting at the beginning the following new heading: ''*Cumulative Application of Multiple Adjustments.*—'';

in Note 4(A) by striking ''specific offense characteristic subsection'' and inserting ''specific offense characteristic''; and by striking ''subdivisions'' and inserting ''subparagraphs'';

and in Note 5 by inserting at the beginning the following new heading: ''*Two or More Guideline Provisions Equally Applicable.*—''.

Chapter Two is amended in the Introductory Commentary by striking ''Chapter Four, Part B (Career Offenders and Criminal Livelihood)'' and inserting ''Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders)''.

Section 2B1.1(b)(7) is amended by striking ''Federal'' and inserting ''federal''; and by striking ''Government'' both places such term appears and inserting ''government''.

Section 2B1.1(b)(17) is amended by striking ''subdivision'' both places such term appears and inserting ''subparagraph''.

Section 2B1.1(b)(19)(B) is amended by striking ''subdivision'' and inserting ''subparagraph''.

Section 2B1.1(c) is amended by striking ''subdivision'' and inserting ''paragraph''.

The Commentary to 2B1.1 captioned ''Application Notes'' is amended—

in Note 1 by striking '' 'Equity securities' '' and inserting '' 'Equity security' '';

in Note 3(E), as redesignated by Amendment 2 of this document, by striking ''subdivision (A)'' and inserting ''subparagraph (A)'';

in Note 3(E)(i), as redesignated by Amendment 2 of this document, by striking ''this subdivision'' and inserting ''this clause'';

in Note 3(E)(viii), as redesignated by Amendment 2 of this document, by striking ''a Federal health care offense'' and inserting ''a federal health care offense''; and by striking ''Government health care program'' both places such term appears and inserting ''government health care program'';

and in Note 4(C)(ii) by striking ''subdivision'' and inserting ''subparagraph''.

The Commentary to § 2B6.1 captioned ''Application Notes'' is amended in Note 1 by striking ''United State Code'' both places such term appears and inserting ''United States Code''; and by striking ''subdivision (B)'' and inserting ''subparagraph (B)''.

Section 2B3.1(b)(3) is amended by striking ''subdivisions'' both places such term appears and inserting ''subparagraphs''; and by striking ''cumulative adjustments from (2) and (3)'' and inserting ''cumulative adjustments from application of paragraphs (2) and (3)''.

The Commentary to § 2B3.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Definitions.*—'';

in Note 2 by inserting at the beginning the following new heading: ''*Dangerous Weapon.*—'';

in Note 3 by inserting at the beginning the following new heading: ''*Definition of 'Loss'.*—'';

in Note 4 by inserting at the beginning the following new heading: ''*Cumulative Application of Subsections (b)(2) and (b)(3).*—'';

in Note 5 by inserting at the beginning the following new heading: ''*Upward Departure Provision.*—'';

and in Note 6 by inserting at the beginning the following new heading: '' *'A Threat of Death'.*—''.

Section 2B3.2(b)(3)(B) is amended by striking ''subdivisions'' and inserting ''clauses''.

Section 2B3.2(b)(4) is amended by striking ''subdivisions'' both places such term appears and inserting ''subparagraphs''; and by striking ''cumulative adjustments from (3) and (4)'' and inserting ''cumulative adjustments from application of paragraphs (3) and (4)''.

The Commentary to § 2B3.2 captioned ''Application Notes'' is amended—

in Note 2 by inserting at the beginning the following new heading: ''*Threat of Injury or Serious Damage.*—'';

in Note 3 by inserting at the beginning the following new heading: ''*Offenses Involving Public Officials and Other Extortion Offenses.*—'';

in Note 4 by inserting at the beginning the following new heading: ''*Cumulative Application of Subsections (b)(3) and (b)(4).*—'';

in Note 5 by inserting at the beginning the following new heading: ''*Definition of 'Loss to the Victim'.*—'';

in Note 6 by inserting at the beginning the following new heading: ''*Defendant's Preparation or Ability to Carry Out a Threat.*—'';

in Note 7 by inserting at the beginning the following new heading: ''*Upward Departure Based on Threat of Death or Serious Bodily Injury to Numerous Victims.*—'';

and in Note 8 by inserting at the beginning the following new heading: ''*Upward Departure Based on Organized Criminal Activity or Threat to Family Member of Victim.*—''.

Section 2C1.8(b)(3) is amended by striking ''Federal'' and inserting ''federal''.

The Commentary to § 2C1.8 captioned ''Application Notes'' is amended in Note 2 by striking ''Federal'' both places such term appears and inserting ''federal''; and by striking ''Presidential'' and inserting ''presidential''.

Section 2D1.1(b)(14)(C)(ii) is amended by striking ''subdivision'' and inserting ''subparagraph''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended—

in Note 8(D)—

under the heading relating to LSD, PCP, and Other Schedule I and II Hallucinogens (and their immediate precursors), by striking the following:

''1 gm of 1-Piperidinocyclohexanecarbonitrile (PCC) =	680 gm
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine (DOB) =	2.5 kg
1 gm of 2,5-Dimethoxy-4-methylamphetamine (DOM) =	1.67 kg
1 gm of 3,4-Methylenedioxyamphetamine (MDA) =	500 gm
1 gm of 3,4-Methylenedioxymethamphetamine (MDMA) =	500 gm
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) =	500 gm'';

and inserting the following:

''1 gm of 1-Piperidinocyclohexanecarbonitrile (PCC) =	680 gm
1 gm of 2,5-Dimethoxy-4-methylamphetamine (DOM) =	1.67 kg
1 gm of 3,4-Methylenedioxyamphetamine (MDA) =	500 gm
1 gm of 3,4-Methylenedioxymethamphetamine (MDMA) =	500 gm
1 gm of 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) =	500 gm
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine (DOB) =	2.5 kg'';

and under the heading relating to Schedule III Substances (except Ketamine), by striking ''1 unit of a Schedule III Substance'' and inserting ''1 unit of a Schedule III Substance (except Ketamine)'';

and in Note 9, under the heading relating to Hallucinogens, by striking the following:

''2,5-Dimethoxy-4-methylamphetamine (STP, DOM) *	3 mg
MDA	250 mg
MDMA	250 mg
Mescaline	500 mg
PCP *	5 mg'';

and inserting the following:

''2,5-Dimethoxy-4-methylamphetamine (STP, DOM) *	3 mg
3,4-Methylenedioxyamphetamine (MDA)	250 mg
3,4-Methylenedioxymethamphetamine (MDMA)	250 mg
Mescaline	500 mg
Phencyclidine (PCP) *	5 mg''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by striking ''Section 6453 of the Anti-Drug Abuse Act of 1988'' and inserting ''section 6453 of Public Law 100–690''.

The Commentary to § 2D1.2 captioned ''Background'' is amended by striking ''Section 6454 of the Anti-Drug Abuse Act of 1988'' and inserting ''section 6454 of Public Law 100–690''.

The Commentary to § 2D1.5 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Inapplicability of Chapter Three Adjustment.*—'';

in Note 2 by inserting at the beginning the following new heading: ''*Upward Departure Provision.*—'';

in Note 3 by inserting at the beginning the following new heading: '' *'Continuing Series of Violations'.*—'';

and in Note 4 by inserting at the beginning the following new heading: ''*Multiple Counts.*—''.

The Commentary to § 2D1.5 captioned ''Background'' is amended by striking ''Title 21 U.S.C. 848'' and inserting ''Section 848 of title 21, United States Code,''.

Section 2E2.1(b)(2) is amended by striking ''subdivisions'' both places such term appears and inserting ''subparagraphs''; and by striking ''the combined increase from (1) and (2)'' and inserting ''the combined increase from application of paragraphs (1) and (2)''.

The Commentary to § 2E2.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Definitions.*—'';

and in Note 2 by inserting at the beginning the following new heading: ''*Interpretation of Specific Offense Characteristics.*—''.

Section 2E3.1(a)(1) is amended by striking ''subdivision'' and inserting ''paragraph''.

The Commentary to § 2E3.1 captioned ''Application Notes'' is amended in Note 1 by striking ''§ 2156(g)'' and inserting ''§ 2156(f)''.

Section 2H2.1(a)(2) is amended by striking ''in (3)'' and inserting ''in paragraph (3)''.

The Commentary to § 2H2.1 captioned ''Application Note'' is amended in Note 1 by inserting at the beginning the following new heading: ''*Upward Departure Provision.*—''.

Section 2K1.4(b)(2) is amended by striking ''under (a)(4)'' and inserting ''under subsection (a)(4)''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended in Note 1 by striking ''United State Code'' both places such term appears and inserting ''United States Code''.

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended—

in Note 1 by striking ''authorized Federal official'' and inserting ''authorized federal official'';

and in Note 4(B)(vi) by striking ''subdivisions'' and inserting ''clauses''.

Section 3B1.1(c) is amended by striking ''in (a) or (b)'' and inserting ''in subsection (a) or (b)''.

The Commentary to § 3B1.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Definition of 'Participant'.*—'';

in Note 2 by inserting at the beginning the following new heading: ''*Organizer, Leader, Manager, or Supervisor of One or More Participants.*—'';

in Note 3 by inserting at the beginning the following new heading: '' *'Otherwise Extensive'.*—'';

and in Note 4 by inserting at the beginning the following new heading: ''*Factors to Consider.*—''; and by striking ''decision making'' and inserting ''decision-making''.

The Commentary to § 3D1.1 captioned ''Application Notes'' is amended in Note 2 by inserting at the beginning the following new heading: ''*Application of Subsection (b).*—''.

The Commentary to § 3D1.1 captioned ''Background'' is amended by striking ''Chapter Four, Part B (Career Offenders and Criminal Livelihood)'' and inserting ''Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders)''.

The Commentary to § 3D1.5 is amended by striking ''Chapter Four, Part B (Career Offenders and Criminal Livelihood)'' and inserting ''Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders)''.

Section 4A1.1(b) is amended by striking ''in (a)'' and inserting ''in subsection (a)''.

Section 4A1.1(c) is amended by striking ''in (a) or (b)'' and inserting ''in subsection (a) or (b)''.

Section 4A1.1(d) is amended by striking ''under (a), (b), or (c)'' and inserting ''under subsection (a), (b), or (c)''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended—

in Note 1, in the heading, by striking ''*§ 4A1.1(a).*'' and inserting ''*§ 4A1.1(a).*—'';

in Note 2, in the heading, by striking ''*§ 4A1.1(b).*'' and inserting ''*§ 4A1.1(b).*—'';

in Note 3, in the heading, by striking ''*§ 4A1.1(c).*'' and inserting ''*§ 4A1.1(c).*—'';

in Note 4, in the heading, by striking ''*§ 4A1.1(d).*'' and inserting ''*§ 4A1.1(d).*—'';

and in Note 5, in the heading, by striking ''*§ 4A1.1(e).*'' and inserting ''*§ 4A1.1(e).*—''.

Section 4A1.2(a)(2) is amended by striking ''by (A) or (B)'' and inserting ''by subparagraph (A) or (B)''.

Section 4A1.2(d)(2)(B) is amended by striking ''in (A)'' and inserting ''in subparagraph (A)''.

Section 4C1.1(a) is amended—

in paragraph (9) by striking ''and'';

by striking paragraph (10) as follows:

''(10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848;'';

and by inserting at the end the following new paragraphs (10) and (11):

''(10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role); and

(11) the defendant was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848;''.

Section 5E1.2(c)(2) is amended by striking ''in (4)'' and inserting ''in paragraph (4)''.

Section 5F1.6 is amended by striking ''Federal'' and inserting ''federal''.

The Commentary to 5F1.6 captioned ''Application Note'' is amended in Note 1 by inserting at the beginning the following new heading: ''*Definition of 'Federal Benefit'.*—''.

The Commentary to § 5G1.2 captioned ''Application Notes'' is amended—

in Note 1 by striking ''*See* Note 3'' and inserting ''*See* Application Note 3'';

in Note 2(A) by striking ''subdivision'' and inserting ''subparagraph'';

in Note 4(B)(i) by striking ''a drug trafficking offense (5 year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20 year statutory maximum)'' and inserting ''a drug trafficking offense (5-year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20-year statutory maximum)'';

in Note 4(B)(ii) by striking ''one count of 18 U.S.C. 924(c) (5 year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20 year statutory maximum)'' and inserting ''one count of 18 U.S.C. 924(c) (5-year mandatory minimum), and one count of violating 21 U.S.C. 841(b)(1)(C) (20-year statutory maximum)'';

and in Note 4(B)(iii) by striking the following:

''The defendant is convicted of two counts of 18 U.S.C. 924(c) (5 year mandatory minimum on first count, 25 year mandatory minimum on second count) and one count of violating 18 U.S.C. 113(a)(3) (10 year statutory maximum). Applying § 4B1.1(c), the court determines that a sentence of 460 months is appropriate (applicable guideline range of 460–485 months). The court then imposes (I) a sentence of 60 months on the first 18 U.S.C. 924(c) count; (II) a sentence of 300 months on the second 18 U.S.C. 924(c) count; and (III) a sentence of 100 months on the 18 U.S.C. 113(a)(3) count. The sentence on each count is imposed to run consecutively to the other counts.'';

and inserting the following:

''The defendant is convicted of two counts of 18 U.S.C. 924(c) (5-year mandatory minimum on each count) and one count of violating 18 U.S.C. 113(a)(3) (10-year statutory maximum). Applying § 4B1.1(c), the court determines that a sentence of 262 months is appropriate (applicable guideline range of 262–327 months). The court then imposes (I) a sentence of 82 months on the first 18 U.S.C. 924(c) count; (II) a sentence of 60 months on the second 18 U.S.C. 924(c) count; and (III) a sentence of 120 months on the 18 U.S.C. 113(a)(3) count. The sentence on each count is imposed to run consecutively to the other counts.''.

The Commentary to § 5K1.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting at the beginning the following new heading: ''*Sentence Below Statutorily Required Minimum Sentence.*—'';

in Note 2 by inserting at the beginning the following new heading: ''*Interaction with Acceptance of Responsibility Reduction.*—'';

and in Note 3 by inserting at the beginning the following new heading: ''*Government's Evaluation of Extent of Defendant's Assistance.*—''.

The Commentary to § 5K1.1 captioned ''Background'' is amended by striking ''*in camera*'' and inserting ''in camera''.

Section 5K2.0(e) is amended by striking ''*in camera*'' and inserting ''in camera''.

The Commentary to § 5K2.0 captioned ''Application Notes'' is amended in Note 3(C) by striking ''subdivision'' and inserting ''subparagraph''.

Section 6A1.5 is amended by striking ''Federal'' and inserting ''federal''.

The Commentary to § 8B2.1 captioned ''Application Notes'' is amended in Note 4(A) by striking ''any Federal, State,'' and inserting ''any federal, state,''.

Reason for Amendment: This amendment makes technical, stylistic, and other non-substantive changes to the *Guidelines Manual.*

The amendment makes technical and conforming changes in response to the recent promulgation of § 4C1.1 (Adjustment for Certain Zero-Point Offenders), which provides a 2-level decrease for certain defendants who have zero criminal history points. The decrease applies only if none of the exclusionary criteria set forth in subsection (a) applies. Currently, the exclusionary criteria include subsection (a)(10), requiring that ''the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848.'' Since promulgation of § 4C1.1, several stakeholders have questioned whether either condition in subsection (a)(10) is disqualifying or whether only the combination of both conditions is disqualifying. The Commission intended § 4C1.1(a)(10) to track the safety valve criteria at 18 U.S.C. 3553(f)(4), such that defendants are ineligible for safety valve relief if they either have an aggravating role or engaged in a continuing criminal enterprise. It is not required to demonstrate both. *See, e.g., United States* v. *Bazel,* 80 F.3d 1140, 1143 (6th Cir. 1996); *United States* v. *Draheim,* 958 F.3d 651, 660 (7th Cir. 2020). To clarify the Commission's intention that a defendant is ineligible for the adjustment if the defendant meets either of the disqualifying conditions in the provision, the amendment makes technical changes to § 4C1.1 to divide subsection (a)(10) into two separate provisions (subsections (a)(10) and (a)(11)).

The amendment also adds references to Chapter Four, Part C (Adjustment for Certain Zero-Point Offenders) in § 1B1.1 (Application Instructions), the Introductory Commentary to Chapter Two (Offense Conduct), and the Commentary to §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 3D1.5 (Determining the Total Punishment). These guidelines and commentaries refer to the order in which the provisions of the *Guidelines Manual* should be applied.

Finally, the amendment makes technical and clerical changes to—

- the Commentary to § 1B1.1 (Application Instructions), to add headings to some application notes, provide stylistic consistency in how subdivisions are designated, and correct a typographical error;
- § 2B1.1 (Theft, Property Destruction, and Fraud), to provide consistency in the use of capitalization and how subdivisions are designated, and to correct a reference to the term ''equity security'';
- the Commentary to § 2B1.6 (Aggravated Identity Theft), to correct some typographical errors and provide stylistic consistency in how subdivisions are designated;
- § 2B3.1 (Robbery), to provide stylistic consistency in how subdivisions are designated and add headings to the application notes in the Commentary;
- § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), to provide stylistic consistency in how subdivisions are designated and add headings to some application notes in the Commentary;
- § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property), to provide consistency in the use of capitalization;
- § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking

(Including Possession with Intent to Commit These Offenses)), to provide stylistic consistency in how subdivisions are designated, make clerical changes to some controlled substance references in the Drug Conversion Tables at Application Note 8(D) and the Typical Weight Per Unit Table at Application Note 9, and correct a reference to a statute in the Background Commentary;

- the Background Commentary to § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), to correct a reference to a statute;
- the Commentary to § 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy), to add headings to application notes and correct a reference to a statutory provision;
- § 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means), to provide stylistic consistency in how subdivisions are designated and add headings to the application notes in the Commentary;
- § 2E3.1 (Gambling Offenses; Animal Fighting Offenses), to provide stylistic consistency in how subdivisions are designated and correct a reference to a statutory provision in the Commentary;
- § 2H2.1 (Obstructing an Election or Registration), to provide stylistic consistency in how subdivisions are designated and add a heading to the application note in the Commentary;
- § 2K1.4 (Arson; Property Damage by Use of Explosives), to provide stylistic consistency in how subdivisions are designated;
- the Commentary to § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes), to correct typographical errors;
- the Commentary to § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), to provide consistency in the use of capitalization and how subdivisions are designated;
- § 3B1.1 (Aggravating Role), to provide stylistic consistency in how subdivisions are designated, add headings to the application notes in the Commentary, and correct a typographical error;
- the Commentary to § 3D1.1 (Procedure for Determining Offense Level on Multiple Counts), to add a heading to an application note;
- § 4A1.1 (Criminal History Category), to provide stylistic consistency in how subdivisions are designated and correct the headings of the application notes in the Commentary;
- § 4A1.2 (Definitions and Instructions for Computing Criminal History), to provide stylistic consistency in how subdivisions are designated;
- the Commentary to § 5G1.2 (Sentencing on Multiple Counts of Conviction), to provide stylistic consistency in how subdivisions are designated, fix typographical errors in the Commentary, and update an example that references 18 U.S.C. 924(c) (which was amended by the First Step Act of 2018, Public Law 115–391 (Dec. 21, 2018) to limit the ''stacking'' of certain mandatory minimum penalties imposed under 18 U.S.C. 924(c) for multiple offenses that involve using, carrying, possessing, brandishing, or discharging a firearm in furtherance of a crime of violence or drug trafficking offense);
- the Commentary to § 5K1.1 (Substantial Assistance to Authorities (Policy Statement)), to add headings to application notes and correct a typographical error;
- § 5K2.0 (Grounds for Departure (Policy Statement)), to correct a typographical error and provide stylistic consistency in how subdivisions are designated;
- § 5E1.2 (Fines for Individual Defendants), to provide stylistic consistency in how subdivisions are designated;
- § 5F1.6 (Denial of Federal Benefits to Drug Traffickers and Possessors), to provide consistency in the use of capitalization and add a heading to an application note in the Commentary;
- § 6A1.5 (Crime Victims' Rights (Policy Statement)), to provide consistency in the use of capitalization; and
- the Commentary to § 8B2.1 (Effective Compliance and Ethics Program), to provide consistency in the use of capitalization.

(2) Request for Comment on Possible Retroactive Application of Amendment 1, Part A of Amendment 3, Part B of Amendment 3, and Part D of Amendment 5

On April 30, 2024, the Commission submitted to the Congress amendments to the sentencing guidelines, policy statements, official commentary, and Statutory Index, which become effective on November 1, 2024, unless Congress acts to the contrary. Such amendments and the reason for each amendment are included in this notice.

Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'' Pursuant to 28 U.S.C. 994(u), ''[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.'' The Commission lists in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2).

The following amendments may have the effect of lowering guideline ranges: Amendment 1 (relating to acquitted conduct); Part A of Amendment 3 (relating to § 2K2.1(b)(4)(B) enhancement); Part B of Amendment 3 (relating to the interaction between § 2K2.4 and § 3D1.2(c)); and Part D of Amendment 5 (relating to enhanced penalties for drug offenders). The Commission intends to consider whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any or all of these amendments should be included in § 1B1.10(d) as an amendment that may be applied retroactively to previously sentenced defendants. In considering whether to do so, the Commission will consider, among other things, a retroactivity impact analysis and public comment. Accordingly, the Commission seeks public comment on whether it should make any or all of these amendments available for retroactive application. To help inform public comment, the retroactivity impact analyses of these amendments will be made available to the public as soon as practicable.

The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable,

public comment should address each of these factors.

The Commission seeks comment on whether it should list in § 1B1.10(d) as changes that may be applied retroactively to previously sentenced defendants any or all of the following amendments: Amendment 1 (relating to acquitted conduct); Part A of Amendment 3 (relating to § 2K2.1(b)(4)(B) enhancement); Part B of Amendment 3 (relating to the interaction between § 2K2.4 and § 3D1.2(c)); and Part D of Amendment 5 (relating to enhanced penalties for drug offenders). For each of these amendments, the Commission requests comment on whether any such amendment should be listed in § 1B1.10(d) as an amendment that may be applied retroactively.

If the Commission does list any or all of these amendments in § 1B1.10(d) as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or limitations regarding the circumstances in which and the amount by which sentences may be reduced?

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Part II

Environmental Protection Agency

40 CFR Parts 51 and 52
Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2022–0381; FRL–9249–01–OAR]

RIN 2060–AV62

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing revisions to the preconstruction permitting regulations that apply to modifications at existing major stationary sources in the New Source Review (NSR) program under the Clean Air Act (CAA or Act). The proposed revisions include revising the definition of ''project'' in the NSR regulations, adding additional recordkeeping and reporting requirements applicable to minor modifications at existing major stationary sources, and proposing to require that decreases accounted for in the Step 1 significant emissions increase calculation be enforceable.

DATES: *Comments:* Comments must be received on or before July 2, 2024.

Public hearing: If anyone contacts the EPA requesting a public hearing by May 8, 2024, the EPA will hold a virtual public hearing. *See* **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES:

Comments: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0381, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov/ (our preferred method). Follow the online instructions for submitting comments.

- *Email:a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0381 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0381.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0381, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/courier delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2022–0381 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* In addition, the EPA has a website for NSR rulemakings at: *https://www.epa.gov/nsr.* The website includes the EPA's proposed and final NSR regulations, as well as guidance documents and technical information related to preconstruction permitting.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Keller, Air Quality Policy Division, Office of Air Quality Planning and Standards (C539–04), Environmental Protection Agency, Post Office Box 12055, Research Triangle Park, NC 27711; telephone number: (919) 541–2065; email address: *keller.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. To request a virtual public hearing, contact Ms. Pamela Long at (919) 541– 0641 or by email at *long.pam@epa.gov.* If requested, the virtual hearing will be held on May 20, 2024. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/nsr.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing, if a hearing is requested. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/nsr* or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov.* The last day to pre-register to speak at the hearing will be May 16, 2024. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/nsr.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *long.pam@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but generally will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/nsr.* While the EPA expects the hearing to go forward as set forth earlier, please monitor our website or contact Ms. Pamela Long at (919) 541–0641 or by email at *long.pam@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates. If you require the services of a translator or special accommodations such as audio description, please preregister for the hearing with Ms. Pamela Long and describe your needs by May 13, 2024. The EPA may not be able to arrange special accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2022–0381. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2022–

0381. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed later.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in Instructions. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, *oaqpscbi@epa.gov,* and should include clear CBI markings as described later. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2023–0401. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BACT Best Available Control Technology
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
EUSGU Electric Utility Steam Generating Unit
FR Federal Register
LAER Lowest Achievable Emissions Rate
NSR New Source Review
NNSR Nonattainment New Source Review
PEA Project Emissions Accounting
PSD Prevention of Significant Deterioration
PTE Potential to Emit
RP Reasonable Possibility in Recordkeeping and Reporting
SER Significant Emissions Rate
SIP State Implementation Plan

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Executive Summary

The EPA is proposing several revisions to its NSR preconstruction permitting regulations intended to improve implementation and strengthen enforceability of the NSR program provisions established in a 2020 rulemaking titled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting rule'' (''project emissions accounting'' or ''2020 PEA rule'').[1] The revisions proposed in this document include (1) revisions to the definition of the term ''project'' to include criteria for determining the scope of a project that may be subject to the major NSR regulations; (2) revisions to the monitoring, recordkeeping and reporting provisions in the NSR regulations to improve compliance with, and enforcement of, the NSR applicability process; and (3) revisions to require that emissions decreases included in the significant emissions increase determination of the NSR applicability process be enforceable.

The NSR regulations establish a two-step process for determining when a modification to an existing major stationary source is subject to major NSR requirements. Under Step 1, prior to beginning construction, the source owner or operator first assesses whether a project would result in a significant emissions increase. Step 2 involves determining whether the project would also result in a significant net emissions increase from the major stationary source. Under these regulations, a project is a major modification that requires an NSR permit if a project results in both a significant emissions increase and a significant net emissions increase. The activities included in a ''project'' define the scope of the analysis under Step 1 of the NSR applicability process. In this action, the EPA is proposing to define the term ''project'' with greater specificity to ensure appropriate and consistent application of that term. The EPA is also proposing to improve accountability and compliance with this process by requiring that decreases in emissions associated with a project that are included in the significant emissions increase determination be enforceable.

Also, to enhance owner/operator accountability and facilitate compliance with the NSR applicability requirements, the EPA is proposing revisions to the recordkeeping and reporting requirements in the NSR regulations' ''reasonable possibility'' provisions that apply to projects at major stationary sources that are evaluated using the actual-to-projected-actual applicability test. The ''reasonable possibility'' provisions apply in those circumstances where the owner/operator determines that the project does not qualify as a major modification but where there is a ''reasonable possibility,'' as that term is defined in the regulations, that the project may nonetheless result in a significant emissions increase. The revisions to the reasonable possibility provisions in this proposal comport with the intent of the recordkeeping and reporting requirements as initially promulgated by the EPA in 2002 to improve compliance with the NSR applicability process by owners or operators that rely on the actual-to-projected-actual applicability test when determining, before beginning actual construction, that a project does not constitute a major modification.[2] The EPA is also proposing, in light of the 2020 codification of project emissions accounting, to expand the applicability of the reasonable possibility provisions to all source owners or operators that use project emissions accounting to take credit for a decrease in emissions under the significant emissions increase determination. The EPA is proposing to require that all owners or operators of major stationary sources subject to the ''reasonable possibility'' recordkeeping and reporting requirements submit pre-project records to the reviewing authority and is proposing to specify the information these pre-project records must include.

B. Does this action apply to me?

Entities potentially affected directly by this action include air pollution emissions sources in all industry categories. Entities potentially affected by this action also include state, local and tribal air pollution control agencies responsible for issuing preconstruction permits pursuant to the major NSR programs.

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

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. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/nsr.*

II. Background

The NSR program is a CAA program that requires certain stationary sources of air pollution to obtain permits prior to construction. The major NSR program applies to new construction and modifications of existing sources that emit ''regulated NSR pollutants'' over certain thresholds. New or modifying sources that emit regulated NSR pollutants in levels under those thresholds may be subject to minor NSR requirements or may be excluded from NSR altogether.

In November 2020, the EPA promulgated the ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting''

[1] Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 85 FR 74890 (November 24, 2020).

[2] *See* Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects, 67 FR 80185 (December 31, 2002) (establishing a new procedure for determining ''baseline actual emissions'' and supplementing the existing actual-to-potential applicability test with an actual-to-projected-actual applicability test for determining if a physical or operational change at an existing source will result in an emissions increase).

(PEA) rule to clarify the accounting procedures that apply when determining whether a physical change or a change in the method of operation (*i.e.,* a project) at a major stationary source would result in a significant emissions increase under the major NSR preconstruction permitting programs.[3] The 2020 PEA rule clarified that both increases and decreases in emissions resulting from a proposed project shall be considered in Step 1 of the NSR major modification applicability test.[4] The EPA initiated this proposed rulemaking based on concerns raised by stakeholders on the implementation of the NSR program following promulgation of the 2020 PEA rule.

In developing this proposed rulemaking, the EPA has considered a petition for reconsideration it received on the 2020 PEA rule, the comments received on that rule's proposal, and the Agency's own experience in analyzing and enforcing the applicable regulatory provisions.[5] The petition for reconsideration described three primary concerns with the PEA rule.[6] These concerns are that (1) the final rule fails to ensure that offsetting emission decreases used to show that a ''project'' will not cause a significant emission increase in Step 1 of the NSR applicability analysis result from the change being evaluated; (2) the final rule allows a source to avoid NSR by offsetting emission increases resulting from a change with non-contemporaneous emission decreases; and (3) that the EPA has not ensured that project emission decreases will occur and will be maintained. The EPA denied the petition for reconsideration on the grounds that the petition did not make the showing required by CAA section 307(d)(7)(b).[7] However, the EPA agreed that the concerns raised in the petition warranted further consideration by the EPA, and the agency therefore initiated this rulemaking action. The EPA has considered these concerns as well as comments received on the proposed PEA rule in the development of this action.

A. New Source Review Permitting Program

The NSR permitting program applies to sources located in an area where the National Ambient Air Quality Standards (NAAQS) have been exceeded (nonattainment area), areas where the NAAQS have not been exceeded (attainment), and areas that are unclassifiable. However, the demonstration that must be made to obtain a permit and the conditions of such permits are different for nonattainment and attainment/unclassifiable areas. Thus, the pollutant(s) at issue and the air quality designation of the area where the facility is located or proposed to be built determine the specific permitting requirements.

Major sources locating, or located, in an area that is in attainment or unclassifiable for a particular regulated NSR pollutant must obtain a Prevention of Significant Deterioration (PSD) permit for that pollutant prior to constructing or undergoing a major modification at the source.[8] These PSD permits may also cover pollutants for which there are no NAAQS.[9] Major NSR permits for sources that are in an area designated nonattainment for a particular regulated NSR pollutant, and which emit that pollutant in excess of the specified nonattainment threshold for that pollutant, are referred to as nonattainment NSR (NNSR) permits. The CAA requires that sources subject to PSD meet emission limits based on Best Available Control Technology (BACT) as specified by CAA section 165(a)(4), and that sources subject to NNSR meet limits based on Lowest Achievable Emissions Rate (LAER) pursuant to CAA section 173(a)(2). Other requirements to obtain a major NSR permit vary depending on whether the permit is a PSD or NNSR permit.

A stationary source is subject to major NSR requirements if (1) a new stationary source is proposed with a potential to emit (PTE) a regulated NSR pollutant at levels that will meet or exceed statutory emissions thresholds,[10] such that it constitutes a ''major stationary source,'' or (2) an existing major stationary source proposes a project that constitutes a ''major modification,'' as discussed further in the following subsection.[11]

Projects that do not trigger major NSR requirements may still be reviewed under SIP-approved preconstruction permit programs, known as minor NSR programs, to ensure that the NAAQS are protected. Under CAA section 110, the CAA Parts C and D permitting programs, of which NSR is a component, are part of a broader requirement to regulate the

[3] Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 85 FR 74890 (November 24, 2020).

[4] While the EPA determined that the revisions to the regulations at 40 CFR 52.21 adopted in the 2020 PEA rule apply to the EPA and reviewing authorities that have been delegated federal authority from the EPA to issue major NSR permits on behalf of the EPA, for state and local air agencies that implement the NSR program through EPA-approved SIPs, section 116 of the CAA allows these states and local air agencies to adopt more stringent SIP emission control requirements than required by the EPA's regulations. Therefore, reviewing authorities that do not allow for PEA have applicability requirements that are at least as stringent as those required by the Act or the EPA's implementing regulations and, therefore, are not required to submit SIP revisions or stringency determinations to the EPA incorporating PEA. 85 FR 74904.

[5] Letter from Sanjay Narayan et al., to Acting Administrator Jane Nishida, ''Re: Petition for Reconsideration of 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting,' 85 FR 74,890 (November 24, 2020), Docket ID No. EPA–HQ–OAR–2018–0048 and for Withdrawal of Guidance Memorandum titled 'Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program' (March 13, 2018) (OAQPS–2020–683 and OAQPS–2020–223),'' January 22, 2021, (''Petition for Reconsideration''), available at *https://www.epa.gov/system/files/documents/2021-10/final-nsr-accounting-rule-reconsideration-petition-1_22_21.pdf.*

[6] The petition also discussed a 2018 Memorandum from the EPA Administrator E. Scott Pruitt, to Regional Administrators, titled, ''Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,'' March 13, 2018 (''March 2018 Memorandum'') available at: *https://www.epa.gov/sites/default/files/2018-03/documents/nsr_memo_03-13-2018.pdf.* The March 2018 Memorandum explained that ''the EPA interpreted the current NSR regulations as providing that emissions decreases as well as increases are to be considered in Step 1 of the NSR applicability process, where those decreases and increases are part of a single project.'' More specifically, in the March 2018 Memorandum, the EPA interpreted the pre-2020 major NSR regulations to mean that emissions increases and decreases could be considered in Step 1 for projects that involve multiple types of emissions units in the same manner as they are considered for projects that only involve new or only involve existing emissions units.

[7] Denial of Petition for Reconsideration and Administrative Stay: ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting,'' 86 FR 57585 (October 18, 2021).

[8] In this action, the EPA refers to ''source'' as shorthand for ''source owner/operator.''

[9] ''Regulated NSR pollutant'' is defined at 40 CFR 52.21(b)(50). A ''regulated NSR pollutant'' includes any pollutant for which a NAAQS has been promulgated and other pollutants regulated under the CAA. These other pollutants include fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds, including others. *See, e.g.,* 40 CFR 52.21(b)(23). For NNSR, regulated NSR pollutants include only the NAAQS, also known as criteria pollutants, and the precursors to those pollutants for which the area is designated nonattainment. *See* 40 CFR 51.165(a)(1)(xxxvii).

[10] For PSD, the statute uses the term ''major emitting facility,'' which is defined as a stationary source that emits, or has a PTE of, at least 100 tons per year (tpy) if the source is in one of 28 listed source categories—or at least 250 tpy if the source is not—of ''any air pollutant.'' CAA section 169(1). For NNSR, the emissions threshold for a major stationary source is 100 tpy, although lower thresholds may apply depending on the degree of the nonattainment problem and the pollutant.

[11] A major stationary source includes any physical change that would occur at a stationary source not otherwise qualifying under 40 CFR 52.21(b)(1) as a major stationary source, if the change would constitute a major stationary source by itself. *See, e.g.,* 40 CFR 52.21(b)(1)(i)(*c*).

construction and modification of stationary sources.[12] The minor NSR program, includes permitting requirements for modifications at stationary sources that are not major modifications (*e.g.,* minor modifications) and those requirements exist to ensure that changes at a stationary source that affect emissions, but are not subject to major source permitting, do not cause or contribute to NAAQS violations.[13]

B. Major Modifications Under the NSR Program

The EPA's regulations define ''major modification'' as any physical change or change in the method of operation of an existing major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.[14] The NSR regulations define ''project'' as a physical change in, or change in the method of operation of, an existing major stationary source.[15] Following from these definitions, the EPA's current implementing regulations establish a two-step process for determining major NSR applicability: a project must result in both (1) a significant emissions increase (referred to as ''Step 1''); and (2) a significant net emissions increase at the stationary source that takes into account emissions increases and emissions decreases attributable to other projects undertaken at the stationary source within a contemporaneous timeframe (referred to as ''Step 2,'' or ''contemporaneous netting''). An emissions increase of a regulated NSR pollutant is considered significant if the increase would be equal to or greater than any of the pollutant-specific Significant Emissions Rates (SERs) listed under the definition of ''significant'' in the applicable PSD or NNSR regulations.[16] For those regulated NSR pollutants not specifically listed, *any* increase in emissions is significant for purposes of the PSD program.[17] As codified in the 2002 NSR Reform Rule,[18] Step 1 considers the effect of the project alone, and Step 2 considers the effect of the project and any *other* emissions changes at the major stationary source that are contemporaneous to the project (*e.g.,* generally within a 5-year period plus construction) and creditable.

The procedure for calculating whether a proposed project would result in a significant emissions increase in Step 1 depends upon the type of emissions unit(s) to be included in the proposed project, which can be new, existing, or a combination of new and existing units (*i.e.,* multiple types of emissions units).[19] A ''new emissions unit'' is defined as ''any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emission unit first operated.'' [20] If a source undertakes a project that involves constructing only one or more new emissions units, it applies the actual-to-potential (ATP) test, under which it determines whether the sum of the difference between the PTE of a regulated NSR pollutant from each new emissions unit following completion of the project and the baseline actual emissions equals or exceeds the significant amount for that pollutant.[21]

If the source undertakes a project that involves only changes to one or more existing emissions units, the source may use the actual-to-projected-actual (ATPA) test or the ATP test to determine the resulting emissions increase.[22] Under the ATPA test, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.[23] If a source undertakes a project that includes both new and existing emissions units, it must use the ATP test to determine the emissions change for each new emission unit while the source can choose to use either the ATPA test or the ATP test for each existing unit.

The ''projected actual emissions'' of a unit is the maximum annual rate, in tpy, the existing emissions unit is projected to emit a regulated NSR pollutant in the future.[24] PTE is defined as a unit's maximum capacity to emit a pollutant under its physical and operational design.[25] The baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of a new unit is zero; and thereafter, for all other purposes, equals the unit's PTE.[26] Baseline actual emissions for existing units are determined based on the rate of actual emissions (in tpy) a unit has emitted in the past.[27]

If a source determines that a significant emissions increase would occur in Step 1, then the source may elect to perform the Step 2 contemporaneous netting analysis to determine if a significant net emissions increase would not occur at the major source and thus conclude the project does not trigger major NSR permitting, or in the alternative, the source may elect to forgo Step 2 and assume PSD or

[12] Section 110(a)(2)(C) of the CAA requires that each SIP ''include a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.'' *See* 40 CFR 51.160–164.

[13] A minor source that undergoes a physical change that would itself be considered major is subject to major source requirements. 40 CFR 52.21(b)(1)(i)(*c*) (''Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section as a major stationary source, if the change would constitute a major stationary source by itself'').

[14] 40 CFR 52.21(b)(2).

[15] 40 CFR 52.21(b)(52).

[16] 40 CFR 52.21(b)(23) defines when emissions of listed pollutants are considered significant under the federal PSD program. These pollutants include, but are not limited to, the following: pollutants for which a NAAQS has been promulgated, fluorides, and sulfuric acid mist. 40 CFR 51.165(a)(1)(x) defines when emissions of listed pollutants are considered significant under the federal NNSR program.

[17] 40 CFR 52.21(b)(23)(ii). Under NNSR, regulated NSR pollutants include only pollutants for which NAAQS have been established and precursors to those pollutants for which the area is designated nonattainment. *See* 40 CFR 51.165(a)(1)(xxxvii). The SERs for all these pollutants are enumerated under 40 CFR 51.165(a)(1)(x)(A) and part 51, appendix S.II.A.10; additionally, per 40 CFR 52.21(b)(23)(iii), *significant* also means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 μg/m^3 (24-hour average).

[18] In 2002, the EPA issued a final rule that revised the regulations governing the major NSR program. The agency refers generally to this rule as the ''NSR Reform Rule.'' As part of the NSR Reform Rule, the EPA revised the NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and plan for future investments in pollution control and prevention technologies. 67 FR 80185 (December 31, 2002).

[19] 40 CFR 52.21(b)(7). There are two types of emissions units, new and existing. A ''replacement unit'' as defined in the NSR regulations is an existing emissions unit.

[20] 40 CFR 52.21(b)(7)(i).

[21] The ''significant amount,'' also known as the ''significant emissions rate'' for regulated NSR pollutants, can be found at 40 CFR 52.21(b)(23).

[22] 40 CFR 52.21(b)(41)(ii)(*d*). A source can also opt to use the actual-to-potential test for existing units.

[23] 40 CFR 52.21(a)(2)(iv)(*c*) and 40 CFR 52.21(a)(2)(iv)(*f*).

[24] The ''projected actual emissions'' of a unit is ''the maximum annual rate, in tons per year, at which an existing emission unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.'' 40 CFR 52.21(b)(41)(i).

[25] 40 CFR 52.21(b)(4).

[26] 40 CFR 52.21(b)(48)(iii).

[27] 40 CFR 52.21(b)(48).

NNSR is triggered.[28] Under Step 2, the source accounts for all other increases and decreases in actual emissions that are contemporaneous to the project and are creditable.[29] An increase or decrease in actual emissions is contemporaneous if it occurs between 5 years before construction on the particular change commences and the date that the increase from the particular change occurs.[30] To be creditable, an increase or decrease cannot have been previously relied upon in the issuance of any NSR permit by the reviewing authority; [31] and an increase in actual emissions is only creditable to the extent that the new level of actual emissions exceeds the old level.[32] Further, a decrease may be accounted for in Step 2 only to the extent that (1) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; (2) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and (3) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.[33] In addition, in nonattainment areas, emissions reductions are only creditable if they have not been relied upon for demonstrating attainment or reasonable further progress.[34]

A project that results in a significant emissions increase in Step 1 and a significant net emissions increase under Step 2 of the NSR major modification applicability test is considered a major modification and requires a major NSR permit.

C. Project Emissions Accounting

In November 2020, the EPA promulgated the PEA rule [35] in which the EPA finalized clarifications to the Step 1 provisions of the major modification applicability test (*e.g.,* 40 CFR 52.21(a)(2)(iv)).[36] The revised language clarified that both emissions increases and decreases from projects may be considered in Step 1 of the NSR major modification applicability test, regardless of the types of emissions units implicated in that project.

The PEA rulemaking was preceded by a March 2018 memorandum from the EPA Administrator titled ''Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program.'' [37] In that memorandum, ''the EPA interpreted the . . . NSR regulations [pre-2020 PEA rule] as providing that emissions decreases as well as increases are to be considered in Step 1 of the NSR applicability process, where those decreases and increases are part of a single project.'' [38]

The 2020 PEA rule revised the NSR regulations to make the permissibility of this approach clearer by changing the term ''sum of the emissions increase'' to ''sum of the difference'' in the context of the hybrid test that applies to projects involving multiple types of emissions units. That rule also added a provision to specify that the term ''sum of the difference,'' as used for all types of units (new, existing and the combination of new and existing units), shall include both increases and decreases in emissions as calculated in accordance with those subparagraphs.[39]

D. Project Aggregation

In the 2020 PEA rule, the EPA also concluded that it is appropriate to apply its ''project aggregation'' interpretation and policy set forth in a 2018 final action on project aggregation [40] in Step 1 of the NSR major modification applicability test for all types of projects, including those that involve both increases and decreases in emissions.[41] The 2020 PEA rule specified that application of the 2018 final action on project aggregation may assist sources and/or reviewing authorities when determining the scope of a project in order to avoid the over-aggregation or under-aggregation of activities that could subsequently be considered an effort to circumvent the NSR program. The 2020 PEA rule did not, however, include any regulatory text to require application of that policy to determine the scope of a project.

In the 2018 final action on project aggregation, the EPA explained that determining what constitutes a ''project'' under NSR is a case-by-case decision that is both site-specific and fact-driven. Because there is no predetermined list of activities that should be aggregated for a given industry or industries, the EPA established criteria for determining when nominally separate activities are considered one project under NSR. These criteria included the ''substantially related'' standard and the three-year rebuttable presumption that were contained in the 2009 EPA action titled, ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting'' (''2009 NSR Aggregation Action'').[42] In articulating what substantially related means, the 2018 final action on project aggregation reaffirmed the 2009 NSR Aggregation Action and stated that activities occuring in unrelated portions of a major stationary source (*e.g.,* a plant that makes two separate products and has no equipment shared among the two processing lines) will not be substantially related. The guidance further specified that the test of a substantial relationship is based on the interdependence of the activities, such that substantially related activities are likely to be jointly planned and occur close in time and at components that are functionally interconnected.[43]

The 2009 NSR Aggregation Action also added the following: ''[t]o be 'substantially related,' there should be an apparent interconnection—either technically or economically—between the physical and/or operational changes, or a complementary relationship whereby a change at a plant may exist and operate independently, however its

[28] The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase. 40 CFR 52.21(a)(2)(iv)(*a*).

[29] 40 CFR 52.21(b)(3)(i)(*b*).

[30] 40 CFR 52.21(b)(3)(ii); Permitting authorities can select an alternate contemporaneous period if approved in their Part D SIP or PSD program. *See* 45 FR 53676, 52680 (August 7, 1980).

[31] 40 CFR 52.21(b)(3)(iii)(a).

[32] 40 CFR 52.21(b)(3)(v).

[33] 40 CFR 52.21(b)(3)(i)(*b*); 40 CFR 52.21(b)(3)(iii); 40 CFR 52.21(b)(3)(vi).

[34] 40 CFR 51.165(a)(1)(vi)(A)(*2*); 40 CFR 51.165(a)(1)(vi)(C); 40 CFR 51.165(a)(1)(vi)(E).

[35] Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 85 FR 74890 (November 24, 2020).

[36] The regulations at 40 CFR 52.21 apply to the federal PSD program. The EPA has other NSR regulations including 40 CFR 51.165, 51.166, and appendix S of part 51, that contain analogous provisions. We cite 40 CFR 52.21 in this document as illustrative, but we propose to revise analogous provisions as specified in the regulatory text below. To the extent that there are different provisions that apply to the other regulations, as in, for example, the nonattainment context, that distinction has been noted.

[37] March 2018 Memorandum.

[38] *Id.* at 1.

[39] 40 CFR 52.21(a)(2)(iv)(*g*).

[40] Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Aggregation; Reconsideration, 83 FR 57324 (November 15, 2018) (''the 2018 final action on project aggregation'' or ''the 2018 Project Aggregation Final Action''). This action completed the EPA's process of reconsidering a 2009 action on the topic of ''project aggregation.''

[41] 85 FR 748895.

[42] 74 FR 2376 (January 15, 2009); The EPA stayed the 2009 NSR Aggregation Action in response to a petition for reconsideration it received on the 2009 NSR Aggregation Action and, in 2010, as part of the reconsideration proceeding, sought comment on the 2009 NSR Aggregation Action.

[43] *Id.* at 2378.

benefit is significantly reduced without the other activity.'' [44]

The 2009 NSR Aggregation Action also stated that timing could be a basis for not aggregating separate projects, and it established a rebuttable presumption against aggregating projects that occur three or more years apart. The EPA justified its selection of three years as the presumptive timeframe in part by reasoning that three years ''is long enough to ensure a reasonable likelihood that the presumption of independence will be valid, but is short enough to maintain a useful separation between relevant construction cycles, consistent with industry practice.'' [45] However, the EPA did note that this presumptive timeframe may be rebutted in certain circumstances. For instance, the 2009 NSR Aggregation Action noted that where there is ''evidence that a company intends to undertake a phased capital improvement project'' where the activities ''have a substantial economic relationship,'' this would likely overcome the presumption that those activities should not be aggregated.[46]

The 2009 NSR Project Aggregation Final Action and subsequent 2018 final action on project aggregation were developed to ensure ''that NSR is not circumvented through some artificial separation of activities at Step 1 of the NSR applicability analysis where it would be unreasonable for the source to consider them to be separate projects.'' [47] Given this aim, the 2018 final action on project aggregation affirmed the example provided in the 2009 NSR Aggregation Action that phased capital improvement projects comprised of activities that have a substantial economic relationship between one another may need to overcome the presumption towards aggregation.[48]

In 2018, a different consideration arose from the EPA's effort to make clear that sources can account for decreases at Step 1. Commenters and petitioners on the 2020 PEA rule expressed concern that sources could over-aggregate activities in order to circumvent NSR. In other words, sources may be able to ''avoid NSR by grouping multiple activities into a 'project' and only requiring NSR if the 'project,' taken together, will produce a significant emissions increase.'' [49] This concern is manifest only when some of aggregated activities produce quantifiable emissions decreases that are used to offset emissions increases from other activities, thus increasing the likelihood that the net emissions from the collection of activities would be at levels below the thresholds at which major NSR applies. The EPA proposes to address this concern with revisions to the language defining ''project'' within the NSR regulations, as explained in further detail in section III. of this action.

E. ''*Reasonable Possibility*'' *Recordkeeping and Reporting Provisions*

In 2002, the EPA adopted recordkeeping and reporting requirements to help permitting authorities and stakeholders oversee compliance with NSR requirements at sources that determine a modification does not trigger major NSR requirements. Under those requirements, sources that saw no reasonable possibility that post-change emissions would prove higher than past actual emissions were not required to keep records. In 2005, the D.C. Circuit Court remanded this ''reasonable possibility'' recordkeeping and reporting provision to the EPA, holding that the ''EPA failed to explain how it can ensure NSR compliance without the relevant data'' and directed the EPA ''either to provide an acceptable explanation for its 'reasonable possibility' standard or to devise an appropriately supportive alternative.'' *New York* v. *EPA,* 413 F.3d 3, 35 (D.C. Cir. 2005). The EPA promulgated rules in 2007 to define ''reasonable possibility,'' which the D.C. Circuit Court upheld in a 2020 decision. *New Jersey* v. *EPA,* 989 F.3d 1038 (D.C. Cir. 2021).[50]

In the 2020 PEA rule, the EPA concluded that the provisions at 40 CFR 52.21(r)(6) and other locations in the NSR rules (the ''reasonable possibility'' or ''RP'' provisions) are adequate to ensure sufficient monitoring, recordkeeping and reporting of emissions for projects determined not to trigger major NSR, after considering both emissions increases and decreases from the project in Step 1 of the NSR major modification applicability test.[51] The reasonable possibility provisions apply to projects involving existing emissions units at a major stationary source in circumstances where the owner or operator elects to use projected actual emissions in determining the emissions increase resulting from changes at such unit(s) and where there is a reasonable possibility (as defined in 40 CFR 52.21(r)(6)(vi)) that a project that is not considered a major modification may nevertheless actually result in a significant emissions increase. When the reasonable possibility criteria in 40 CFR 52.21 are triggered,[52] specific pre- and post-project recordkeeping, monitoring, and reporting requirements in paragraph 40 CFR 52.21(r)(6) must be met, depending on the circumstances.

As defined in the regulations, a reasonable possibility exists when the owner or operator calculates the project to result in either: (1) a projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase'' for the regulated NSR pollutant; or (2) a projected actual emissions increase that, added to the amount of emissions excluded, sums to at least 50 percent of the amount that is a ''significant emissions increase'' for the regulated NSR pollutant. For a project for which a reasonable possibility exists only under criterion (2), and not also within the meaning of criterion (1), the RP provisions at

[44] *Id;* The 2009 NSR Aggregation Action was preceded by a 2006 proposal in which the EPA proposed language that ''projects occurring at the same major stationary source that are dependent on each other to be economically or technically viable [should be] . . . considered a single project.'' Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting, 71 FR 54235 (September 14, 2006) (''2006 proposal''). The 2006 proposal sought to clarify policy that had been discussed in EPA guidance documents. *See, e.g.,* ''Applicability of New Source Review Circumvention Guidance to 3M-Maplewood, Minnesota'' (June 17, 1993), *https://www.epa.gov/sites/default/files/2015-07/documents/maplwood.pdf.* The preamble language explained the proposed revisions to the regulatory language by stating that ''if a source or reviewing authority determines that a project is dependent upon another project for its technical or economic viability, the source or reviewing authority must consider the projects to be a single project and must aggregate all of the emissions increases for the individual projects in Step 1 of the major NSR applicability analysis.'' 71 FR 54235, 54245 (September 14, 2006).

[45] *Id.*

[46] *Id.*

[47] 83 FR 57326.

[48] *Id.* at 57327 (citing 74 FR 2380, 2380).

[49] Petition for Reconsideration at 5.

[50] In *New Jersey* v. *EPA,* the D.C. Circuit upheld the EPA's 2007 reasonable possibility rule, stating that the EPA ''offered a rational basis for adopting the 50 percent trigger.'' 989 F.3d 1038, 1051 (D.C. Cir. 2021). The court recognized that in the preamble of the 2007 reasonable possibility rule, the EPA ''strove for a balance between ease of enforcement and avoidance of requirements that would be unnecessary or unduly burdensome on reviewing authorities or the regulated community.'' *Id.* The court also recognized in its ruling that the EPA solicited comment on other percentage increase triggers and that the EPA's ''final rule accounted for variability in projections due to demand growth emissions and thereby addressed the principal objection of commenters, including [the] petitioner[s], to the 50 percent trigger.'' *Id.*

[51] 85 FR 74890, 74895 (November 24, 2020).

[52] As noted earlier, this proposal refences 40 CFR 52.21 as one such place where the applicable regulations may be found, but there are other NSR regulations that contain the same language.

(r)(6)(ii) through (v) do not apply to the project. Among other requirements, the RP provisions at (r)(6)(ii), (vi), and (v) require that the owner or operator of an electric utility steam generating unit (EUSGU) submit a copy of the information recorded under the RP provisions to the reviewing authority.

Additionally, under the monitoring provisions at 40 CFR 52.21(r)(6)(iii), as applicable, sources must calculate and maintain a record of annual emissions in tpy on a calendar year basis for a period of 5- or 10-years following resumption of regular operations after the change, depending on the type of change at the unit(s). Post-project annual reporting is required for projects involving EUSGUs, whereas for projects not involving EUSGUs, owners or operators need only maintain post-project records on-site and submit a report if certain criteria listed in the regulations are met.[53] In accordance with 40 CFR 52.21(r)(7), the information required to be documented and maintained pursuant to paragraph 40 CFR 52.21(r)(6) shall be available for review upon a request for inspection by the reviewing authority or the general public. The requirements of 40 CFR 52.21(r)(6) apply equally to units with projected increases and projected decreases in emissions, as long as there is a reasonable possibility that the project could result in significant emissions increase and those units are part of the project (*e.g.,* their emissions ''could be affected'' by the project). Projects that do not meet the reasonable possibility criteria are not subject to any specific recordkeeping requirements under the Federal regulations.

For projects that trigger the reasonable possibility standard for one or more regulated NSR pollutants, the records that the owner or operator must maintain include (a) a description of the project; (b) identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and (c) a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded including an explanation for why such amount was excluded, and any netting calculations, if applicable.[54]

In this action, the EPA is proposing revisions to the reasonable possibility standard to further clarify how the recordkeeping and reporting provisions are intended to apply. The EPA is also proposing to strengthen the standard to improve accountability in those instances where the PEA rule is applied. These revisions are presented in section VI. of this action.

III. Proposed Definition of ''Project''

In this action, the EPA is proposing to revise the existing definition of ''project'' in the major NSR regulations. The term ''project'' is currently defined as ''a physical change in, or change in the method of operation of, an existing major stationary source.'' [55] The EPA's proposed revision would add detail to this definition in a manner consistent with the 2018 final action on project aggregation. The EPA is proposing to further define a project as ''a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable.''

In comments on the 2020 PEA rule and in the petition for reconsideration, some stakeholders expressed a concern that the 2020 PEA rule would enable a source to avoid NSR by grouping multiple activities into a ''project'' and only requiring NSR if the ''project,'' taken together, will produce a significant emissions increase. The comments add that this would allow source owners/operators to consider only emissions offsets that they selectively pair with the change as a part of the ''project'' and would allow source owners/operators to disregard an actual source-wide emissions increase resulting from the change being permitted.[56]

In the final 2020 PEA rule, the EPA stated that ''the application of the 'substantially related' test of the 2018 final action on project aggregation should be sufficient to prevent sources from arbitrarily grouping activities for the sole purpose of avoiding the NSR major modification requirements through project emissions accounting.'' [57] The EPA added in that rulemaking that ''the 'substantially related' test . . . applies to prevent aggregating into a single project those activities that do not represent such project, so decreases from activities that do not meet this test should not be considered in Step 1.'' [58] In the final rule, however, the EPA did not include regulatory text to require application of the provisions contained in the 2018 final action on project aggregation. The EPA is now proposing a definition of ''project'' that would codify a definition that is consistent with the 2018 final action on project aggregation.

The EPA is proposing changes to the definition of ''project'' to address concerns raised in the petition for reconsideration and in comments submitted on the PEA rule. Both the petition for reconsideration and comments on the 2020 PEA rule argued that a more-specific definition of a ''project'' would guard against circumvention of the NSR applicability process. Indeed, in their petition for reconsideration, petitioners argued that the EPA's 2020 PEA rule was flawed because it failed to ensure that emissions decreases taken in Step 1 to avoid NSR applicability result from the change being evaluated. Further petitioners noted that nothing in the final rule required states to use the ''substantially related'' test, and that EPA's statement that the ''substantially related'' would be appropriate for determining if decreases can be accounted for in Step 1 was insufficient.[59] By introducing a definition of ''project'' that codifies the 2018 project aggregation guidance, the EPA hopes to address these concerns.

The EPA agrees with commenters that a more specific regulatory definition of project would provide greater clarity regarding the activities included within the scope of a project for the purpose of determining whether the project constitutes a major modification under the NSR regulations.[60] The EPA has recognized that some line must be drawn between those activities that constitute a single ''physical change . . . or change in the method of

[53] 40 CFR 52.21(r)(6)(iv).

[54] Under 40 CFR 52.21(b)(41)(ii)(*c*) sources ''shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions . . . and that are also unrelated to the particular project, including any increased utilization due to product demand growth.''

[55] 40 CFR 51.165(a)(1)(xxxix); 40 CFR 51.166(b)(51); 40 CFR part 51, appendix S II.A.33.; 40 CFR 52.21(b)(52).

[56] Sierra Club, et al., Response to Request for Comments on Proposed Rule: Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 84 FR 39244 (August 9, 2019) at 5; see also Petition for Reconsideration at 4; comment from Steve Odendahl, Manager Air Law for All, Ltd. Re: Docket ID No. EPA–R04–OAR–2022–0397 (August 25, 2022) at page 4.

[57] 85 FR 74890, 74898 (November 24, 2020).

[58] *Id.* at 74899.

[59] Petition for Reconsideration at 6–10.

[60] States would generally be required to update their NSR regulations to incorporate the new definition of project and submit those regulations to the EPA for approval into the SIP.

operation'' and those changes at a source that are separate.[61] Historically, the EPA developed a policy on determining the scope of a ''project,'' which evolved largely ''from specific, case-by-case after-the-fact inquiries related to the possible circumvention of NSR in existing permits.'' [62] The subsequent issuance of final actions reflecting EPA interpretations and policy, while providing additional clarity, did not establish legal requirements and did not create consistency with respect to the application of Step 1 by reviewing authorities.[63] Several commenters on prior EPA actions regarding project aggregation noted that there is evidence in the rulemaking record that NSR applicability decisions based upon informal guidance and letters creates confusion.[64] The EPA is, therefore, proposing to adopt a controlling definition of ''project'' that is ''a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable.''

Concerns of over- and under-aggregation illustrate the need for adding criteria to the NSR regulations for determining when nominally separate changes should be considered a single ''project'' for purposes of determining NSR applicability. The EPA has found that in some cases activities were not aggregated despite evidence that they were substantially related. In those instances, project disaggregation determinations were made without documentation for such a determination.[65] The EPA is seeking comments on examples of under- or over-aggregation of activities, *e.g.,* aggregation of activities without regard to technical and economic interrelatedness, and disaggregation of activities into multiple projects leading source to forgo major NSR requirements.

Based on these concerns, the EPA therefore finds it necessary to establish a controlling standard in its regulations to draw a line between those activities that are to be considered a single ''physical change or change in the method of operation'' (*i.e.,* project) and those that are separate. The EPA is proposing to adopt a revised definition of project to clarify the activities that must be considered when evaluating whether a project (*i.e.,* a physical change or change in the method of operation or a modification) is a major modification subject to NSR permitting requirements.[66]

Under the applicability analysis framework in the EPA's NSR regulations, it is important to accurately determine which activities should be considered part of a single project (*i.e.,* modification). There are consequences to either under- or over-aggregating activities; namely that sources undergoing modifications may inconsistently use the flexibility of imprecise regulatory provisions to systematically avoid major source NSR.

This potential pitfall of aggregation arises because the regulatory framework provides avenues to disaggregate ''projects.'' The CAA definition of ''modification'' as ''any physical change . . . or change in the method of operation'' leaves ambiguity as to what activities are to be included in the source ''modification'' when the source may be undertaking contemporaneous activities that may all increase the source's emissions.[67] The EPA has previously only defined a ''project'' as ''a physical change in, or change in the method of operation of, an existing major stationary source.'' [68] A ''project'' is a major modification for a regulated NSR pollutant if it causes a significant emissions increase (as defined at 40 CFR 52.21(b)(40)) and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of 40 CFR 52.21).[69]

This definition may not be sufficient to guard against the potential for sources to selectively aggregate or disaggregate multiple projects such that they are able to avoid major NSR in a manner that is contrary to the intent of the CAA. The rule revisions proposed in this action aim to bring additional clarity and consistency by providing a controlling standard that allows reviewing authorities to identify situations where activities should be grouped together or separated. By adopting a more specific definition of ''project,'' this action, if finalized as proposed, would enhance the ability of reviewing authorities to enforce against avoidance of major NSR requirements due to the improper aggregation or disaggregation of activities.

In the 2020 PEA rule, the EPA referenced the 2018 Project Aggregation Final Action in recognition that ''it is appropriate to limit the scope of emissions decreases that can be considered at Step 1 to only the project under review and to not allow sources to attempt to avoid NSR by expanding the scope of decreases to those that are not truly part of the project.'' [70] But the EPA did not require application of the 2018 Project Aggregation Final Action in the 2020 PEA rule. The EPA responded to comments stating ''if PEA is to be allowed, the 'substantially related' standard must be applied to the activities that result in emissions increases and decreases,'' by stating that ''applying the 'substantially related' criteria on project aggregation for those reviewing authorities that implement PEA should alleviate any concerns about potential NSR circumvention as part of Step 1 of the major modification applicability test.'' [71] Therefore, the EPA predicated finalization of the PEA rule on the basis that the 2018 Project Aggregation Final Action, or some

[61] *See, e.g.,* 71 FR 54244, 54245 (describing the EPA's development of an aggregation policy ''to ensure the proper permitting of modifications that involve multiple projects'').

[62] *Id.*

[63] In the 2018 final action on project aggregation the EPA stated that ''We acknowledge that, by not making any changes to the regulatory text, as had been proposed, it may have been somewhat unclear to some whether state and local air agencies have to adopt or implement the elements of the 2009 NSR Aggregation Action, and, if so, how they should do so.''

[64] *See, e.g.,* ''Comments of the Utility Air Regulatory Group on the Environmental Protection Agency's Proposed Rule Concerning Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation; Reconsideration (April 15, 2010),'' Docket EPA–HQ–OAR–2003–0064; ''Comments of Toyota Motor Engineering & Manufacturing North America (Nov. 13, 2006),'' Docket EPA–HQ–OAR–2003–0064; ''Comments of Chevron Corporation (November 10, 2006),'' Docket EPA–HQ–OAR–2003–0064.

[65] *See, e.g.,* In the Matter of Suncor Energy (U.S.A.), Inc. Commerce City Refinery, Plant 2 (East), Order on Petition Nos. VIII–2022–13 & VIII–2022–14, pages 72–77 (July 31, 2023) (requiring that, in the absence of applying the EPA's 2018 Project Aggregation Final Action, the review authority ''must ensure that its NNSR applicability determination . . . including the decision not to aggregate . . . changes with similar changes . . . is based on reasonable grounds and properly supported by the permit record.''); *see also* In the Matter of Consolidated Environmental Management, Inc.—Nucor Steel Louisiana, Order on Petition Nos. VI–2010–02 & VI–2011–03 (March 23, 2012) (finding that the reviewing authority ''did not analyze any regulatory definition of 'project,' such as the definition in 40 CFR 52.21(b)(52), before applying that term'' and that ''while [the reviewing authority] suggests that [the source] has not attempted to split the projects to avoid PSD permitting because both processes were subject to PSD review . . . this statement does not address whether [the reviewing authority's] PSD review adequately addressed the full scope of the source).''

[66] CAA section 111(a)(4); CAA section 165(a)(3).

[67] CAA section 111(a)(4).

[68] 40 CFR 52.21(b)(52).

[69] 40 CFR 52.21(a)(2).

[70] 85 FR 74898.

[71] Response to Comments Document on Proposed Rule: ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting''—84 FR 39244, August 9, 2019 at 73–5 (October 2020).

analogous definition of project, would be applied by permitting authorities to prevent circumvention of the NSR program requirements with the application of PEA, yet did not establish such a requirement in that rule. The EPA is therefore proposing in this action to codify a definition of a project consistent with the 2018 Project Aggregation Final Action to alleviate the potential for NSR circumvention that it highlighted in the 2020 PEA rule and Response to Comments document to that action.[72] The EPA is proposing this in light of evidence that the 2018 Project Aggregation Final Action or some similar definition of ''project'' is, in some instances, not being applied by reviewing authorities.[73]

The project definition criteria in the 2018 Project Aggregation Final Action are appropriate criteria for defining a project and comport within the purpose and language of the CAA.[74] More specifically, activities that occur at the same major stationary source that are dependent on each other to be economically or technically viable should be considered a single project. If finalized, the proposed definition of project will enable a more consistent application of the aggregation criteria by both those considering the applicability of NSR to proposed modifications as well as for those conducting an after-the-fact inquiry regarding whether NSR was circumvented through the failure to aggregate dependent physical or operational changes at a source (or over-aggregation of unrelated activities).

When considered with application of PEA, a more specific definition of project would help ensure that emissions decreases accounted for under Step 1 of the NSR applicability process are substantially related to other activities comprising the physical change or change in the method of operation (*i.e.,* a project) at the source. Upon finalization of this element of this proposed action, any decrease in emissions accounted for under Step 1 of the NSR applicability test must be substantially related to the other activities involved in the project. Therefore, for the reasons discussed in the 2018 Project Aggregation Final Action, multiple changes that are ''substantially related'' would be considered one project for purposes of determining NSR applicability. Reviewing authorities that do not allow for project emissions accounting at Step 1 would still benefit from a codified definition of ''project'' as greater specificity can allow for identification of, and enforcement against, situations where a source may seek to avoid major NSR requirements by disaggregating activities that are ''substantially related.''

The EPA is not proposing that this definition of project include a specific timeframe that defines ''occurring contemporaneously,'' such as the three-year rebuttable presumption from the 2018 Project Aggregation Final Action. Since promulgation of the 2018 Project Aggregation Final Action, the EPA has obtained information that suggests a three-year timeframe may not adequately represent the wide variety of projects performed across all source categories. For example, while the EPA has become aware of several multi-year expansion projects that span more than three years, the EPA does not have information on the percentage of projects that that involve activities occurring within any specific time period.[75] Accordingly, the EPA is taking comment on whether a specific temporal component of the project aggregation criteria, *i.e.,* the three-year rebuttable presumption contained in the 2018 final action on project aggregation should be retained. The EPA is requesting comment on this proposed definition of ''project,'' including whether the proposed relationship-based aggregation criteria are appropriate and whether there would be any potential issues with implementing the definition for any particular type of project or source category.

In the event the EPA finalizes a temporal component to the definition of project, the EPA is soliciting comment on whether a rebuttable presumption should be retained. The EPA requests comments on the proposed codification of the ''substantially related'' test without the presumption, as well as any comments that may support, in the alternative, codifying a rebuttable time-based presumption of three years or some other period. The EPA requests that comments in support of a rebuttable time-based presumption provide evidence of why the presumption and associated time-period would be appropriate for purposes of NSR applicability across affected source types.

Irrespective of the finalization of this proposal, the EPA advises that permitting authorities scrutinize project determinations in those cases where a source concurrently submits a major and minor NSR permit application, when the source submits multiple minor NSR permit applications within a short period of time, or where there is otherwise evidence that some or all of the activities associated with those permit applications may be substantially (*i.e.,* technically and economically) related. The EPA would like information on the impacts the definition of ''project'' proposed in this action, if finalized, would have in safeguarding against potential over-aggregation or under-aggregation of projects with the intent to circumvent major NSR.

IV. Safeguard Against ''Double Counting'' of Emissions Decreases and Increases

The EPA is requesting comment on the potential, within a project emissions accounting framework, for source owners or operators to ''double count'' emissions decreases across multiple projects, and whether the NSR regulations should include language to prevent this.[76] The definition of projected actual emissions provides that the owner or operator ''[s]hall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions . . . and that are also unrelated to the particular project, including any increased utilization due to product demand growth.'' [77] However, there is no corresponding provision that limits eligible emissions decreases to only those that result from the project being evaluated (*i.e.,* a decrease from an existing emissions unit is simply calculated as the difference between projected actual emissions and baseline actual emissions). Therefore, it seems possible that a decrease resulting from an earlier project (one completed after the selected baseline actual

[72] 85 FR 74890, 74900.

[73] Supra note 67.

[74] In the 2018 final action on projection aggregation, the EPA argued that the ''substantially related'' test would not result in the elimination of a type of physical change that Congress intended to cover (*i.e.,* the change that consists of the group of nominally-separate changes that comprise a project but do not qualify as 'substantially related'). In that final action, the EPA reasoned that a ''common meaning'' of a single ''change'' would not include multiple changes that are not substantially related, such as changes that are undertaken at a source at different times, or undertaken for different purposes, or are otherwise related to each other. 83 FR 57332.

[75] Supra note 67.

[76] *See* Virginia Department of Environmental Quality (VDEQ) comments on the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting (84 FR 39244) at page 3 (noting that the ability of ''existing major sources to engage in a nearly continuous series of projects to increase efficiency, reduce cost and improve product quality for decreases'' lends itself to a potential ''double counting'' issue).

[77] 40 CFR 52.21(b)(41)(ii)(*c*).

emissions period) could be accounted for in a subsequent project being evaluated, even if that project had no causal relationship to the decrease. The EPA acknowledges that this situation can occur when multiple projects during the baseline actual emissions determination timeframe involve the same existing emissions unit, but the Agency believes that ''double counting'' of emissions decreases will be addressed by the requirement (discussed below) that any decreases be made enforceable in order to be eligible for consideration in the Step 1 applicability calculation.[78] The EPA is nonetheless requesting comment on adding a provision in the NSR regulations to require that the baseline actual emissions of a unit with a projected decrease in emissions be adjusted to account for any portion of that decrease in emissions that would not result from (*i.e.,* is unrelated to) the project being evaluated, but would also like commenters to suggest alternatives to this language.

The EPA is aware that the potential also exists for ''double counting'' emissions increases under the existing regulations, such that major NSR may be triggered when a project itself would not result in a significant emission increase. For example, when projecting emissions from an affected existing emissions unit for Project A (the current project) a source must also consider whether any future separate project(s) during the required projection period (*i.e.,* 5 or 10 years after resuming regular operation) may affect the projected actual emissions from the unit, and if that affect is an increase that the unit could not have accommodated during the selected baseline period, that increase must be accounted for as part of the project applicability analysis for Project A. This may result in a situation where emissions increases are ''double counted'' in the NSR applicability process.

Thus, the possibility for ''double counting,'' or imperfect allocation of emissions increases and decreases to a project, exists in limited circumstances, but revising the regulations to completely address any such possible situations would add significant complexity and it is unclear whether any such revisions are necessary or warranted. The EPA is requesting comment on the prevalence of either of these forms of ''double counting,'' specific examples, if applicable, of each, and whether the EPA should revise the NSR regulations to address one or both of these possible issues and, if so, how it should revise the regulations to rectify this potential issue.

V. Enforceability of Emissions Decreases

The EPA is proposing, in a distinct and severable portion of this proposal, to require that decreases associated with a project under the Step 1 significant emissions increase determination be legally and practicably enforceable (*i.e.,* enforceable as a practical matter). The EPA is proposing to revise the regulations accordingly by adding ''a decrease may only be accounted for in the significant emissions increase determination if it meets the requirements under 40 CFR 52.21(b)(3)(vi)(*b*)'' to the ''significant emissions increase'' definition at 40 CFR 52.21(a)(2)(iv)(*g*).[79]

The EPA is proposing this change as a safeguard to ensure that emissions decreases that are accounted for in the NSR applicability process will occur and be maintained. This is consistent with the requirement under CAA section 110 that ''each implementation plan submitted by a State include enforceable emission limitations'' and ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.'' [80] The EPA is proposing this change to address concerns raised in the petition for reconsideration. Petitioners argued that under the 2020 PEA rule the EPA lacked oversight such that it cannot ensure that projected emission decreases will occur, or that they will be maintained over time.[81] A similar concern was expressed by commenters to the 2020 PEA rule, who argued the rule ''would make NSR requirements unenforceable[,]'' and that finalization of the 2020 PEA rule was unlawful because ''EPA fails to require that . . . decreases [accounted for in Step 1] be . . . enforceable as a practical matter.'' [82] These commenters argued that enforceability is a regulatory safeguard that is required to ensure that any emission decreases relied upon to offset an otherwise emissions-increasing change are real and will remain in effect.[83] In proposing enforceability of decreases accounted for in Step 1, the EPA hopes to provide sufficient oversight that will address petitioners and commenters concerns.

Under the existing NSR regulations, projected actual emissions are not required to be made enforceable, regardless of whether the result of the calculation is an emission increase or decrease. In some cases, a projection may be enforceable, at least in part, if it is based on separate CAA legal authority (*e.g.,* NSPS, NESHAP, SIP), but there is no independent requirement in the NSR applicability procedures for such enforceability. In the 2002 NSR Reform Rule, the EPA elected not to require that projected actual emissions be made enforceable because establishing such a requirement may have ''place[d] an unmanageable resource burden on reviewing authorities'' and because the EPA did not believe at that time that it was necessary to make future projections enforceable in order to adequately enforce the major NSR requirements.[84] However, with the more explicit recognition that decreases in emissions may be considered in the Step 1 significant emissions increase determination, there may be reason to require that such decreases be enforceable. Because of the predominant impact that one or more claimed decreases in emissions involved in a project could have on the determination of whether the project constitutes a major modification, additional safeguards are appropriate to ensure that such decreases actually occur and that they are maintained. The existing framework under the reasonable possibility provisions and the revisions to that framework proposed in this action may be insufficient to provide that assurance. While the revisions proposed to the ''reasonable possibility'' provisions in section VI. of this action will allow reviewing authorities to verify that decreases accounted for at Step 1 by source owner or operators actually occur, they may not provide adequate recourse to reviewing authorities if the decreases do not occur as projected. While source owners or operators are required to submit a report to the reviewing authority when emissions differ from preconstruction

[78] Under the existing NSR regulations, baseline actual emissions must be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source must currently comply, which would include any limits imposed to qualify decreases as part of prior step 1 applicability analyses involving a common unit or units.

[79] The EPA is also proposing analogous regulatory language for 40 CFR 51.165, 40 CFR 51.166, and appendix S to 40 CFR part 51.

[80] CAA section 110(a)(2)(B) and (C).

[81] Petition for Reconsideration at 11–12.

[82] Sierra Club, et al., Response to Request for Comments on Proposed Rule: Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 84 FR 39244 (August 9, 2019) at 13–24.

[83] *Id.*

[84] 67 FR at 80204.

projections, this requirement only applies when actual emissions exceed baseline actual emissions ''by a significant amount'' for the regulated NSR pollutant.[85] Consequently, source owner or operators may overestimate emissions decreases at Step 1 with no recourse provided actual emissions are not significant.

The EPA is thus proposing to revise the existing definition of ''significant emissions increase'' in the major NSR regulations to add that a decrease can only be accounted for at Step 1 if it meets the creditability requirements for decreases in the existing ''significant net emissions increase'' definition. The EPA is taking comment on this proposed requirement. Specifically, the EPA is requesting input from commenters on the types of projects that would be impacted by a requirement that emission decreases accounted for under Step 1 of the NSR applicability process be enforceable prior to beginning actual construction and the effect that such a requirement would have on project decision-making and project outcomes. The EPA is also requesting comment on the following questions related to this proposal:

- How would a requirement that emissions decreases under Step 1 meet the criteria currently applicable to decreases accounted for under Step 2 impact accountability and enforceability of emissions limitations?
- How can the EPA justify a distinction with respect to enforceability requirements by differentiating projections resulting in an increase versus those projections that result in a decrease in emissions given that inaccuracies in projections, in either case, may result in improper applicability conclusions?
- Is there a more effective regulatory revision to require that decreases at Step 1 are enforceable than what is being proposed in this action? Why would your proposed alternative be preferable to the revisions proposed by the EPA to the ''significant emissions increase'' definition?
- Is this proposed requirement necessary for added assurance that decreases accounted for by a source under the project emissions accounting process actually occur and are maintained, or are the ''reasonable possibility'' requirements in the recordkeeping and reporting provisions, including the revisions to these provisions described in section VI., a sufficient means of assurance?
- Finally, the EPA is taking comment on revising the regulations to expressly disallow project emissions accounting such that only emissions increases can be considered under the Step 1 significant emissions increase determination.

VI. ''Reasonable Possibility'' Recordkeeping and Reporting Regulations

In this rulemaking, the EPA is proposing both clarifications to the existing ''Reasonable Possibility'' recordkeeping and reporting requirements and a strengthening of the regulations by requiring that all sources crediting a decrease at Step 1 maintain records and report information under 40 CFR 52.21(r)(6). As with the 2007 Reasonable Possibility (''RP'') rule, the EPA is again ''analyz[ing] the trade-off between compliance improvement and the burdens of data collection and reporting'' in this proposal.[86]

A. Clarification of Existing ''Reasonable Possibility'' Requirements

The EPA is proposing regulatory language to clarify certain existing RP requirements to ensure appropriate and consistent application of those requirements by affected sources and reviewing authorities. This includes clarifying (1) the emissions units that should be included in the project actual emissions calculation; (2) the calculation to be included in the description of the applicability test used to determine that the project is not a major modification; (3) the emissions units to be included in the monitoring requirement at 40 CFR 52.21(r)(6)(iii); (4) the provisions that apply to projects that involve an electric utility steam generating; and (5) the emissions units that should be included in the ''projected actual emissions increase'' used to determine whether there is a ''reasonable possibility'' under 40 CFR 52.21(r)(6)(vi).

The provisions of 40 CFR 52.21(r)(6) apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units in circumstances where the owner or operator elects to use the method specified in 40 CFR 52.21(b)(41)(ii)(*a*) through (*c*) for calculating projected actual emissions from any existing emissions unit and there is a reasonable possibility that a project not classified as a major modification based on those projections may actually result in a significant emissions increase of such pollutant. The existing regulations define a project as ''a physical change in, or change in the method of operation of, an existing major stationary source.'' This leaves ambiguity with respect to the emissions units that should be included in the projected actual emissions calculation. To make this clear, consistent with the EPA's original intent, the Agency is proposing revisions to 40 CFR 52.21(r)(6) and corresponding sections of the regulations to replace the terms ''at existing emissions units'' with ''that involve one or more existing emissions units'' and adding at the end of that paragraph, the phrase ''from any existing emission unit.''

The EPA is also proposing that the requirement under 40 CFR 52.21(r)(6)(i)(*c*) that the pre-project record include ''a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant'' also include the PTE of an emissions unit, as applicable. It is important that the pre-project NSR applicability record include all emissions units that could be affected by the project, including those units for which the actual-to-potential (ATP) test applies, *i.e.,* any new emissions unit(s) and any existing emissions unit(s) for which the owner or operator elects to use PTE in lieu of projected actual emissions as provided by 40 CFR 52.21(b)(41)(ii)(*d*). To make this clear under 40 CFR 52.21(r)(6)(i)(*c*), the EPA is proposing to add ''the potential to emit, as applicable'' after ''the projected actual emissions'' in that subparagraph.

The EPA is proposing to clarify that the monitoring provisions in 40 CFR 52.21(r)(6)(iii) apply to all the emissions units identified in 40 CFR 52.21(r)(6)(i)(*b*) if the project increases the design capacity or potential to emit of any of those emissions units. The EPA is proposing to revise the language at the end of this paragraph from ''if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit'' to ''if the project increases the design capacity or potential to emit that regulated NSR pollutant at any existing emissions unit identified in 40 CFR 52.21(r)(6)(i)(*b*).''

The EPA is proposing to clarify that the provisions of 40 CFR 52.21(r)(6)(iv) apply to projects that involve an electric utility steam generating unit, and that the provisions of 40 CFR 52.21(r)(6)(v) apply to projects that do not involve an electric utility steam generating unit. The EPA believes this clarification is appropriate to address the reporting requirements for projects that involve one or more electric utility steam generating units as well as other emissions units and to appropriately

[85] 40 CFR 52.21(r)(6)(v).

[86] *New Jersey* v. *EPA,* 989 F.3d 1038 (D.C. Cir. 2021) (citing *New York,* 413 F.3d at 44 (Williams J., concurring)).

focus the requirements on the nature of the project rather than the emissions unit. To make this clarification under 40 CFR 52.21(r)(6)(iv), the EPA is proposing to revise ''if the emissions unit is an electric utility steam generating unit'' to read ''if the project involves an electric utility steam generating unit.'' To make this clarification under 40 CFR 52.21(r)(6)(v), the EPA is proposing to revise ''if the unit is a unit other than an electric utility steam generating unit'' to read ''if the project does not involve an electric utility steam generating unit.'' The EPA would like to make clear that the contents of the report required under 40 CFR 52.21(r)(6)(iv) for projects that involve an existing electric utility steam generating unit shall include the annual emissions from all units involved in the project as calculated pursuant to 40 CFR 52.21(r)(6)(iii). The EPA believes this clarification is appropriate to ensure that, for projects that involve one or more electric utility steam generating units as well as other emissions units, the required reports include the annual emissions from all emissions units involved in the project consistent with the requirement under 40 CFR 52.21(r)(6)(v) for projects that do not involve an electric utility steam generating unit. To make this clarification under 40 CFR 52.21(r)(6)(iv), the EPA is proposing to revise ''setting out the unit's annual emissions'' to read ''setting out the annual emissions from each affected emissions unit.''

The ''projected actual emissions increase'' used to determine whether there is a ''reasonable possibility'' under 40 CFR 52.21(r)(6)(vi) means the sum of the emissions changes of a regulated NSR pollutant for each emissions unit that could be affected by the project calculated using the appropriate procedure identified at 40 CFR 52.21(a)(2)(iv) (*i.e.,* the ATP test for any new emissions unit(s) and the ATPA applicability test for any existing emissions unit(s)). This includes all the emissions units identified in accordance with 40 CFR 52.21(r)(6)(i)(*b*) and is not limited to existing emissions units, or to those existing emissions units for which the owner or operator elects to use projected actual emissions. A full accounting of the project emissions increase is needed to determine whether and how the RP requirements apply.

The EPA believes these clarifications to the RP recordkeeping and reporting requirements would help ensure that sources consistently determine the applicability of the reasonable possibility requirements in 40 CFR 52.21(r)(6) and perform the recordkeeping, monitoring, and reporting needed to verify that projects determined not to constitute a major modification do not, after operation, result in a significant emissions increase. The proposed clarifications would thereby enhance accountability of sources relying on projected actual emission in their NSR applicability determinations and enforcement of the NSR provisions.

In their petition for reconsideration, petitioners took issue with the EPA's ''self-reporting and self-monitoring provisions'' under 40 CFR 52.21(r)(6) because the revisions to the ''reasonable possibility'' provisions the EPA took to address the D.C. Circuit's decision in *New York* v. *EPA* apply only to emissions increases. Petitioners stated that as a result of this, sources that account for an unenforceable emissions decrease at Step 1 such that they avoid a Step 2 netting analysis would not be subject to the ''reasonable possibility'' provisions. Petitioners add that that the lack of recordkeeping and reporting requirements in these instances prevent effective oversight and enforcement by the reviewing authority.[87]

In the response letter to the petition for reconsideration, the EPA noted that it responded to similar comments in the 2020 PEA final rule. The EPA stated in that rule that 40 CFR 52.21(r)(6)(i)(*b*) requires a source to identify emissions units ''whose emissions of a regulated NSR pollutant could be affected by the project.'' The EPA stated that the use of ''affected'' as opposed to ''increased'' supports the EPA's view that the ''reasonable possibility'' test can be used to track both the increases and decreases from a project. The EPA added that the information required for collection under 40 CFR 52.21(r)(6)(i)(*c*) similarly can apply to both increases and decreases from the project. As a result, in that action, the EPA disagreed that the ''reasonable possibility'' provisions were inadequate to account for projects that included emissions decreases.[88]

Although EPA continues to support this reading of the existing regulations, to better address the concern expressed by petitioners that the existing RP provisions ''do not provide an effective mechanism to ensure that unenforceable emission decreases . . . will . . . be qualitatively equivalent to the increases they purportedly offset,'' the EPA is proposing to revise the text of the NSR applicability regulations at 40 CFR 52.21(a)(2)(iv)(*b*) to more clearly state that the major modification applicability calculations must include all of the emissions units that could be affected by the project, consistent with 40 CFR 52.21(r)(6)(i)(*b*). Affected emissions units may include new, modified, and non-modified affected emissions units involved in the project. Non-modified affected emissions units are existing emissions units that will not undergo a physical change or change in the method of operation but that could realize a change in utilization as a result of the project, including increases resulting from removal of a process bottleneck (what we often call ''de-bottlenecking''). The existing language under 40 CFR 52.21(a)(2)(iv)(*b*) states that ''[t]he procedure for calculating . . . whether a significant emissions increase . . . will occur depends upon the type of emissions units being modified,'' which is unclear with respect to the need to also include non-modified existing emissions units that could be affected by the project. The proposed clarification to the regulations will provide consistency between the applicability and RP regulations and help ensure that all emissions units that could be affected by a project and all corresponding emissions increases and decreases are included in the applicability calculations and post-project monitoring, recordkeeping, and reporting.

Finally, the EPA proposes to clarify the meaning of the term ''differ,'' as used in the reporting requirements for projects that do not involve an electric utility steam generating unit under 40 CFR 52.21(r)(6)(v). This provision provides that a reporting obligation is triggered, in part, when the annual emissions, in tpy, from a project ''differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section.'' First, the EPA does not intend for a difference between post-project emissions and pre-project projection by itself to trigger reporting. Rather, the EPA intends for reporting to be triggered under 40 CFR 52.21(r)(6)(v) when post-project emissions differ from the preconstruction project in a way that indicates that the project did in fact result in a significant emissions increase. Second, the term ''differ'' is not synonymous with ''exceed,'' and that distinction is important in determining when reporting is required under 40 CFR 52.21(r)(6)(v). The EPA intends to require reporting when emissions exceed the baseline actual emissions by a significant amount and exceed the preconstruction projection, and when actual emissions monitored and recorded after a project in

[87] Petition for Reconsideration at 22 (citing 84 FR 39251).

[88] 85 FR at 74897.

accordance 40 CFR 52.21(r)(6)(iii) that do not exceed the preconstruction projection may nevertheless differ in a way that materially impacts the validity of the pre-project NSR applicability conclusion. For example, post-project actual emissions data may indicate that the portion of emissions excluded pursuant to 40 CFR 52.21(b)(41)(ii)(*c*) was overestimated for one or more existing emissions units. Thus, while the post-project emissions calculated for the project may not have exceeded the pre-project projection, there may be evidence that the emissions increase from the project would have been significant had certain emissions not been erroneously excluded. If such evidence exists, and if the emissions from all project-affected emissions units exceed the baseline actual emissions by a significant amount, a report must be submitted in accordance with 40 CFR 52.21(r)(6)(v). The EPA requests comment on whether we should add the word ''materially'' in front of the word ''differ'' or amend this provision in another way to achieve the result described above.

B. Proposed New ''Reasonable Possibility'' Requirements

In addition to the clarifications described in the preceding section, the EPA is also proposing additional requirements to the ''reasonable possibility'' recordkeeping and reporting provisions. These include (1) proposing to add a new criteria to the RP provisions such that a source is subject to the RP requirements whenever a decrease is accounted for in the Step 1 significant emissions increase determination; (2) removing the distinction between EUSGUs and all other sources with respect to the submission of pre-project records; and (3) adding records that must be submitted to the reviewing authority when the source is subject to RP for a particular project.

The EPA is proposing to revise the RP regulations to require that any source accounting for a decrease at Step 1 is also subject to the reasonable possibility recordkeeping provisions. This proposed revision to the RP regulations is intended to balance compliance assurance with recordkeeping and reporting burdens. The express inclusion of decreases at Step 1 in the NSR applicability process in project emission accounting warrants additional recordkeeping and reporting to ensure that decreases that a source accounts for are appropriately considered as part of the project being evaluated and to provide a means to determine whether such decrease(s) actually occur. Stakeholders have raised concern that sources can use project emissions accounting to evade permitting requirements that they would otherwise be subject to and that there would be no way for permitting authorities to identify that the source should have been subject to NSR permitting. For example, the petition for reconsideration expressed concern that under project emissions accounting, sources may improperly account for an unrelated decrease at Step 1 and thereby improperly find that a permit is not required.[89] If, in aggregate, the emissions increase determined by the source is less than the RP threshold, it may be the case that the source is not subject to any recordkeeping and reporting requirements under the existing regulatory requirements. This means that the reviewing authority may not be able to verify that activities were properly aggregated and that decreases accounted for in the NSR applicability process actually occur.

Therefore, in this action, the EPA is proposing to require that projects that involve a calculated emissions decrease of a regulated NSR pollutant from one or more affected emissions units are subject to the RP provisions, including 40 CFR 52.21(r)(6)(i) through (v), as applicable, for that pollutant regardless of the overall estimated project emissions increase. The EPA is proposing this revision because the express inclusion of decreases under project emissions accounting warrants further accountability to ensure that those decreases are appropriately considered part of the project (*i.e.,* physical change or change in the method of operation at a source) and to provide a means to determine whether the decreases being accounted for actually occur. To implement this new requirement, the EPA is proposing to revise the RP regulations to include another category of projects that would have a ''reasonable possibility'' of resulting in a significant emissions increase, namely any project that that includes an emissions decrease in PEA at Step 1. The EPA is proposing to do so by adding the following as a trigger to the reasonable possibility in recordkeeping and reporting requirements: ''The owner or operator accounts for a decrease in emissions from one or more emissions unit(s) in determining that the project is not a major modification for a regulated NSR pollutant regardless of the projected actual emissions increase.''

Under the existing RP regulations, sources that trigger the ''reasonable possibility'' criteria under 40 CFR 52.21(r)(6)(vi)(*a*) for projects that involve EUSGUs are required to submit pre-project records and post-project monitoring reports while sources that trigger the same criteria for projects that do not involve EUSGUs are not required to submit pre-project records and are only required to submit post-project reports when certain criteria are met.[90] The EPA believes that restricting the pre-project reporting requirements to EUSGUs may not be warranted. There is currently no requirement in the Federal regulations that source owners or operators of projects involving non-EUSGU sources subject to RP notify reviewing authorities that they are maintain records on-site as required by RP. The EPA is revising the pre-project requirements to align the requirements for all project types. This revision is intended to provide more transparency for projects that may not have otherwise been reviewed under the current regulations.

To address these concerns, the EPA is proposing language to remove the distinction between EUSGUs and non-EUSGUs in the submission of pre-project records required under 40 CFR 52.21(r)(6)(i). The EPA is proposing to do so by specifying that all sources that trigger the RP criterion under 40 CFR 52.21(r)(6)(vi)(*a*) submit to the reviewing authority the records required to be generated in accordance with 40 CFR 52.21(r)(6)(i). To remove the differential treatment of EUSGUs and all other sources with respect to pre-project reporting requirements under the RP regulations, the EPA is proposing to remove the language ''if the emissions unit is an existing electric utility steam generating unit'' where that language is used in the reasonable possibility provisions for submission of pre-project records.[91]

The EPA is proposing this revision to provide increased transparency and opportunity for review of pre-project applicability analyses for projects that do not involve EUSGUs, and to ensure that required minor NSR permit applications contain the requisite detail necessary to confirm compliance with the definition of project outlined in section III. of this action. The EPA does

[89] Petition for Reconsideration at 9–10 (noting that ''in their comments on the proposal, Petitioners argued that the proposed project emissions accounting approach contravened the Clean Air Act's requirement that NSR apply to any change that 'increases the amount of any pollutant emitted' by a source because, inter alia, it would allow a source to avoid NSR based on offsetting emission decreases that are not contemporaneous with the change under consideration'').

[90] 40 CFR 52.21(r)(6)(ii), (iv), and (v).

[91] 40 CFR 52.21(r)(6)(ii).

not expect this requirement to add significant regulatory burden. Since non-EUSGUs subject to the ''reasonable possibility'' recordkeeping and reporting provisions under existing regulations are required to maintain pre-project records, the only additional requirement for non-EUSGUs subject to RP would be submitting these records to the reviewing authority. In many cases, this submission of pre-project records would generally occur anyway as part of a minor NSR permitting process. Under circumstances that require a minor NSR permit application or other transaction with the reviewing authority, the pre-project records required by the RP provision are normally included in the submittal. The proposed rule is intended to avoid any gaps where such information is not otherwise submitted to the reviewing authority.

When considered with the proposed expansion of ''reasonable possibility'' to include instances where a source considers one or more emissions decreases at Step 1 of the NSR applicability process, the proposed additional pre-project reporting requirement for non-EUSGU projects would create more transparency and accountability when such emissions decreases are considered in the project emissions accounting process. If these requirements are finalized as proposed, they would enable reviewing authorities to identify potentially improperly accounting for emissions decreases to avoid triggering the ''reasonable possibility'' criteria that a source would otherwise have been subject to.

Additionally, the EPA proposes that sources be required to submit pre-project records to the reviewing authority for all projects that trigger the RP criteria, including projects that do not involve EUSGUs. Under the existing RP regulations, sources are only required to maintain the required pre-project records on site and are not required to notify the reviewing authority that these records are being maintained because RP has been triggered. If the revisions proposed in this action are finalized, this gap in reporting will be filled. This is because sources that consider a decrease at Step 1 would trigger RP and would be required to submit records specifying the decreases to the reviewing authority.

In the alternative of requiring that all records be submitted to the permitting authority, the EPA is taking comment on requiring that, for projects that do not involve EUSGU(s), owner or operators need only inform the permitting authority that they are maintaining records on site as required by the ''reasonable possibility'' provisions.

The EPA is also proposing to specify that the description of a project in these records include ''the name of the project, the project's intended objective(s), each physical change and/or change in the method of operation associated with the project objective(s), and estimated timeline for the project, including an estimation of when the project would begin actual construction and begin normal operation.'' When combined with the proposed definition of project, these proposed revisions to the RP regulations will foster greater accountability for applicability conclusions, including whether the source owner/operator is required to maintain ''reasonable possibility'' records.

The EPA is seeking information on the potential implications of these proposed revisions to the RP regulations, including benefits to the enforceability of major NSR permitting requirements and burden on sources and/or the reviewing authorities that may result from the proposed revisions. The EPA is requesting substantiation of any facility expansion projects (or other projects affecting emissions) that did not go forward solely because the source did not want to maintain or submit RP records. The EPA is aware that expanding the ''reasonable possibility'' recordkeeping and reporting requirement to all projects that include a decrease in their Step 1 applicability calculations may expand the number of sources subject to recordkeeping, monitoring, and reporting provisions. The EPA believes that in many cases these sources and the emissions units involved in a project subject to RP requirements will also be subject to other CAA recordkeeping, monitoring, and reporting requirements, including those associated with NSR or title V permits, other SIP provisions, and applicable standards such as new source performance standards (NSPS). Thus, much of the information required to meet the expanded RP requirements should already be available. The EPA would like information on the number and types of sources and projects that will be subject to the additional recordkeeping and reporting requirements if this proposed revision is finalized and to what extent existing requirements and available information can be used to meet these new requirements with little extra burden. Finally, the EPA would also like information on potential administrative costs and/or benefits of these proposed revisions to the recordkeeping and reporting requirements to reviewing authorities.

C. Additional Considerations for Proposed Reasonable Possibility Revisions

The proposed revisions to the RP regulations discussed previously comport with the court's decision in *New Jersey* v. *EPA* in that they balance ''ease of enforcement with avoidance of requirements that would be unnecessary or unduly burdensome on reviewing authorities or the regulated community.'' [92] However, the EPA is proposing regulations today that shift that balancing based on developments since the promulgation of the RP regulations considered in that case.

In that decision, the court did not respond to petitioner's concerns about the sufficiency of RP in light of the project emissions accounting rule, stating that ''enforcement problems stemming from EPA's actions following the Rule's promulgation are beyond the current record for judicial review.'' [93] The EPA is now proposing, revisions to RP to account for potential increased risk of improper avoidance of NSR requirements due to the express inclusion of decreases in Step 1 under the 2020 PEA rule.

In *New Jersey* v. *EPA,* the petitioner also challenged ''EPA's explanation that enforcement authorities may rely on other records—such as Title V records, minor NSR records, state and national emissions inventory records, and business records—to evaluate preconstruction NSR compliance when the Rule's recordkeeping and reporting requirements are not triggered.'' The petitioner argued ''that such records lack the type of project-specific, preconstruction information needed to evaluate NSR compliance'' and ''that EPA failed to explain how enforcement authorities may draw on these records collectively to trace emissions increases to specific modifications.'' [94] The D.C. Circuit did not find these arguments persuasive on the grounds the petitioners ''cite[ ] no authority to support the[ir] proposition.''

However, it has been several years since the EPA completed the rulemaking that was challenged in the *New Jersey* case, and the record for that rulemaking is now several years old. The EPA has since received feedback regarding the sparsity of information in minor NSR permit applications. For example, the EPA has received comments from state permitting authorities and environmental groups that oftentimes minor NSR permit

[92] *New Jersey* v. *EPA,* 989 F.3d 1038 (D.C. Cir. 2021) (citing 72 FR at 72609–11).

[93] *Id.* at 1050.

[94] *Id.* at 1051.

records do not contain information on how the applicability analysis was conducted, thereby impeding verification of a source's determination that a major NSR permit is not required under a given circumstance.[95] The EPA is thus proposing revisions to address these concerns.

VII. Revisions To Clarify Statutory Limitations on Netting in Nonattainment NSR

The EPA is proposing revisions to the NSR nonattainment provisions to make the regulations consistent with CAA requirements, which limit netting in certain ozone non-attainment areas. The proposed revisions are applicable to Serious, Severe and Extreme classified ozone nonattainment areas and establish that for these areas, emissions increases over any period of 5 consecutive years should be aggregated when determining whether there is a significant net emissions increase, and in Extreme ozone nonattainment areas, project emissions accounting is not permissible under the CAA.[96] This includes revisions to the language in 40 CFR 51.165 and appendix S to part 51 to reflect that sources locating in an ozone nonattainment area that is classified as Serious or Severe for ozone, must aggregate all net emissions increases that have occurred within the previous 5 consecutive calendar year period. The proposed revisions will also establish that netting is not available for sources emitting ozone precursors and locating in ozone nonattainment areas that are classified as Extreme.

The EPA noted in the 2020 PEA rule that project emissions accounting would not apply to ''certain modification provisions under Title I, Subpart D of the CAA and the EPA nonattainment NSR regulations that apply to certain nonattainment area classifications. For example, CAA section 182(e)(2) and 40 CFR part 51, appendix S 11.A.5.(v).'' The EPA did not in that action, however, elaborate and clarify that project emissions accounting would not be available in certain nonattainment areas. This section addresses the application of netting and PEA in those situations.

The provisions of section 182(c)(6) of the CAA apply to ozone nonattainment areas classified Serious or higher. The provisions state that any emission increases of ozone precursor emissions (VOC and NO_X) [97] resulting from a modification shall not be considered *de minimis* for the purposes of determining NNSR applicability ''unless the increases in net emissions. . .from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.'' Thus, sources locating in an area classified Serious or Severe for ozone cannot consider an emission increase to be *de minimis* (*i.e.,* not significant) if it exceeds a 25 ton per year threshold of an ozone precursor when emissions from the project are aggregated with other projects that result in emissions increases over a period of 5 consecutive calendar years.[98] For sources locating in areas that are classified as Extreme for ozone, section 182(e)(2) of the CAA specifies that any change at a major stationary source which results in *any* increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source must be considered a major modification for NSR applicability purposes. In addition, in an Extreme area, the source has the option of providing offsets from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, rather than the required 1.5 to 1 offset ratio.[99] The EPA is proposing language in the regulations to implement this CAA language applicable to sources that emit ozone precursors that are locating in an area that is classified as Serious, Severe or Extreme for ozone.

VIII. Implementation of These Proposed Revisions for Delegated and SIP-Approved Programs

The PSD program requirements in 40 CFR 52.21 are implemented by the EPA or reviewing authorities that have been delegated Federal authority from the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement with an EPA Regional office). Thus, if these proposed regulatory changes are finalized, any revisions to this federal PSD regulation will automatically apply to the EPA and all permitting authorities that implement a PSD program pursuant to a delegation agreement that does not reference § 52.21 as of a specific date.[100]

For state and local agencies that implement the NSR program through EPA-approved SIPs, the EPA's regulations for SIP-approved programs in 40 CFR 51.165 and 51.166 include applicability procedures that are analogous to the applicability procedures at 40 CFR 52.21(a)(2)(iv) that have been cited in this preamble.

If finalized, these regulations would modify the content of the minimum program elements of NSR. Consequently, if the EPA were to finalize the revisions being proposed in this rulemaking, reviewing authorities would need to revise their regulations and submit SIP revisions to adopt those revisions. Upon the effective date of any final revisions, EPA's implementing regulations at 40 CFR 51.166(a)(6) provide permitting authorities with up to 3 years to submit state implementation plan revisions reflecting any final EPA revisions to permit program regulations. If a reviewing authority's SIP-approved regulations already require that sources submit information consistent with the information required in the revisions to the reasonable possibility recordkeeping and reporting requirements described in section VI. of this action, those requirements may be considered by the EPA to be as stringent as that required by any final EPA regulatory revisions. Reviewing authorities whose SIP-approved regulations already require submission of regulations consistent with the proposed revisions in this action may submit a demonstration that their requirements are as stringent as those in the final action.

IX. Costs, Benefits, and Other Impacts of the Proposed Rule

The EPA is proposing to codify a definition of project and is proposing revisions to the monitoring, recordkeeping and reporting provisions under the major NSR program regulations to improve compliance with, and enforcement of, the major NSR applicability regulations. The benefits and costs associated with the proposed revisions to the NSR regulations are likely to vary greatly depending on the source category, number and location of facilities, and the pollutants and potential controls involved in any future contemplated projects. The EPA expects

[95] *See, e.g.,* Sierra Club, et al., Response to Request for Comments on Proposed Rule: Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 84 FR 39244 (August 9, 2019) at 21 (commenting that PEA ''would allow sources to avoid any obligation to 'retain the data underlying their projections, let alone send that information to permitting authorities,' so long as the source believes that its unenforceable (and potentially unidentified and undocumented) emission reductions will not trigger an increase in emissions.'').

[96] CAA section 182(c)(6); CAA section 182(e)(2).

[97] While CAA section 182(c)(6) refers only to VOC emissions, CAA section 182(f) extends to NO_X emissions all requirements related to VOC emissions.

[98] CAA section 182(c)(6).

[99] CAA section 182(e)(2).

[100] Where the EPA has only delegated authority to implement a date-specific version of section CAA 52.21, the delegation agreement would need to be updated to incorporate the revisions in this rule.

that the overall impacts of the proposed changes to the major NSR program applicability regulations will provide clarity and will also improve practicable enforceability and public transparency of the NSR program applicability requirements. However, there are numerous challenges to quantifying potential cost and emissions impacts of the proposal. The EPA lacks data on the NSR permitting process since the NSR program is largely implemented by state and local reviewing authorities. Because NSR is a pre-construction program, the EPA also faces the absence of information on projects that would have been subject to NSR permitting requirements if the revisions proposed in this action are finalized as proposed. This is to say that the EPA does not have information, with the exception of anecdotal evidence, on what projects would have been undertaken but for the codification of a definition of project, the requirements that decreases be made enforceable at Step 1 of the two-step NSR applicability requirements, or additional recordkeeping and reporting requirements. Because the EPA has no information on what forthcoming projects are planned and what impact the proposed revisions to the NSR regulations would have on these projects, the EPA also does not have specific information on what emissions impacts these projects would have had.

For example, major source permit applications are not submitted to the EPA, but to state and local reviewing authorities. There is currently no centralized database for NSR permit applications due primarily to potential federalism concerns. Minor source permitting is performed at the state and local levels (with the exception of Indian country), and there is significant variation in how state and local authorities design and implement minor source permit programs. Additionally, there are currently instances where a source may trigger the reasonable possibility recordkeeping and reporting requirements but not any NSR permitting requirements. If the source is not an EUSGU, then that source (under the EPA's Federal regulations) does not need to notify the reviewing authority or the public that these requirements were triggered.

In a separate effort, the EPA has been scoping the development of an economic model appropriate to evaluate NSR applicability. Assuming the availability of appropriate permitting data as described earlier, the model could potentially be used to evaluate how proposed changes to the NSR regulations might impact permitting costs to industry and agencies, economic activities, and emissions.

In absence of a quantitative analysis for this action, the following discussion presents a qualitative assessment of the potential benefits and costs of the major clarifications and revisions included in this proposal.

A. Proposed Definition of ''Project''

The EPA expects the proposed revisions to the regulatory definition of ''project'' will not impose additional direct regulatory costs on reviewing authorities and regulated entities, but will benefit permitting authorities and the public by systemizing application of the NSR applicability process to focus on a ''project'' under a consistently interpreted definition. Since this would codify pre-existing EPA guidance—the 2018 Project Aggregation Final Action that affirmed a prior 2009 interpretation—the EPA expects it will not impose additional direct regulatory costs. In the 2020 PEA rulemaking, the EPA stated that ''it is appropriate to apply its 'project aggregation' interpretation and policy, set forth in the 2018 final action that completed reconsideration of a 2009 action on this topic to Step 1 of the NSR major modification applicability test for projects that involve both increases and decreases in emissions.'' [101] This was reiterated in the Response to Comments document on the PEA rule, which stated that ''the EPA is affirming that the criteria in the November 2018 final action on project aggregation apply universally to defining a project for purposes of major NSR, *i.e.,* both in the context of under- and over-aggregation of activities into a project and the associated potential circumvention of NSR.'' [102] While the EPA repeatedly pointed to the 2018 Project Aggregation Final Action as the interpretation sources and permitting authorities should be implementing, it did not codify this interpretation. Therefore, the proposed codification of a definition for project is consistent with how the EPA presumed ''project'' would be defined in the 2020 PEA rule and should impose no additional obligations on regulated entities and permitting authorities.

Consistent with the EPA's statements in the 2018 Project Aggregation Final Action, we anticipate the EPA's efforts to clarify ''project'' through this rulemaking ''will streamline NSR permitting by reducing the time needed to assess whether nominally-separate physical and operational changes should be aggregated for NSR applicability purposes.'' [103] As explained in section III. of this preamble, this definition will provide guardrails that will ensure that decreases that a source accounts for are actually part of the project being considered in the NSR applicability process.

B. Enforceability of Emissions Decreases

In this action, the EPA is proposing to require that decreases accounted for in Step 1 of the NSR applicability process be made enforceable. In this action the EPA is requesting information on the costs to reviewing authorities and to sources associated with proposing that decreases be made enforceable. As explained in section V. of this action, the EPA is proposing to make decreases enforceable due to concerns that PEA will allow sources to include decreases in the project-related NSR applicability analysis without any assurance that those decreases will actually occur.

C. Clarifications and Revisions to the ''Reasonable Possibility'' (RP) in Recordkeeping and Reporting Provisions

The EPA is proposing to clarify certain existing RP requirements as follows to ensure appropriate and consistent application of those requirements by affected sources and reviewing authorities. The EPA is proposing to clarify that the provisions of 40 CFR 52.21(r)(6) apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the ATPA method for calculating projected actual emissions from any existing emissions unit. As with the codification of a definition of project, this clarification will allow for more consistent application of the reasonable possibility and recordkeeping provisions across the nation as those regulations were intended to apply.

Additionally, the EPA is expanding the applicability of the RP regulations due to PEA. The EPA believes that the inclusion of decreases at Step 1 in the NSR applicability process (*i.e.,* project emission accounting) may warrant additional recordkeeping and reporting to ensure that decreases that a source accounts for are appropriately

[101] 85 FR at 74895.

[102] Response to Comments Document on Proposed Rule: ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting''—84 FR 39244, August 9, 2019, at 58 (October 2020).

[103] 83 FR 57324 (November 15, 2018).

considered as part of the project being evaluated and that such decrease(s) actually occur following the project. In order to determine whether they are subject to permitting requirements, all sources are required to undertake the calculation that is part of the NSR applicability process. Under the current regulations, sources that conduct the applicability analysis are not required to submit any information indicating that they are not subject to the NSR permitting requirements nor are they required to notify the reviewing authority that they are subject to the RP recordkeeping and reporting requirements.[104] This proposal would not result in a substantial increase in costs because it would only require that sources submit records they are already required to produce and, in some cases, maintain on-site.

Following promulgation of the PEA rule, sources accounting for a decrease associated with a project in Step 1 in the NSR applicability process may evade all recordkeeping requirements if the sum of that decrease and any increase from the same project is under 50 percent of the SER.[105] Therefore, if a source impermissibly undertakes a project that requires a permit and where that source claims a decrease in emissions associated with the project such that the emissions projected for the project is under 50 percent of the SER, there is no means of verifying whether that project was appropriately defined. There is, in fact, no means for the reviewing authority or the public to know that such project that would otherwise have required a permit but for emissions decrease purportedly associated with the project, is occurring. There is therefore no way under the currently regulatory scheme which allows for PEA, for the public or for permitting authorities to ensure that decreases that were used by a source to forgo permitting requirements are actually occurring. The EPA believes these shields are an impediment to practical enforceability of the applicability process and that it may be warranted to require greater accountability for projects that account for project-related decreases in their ''significant emissions increase'' calculation. The EPA is therefore proposing to require that these sources submit any required pre-project records to the reviewing authority as required by the NSR regulations.

D. Revisions to Nonattainment Applicability Provisions

The proposed revisions to the nonattainment provisions applicable to Serious, Severe and Extreme classified ozone nonattainment areas do not impose new costs on sources, reviewing authorities, or the public. Rather, they merely establish in regulations requirements that sources are already required to adhere to in the CAA. This includes that for these areas, source-wide netting is not permissible, and in extreme ozone nonattainment areas project emissions accounting is not permissible under the CAA. Accordingly, in this action, the EPA is not proposing new requirements but is only proposing revisions to the regulations in 40 CFR 51.165 and appendix S to part 51 to reflect that sources locating in an area that is classified as Serious or Severe for ozone, must aggregate all net emissions increases that have occurred within the previous 5 consecutive calendar year period. These revisions mirror CAA language and do not reflect new requirements imposed upon sources or reviewing authorities. Consequently, these revisions will not change any pre-existing requirements for sources locating in ozone nonattainment areas or reviewing authorities.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (''E.O.'') can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14904: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was, therefore, not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0003 for the PSD and NNSR permit programs. The burden associated with obtaining an NSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed rule will strengthen the reasonable possibility in current recordkeeping and reporting provisions by requiring that any source wishing to account for a decrease in the significant emissions increase determination in the NSR applicability process be subject to those recordkeeping and reporting provisions. This proposed rule, if finalized, may therefore increase the recordkeeping and reporting burdens of sources that may have otherwise not been subject to these requirements. The EPA is soliciting feedback on the number of sources that may be subject to recordkeeping and reporting requirements because of this proposed revision and is also soliciting information on the cost of compliance to these sources. The EPA does not anticipate, however, that the economic impact of this revision will be significant since most sources that undertake an emissions-decreasing activity would likely have been subject to recordkeeping and reporting requirements in the absence of the proposed revision. Consequently, a substantial number of small entities are unlikely to be impacted should this proposed revision be finalized. Furthermore, with respect to proposed revisions to reporting requirements, the EPA does not anticipate that this would result in a significant economic impact on a substantial number of small entities because under existing regulations, all sources are required to maintain records. The EPA does not believe that the additional requirement of submitting these records, which are already required to be produced, will result in a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Nonetheless, if this rule is finalized as proposed, it is possible that some state and local air

[104] For projects that involve one or more EUSGUs, owners or operators are required to submit records under the RP regulations, but for all other projects, owners or operators must only maintain records on-site and are not currently required to notify the reviewing authority that they are maintaining RP records on-site.

[105] 40 CFR 52.21(r)(6)(vi).

agencies will need to submit a one-time revision to their SIP.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 in that this action would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA is currently the reviewing authority for PSD and NNSR permits issued in tribal lands and, as such, the revisions being proposed will not impose direct burdens on tribal authorities. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule will impact the NSR applicability process, and the recordkeeping and reporting provisions associated with that process. As such, it is not likely to significantly impact the number of sources subject to permitting requirements but will only facilitate transparency and accountability for those sources that would otherwise have been subject to permitting requirements.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. This is due to the lack of permitting data necessary for the EPA to evaluate the number of sources likely to be impacted by this action. Additionally, the impacts of the proposal on the benefits and costs of the NSR program are likely to vary greatly depending on the source category, number and location of facilities, and the pollutants and potential controls addressed. The NSR program is largely implemented by state and local permitting authorities. These programs vary with respect to whether they implement PEA,[106] whether their applicability process allows for source-wide netting, and what information they require from sources applying for a permit.[107]

However, there are numerous challenges to quantifying potential cost and emissions impacts of the proposal. The EPA lacks systematic data on the permitting process because the NSR program is largely implemented by state and local permitting authorities. The EPA also faces the absence of information on projects that do not engage with NSR under requirements in the baseline but might under the proposed provisions.

For example, major source permits are not submitted to the EPA, but to state and local permitting authorities. There is currently no centralized database where this permitting information is maintained. Minor source permitting is generally performed at the state and local levels, and there is a high degree of variation with respect to how state and local authorities permit non-major sources. Additionally, there are currently instances where a source may trigger the reasonable possibility recordkeeping and reporting requirements but not any other permitting requirements. If the source does not include an electric utility steam generating unit, then that source (under our current Federal regulations) does not need to notify anyone that these requirements were triggered. In these cases, under the current regulations, the reviewing authority and the public are not provided notification that records are being maintained as required by the reasonable possibility in recordkeeping provisions.

The EPA is proposing this rulemaking to fill some of these gaps identified in permitting information that is collected. For example, if finalized, this rule would require that sources inform the reviewing authority that records were maintained in compliance with the reasonable possibility requirements. The reviewing authority is then required to inform the public that these records are available for public review, if such review is requested. The EPA is additionally exploring the potential development of a database to collect permitting information and other recordkeeping and reporting information.

Despite the difficulties associated with quantitatively estimating the impacts of this proposal, the EPA believes that this action does not have disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. Rather, the EPA expects that the overall impacts of the implementation of the proposed changes to the NSR program will improve the implementation, enforcement, and public transparency of the NSR program that may result in benefits to all communities including those with environmental justice concerns.

The proposed revisions to the recordkeeping and reporting requirements are likely to improve public transparency of permit terms and conditions. In this way, there may be benefits to populations with environmental justice concerns that are more likely to be impacted by the emissions of sources subject to the ''reasonable possibility'' in

[106] In an informal survey, the EPA identified 34 out of 79 permit authorities that allow the use of PEA in their PSD programs. Of these, 8 are delegated authorities and in three, EPA is the reviewing authority. Additionally, seven incorporate the federal rules by reference, three have a rulemaking underway to adopt the federal rule, 16 interpret their pre-2020 PEA rule regulations to allow for PEA by adopting the interpretation in the 2018 Memo or another equivalent interpretation, and two have revised their regulations to implement PEA and submitted a SIP to the EPA for approval. For 13 of these authorities, it is unclear whether they interpret their regulations to allow for PEA.

[107] *E.g.,* Washington has adopted regulations consistent with those proposed in this action in WAC 173–400–720(4)(b)(iii)(D); N.J. Stat. section 26:2C–9.2(i) provides that ''the department may require the reporting and evaluation of emissions information for any air contaminant.''

recordkeeping and reporting provisions. Additionally, the requirement that decreases accounted for in the NSR applicability process be made enforceable would improve the enforceability of emissions estimates used in the NSR applicability process. This improved enforcement, will ensure that decreases accounted for in the project emissions accounting process occur as projected. The revisions proposed in this action to both the recordkeeping and reporting provisions as well as the enforceability of calculations used in the NSR applicability process will reduce the barriers to public participation in the permitting process by providing the public and permitting authorities more information on the project and the emissions associated with that project.

The EPA conducted outreach during the development of this proposed rulemaking to environmental nonprofit groups that petitioned the EPA on the project emissions accounting rule, as well as to state permitting authority associations, industry groups, and Tribal groups. Additionally, as part of other ongoing policy reviews of minor NSR programs, the EPA has conducted outreach that, among other topics, considered public notification requirements for minor modifications at major sources. Those outreach sessions were provided to the same environmental nonprofit groups the EPA met with for this action as well as with industry, state permitting authorities, and other environmental justice groups. The feedback obtained from those sessions informed aspects of this action as pertains to the revisions to the reasonable possibility in recordkeeping and reporting provisions and will inform public notice requirements that will be proposed as part of a subsequent action.

XI. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Air pollution control.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLAN

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671 q.

Subpart I—Review of New Sources and Modifications

§ 51.165 [Amended]

■ 2. Amend § 51.165 by revising and republishing paragraphs (a)(1), (2), and (6) to read as follows:

§ 51.165 Permit requirements.

(a) State Implementation Plan and Tribal Implementation Plan provisions satisfying sections 172(c)(5) and 173 of the Act shall meet the following conditions:

(1) All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below:

(i) *Stationary source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(ii)(A) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.,* which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972,* as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0065 and 003–005–00176–0, respectively).

(B) The plan may include the following provision: Notwithstanding the provisions of paragraph (a)(1)(ii)(A) of this section, *building, structure, facility, or installation* means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (a)(1)(ii)(B), has the same meaning as in 40 CFR 63.761.

(iii) *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(iv) (A) *Major stationary source* means:

(*1*) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs (a)(1)(iv)(A)(*1*)(*i*) through (*viii*) of this section.

(*i*) 50 tons per year of Volatile organic compounds in any serious ozone nonattainment area.

(*ii*) 50 tons per year of Volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(*iii*) 25 tons per year of Volatile organic compounds in any severe ozone nonattainment area.

(*iv*) 10 tons per year of Volatile organic compounds in any extreme ozone nonattainment area.

(*v*) 50 tons per year of Carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to Carbon monoxide levels in the area (as determined under rules issued by the Administrator).

(*vi*) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10}.

(*vii*) 70 tons per year of $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

(*viii*) 70 tons per year of any individual precursor for $PM_{2.5}$ (as defined in paragraph (a)(1)(xxxvii) of this section), in any serious nonattainment area for $PM_{2.5}$.

(*2*) For the purposes of applying the requirements of paragraph (a)(8) of this section to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs (a)(1)(iv)(A)(*2*)(*i*) through (*vi*) of this section shall apply in areas subject to subpart 2 of part D, title I of the Act.

(*i*) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(*ii*) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(*iii*) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(*iv*) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(*v*) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(*vi*) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(*3*) Any physical change that would occur at a stationary source not qualifying under paragraphs (a)(1)(iv)(A)(*1*) or (*2*) of this section as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone

(C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(*1*) Coal cleaning plants (with thermal dryers);

(*2*) Kraft pulp mills;

(*3*) Portland cement plants;

(*4*) Primary zinc smelters;

(*5*) Iron and steel mills;

(*6*) Primary aluminum ore reduction plants;

(*7*) Primary copper smelters;

(*8*) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(*9*) Hydrofluoric, sulfuric, or nitric acid plants;

(*10*) Petroleum refineries;

(*11*) Lime plants;

(*12*) Phosphate rock processing plants;

(*13*) Coke oven batteries;

(*14*) Sulfur recovery plants;

(*15*) Carbon black plants (furnace process); (*16*) Primary lead smelters;

(*17*) Fuel conversion plants;

(18) Sintering plants;

(*19*) Secondary metal production plants;

(*20*) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*22*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*23*) Taconite ore processing plants;

(*24*) Glass fiber processing plants;

(*25*) Charcoal production plants;

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v)(A) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in:

(*1*) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section); and

(*2*) A significant net emissions increase of that pollutant from the major stationary source.

(B) Any significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section) from any emissions units or net emissions increase (as defined in paragraph (a)(1)(vi) of this section) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(C) A physical change or change in the method of operation shall not include:

(*1*) Routine maintenance, repair and replacement;

(*2*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*3*) Use of an alternative fuel by reason of an order or rule section 125 of the Act;

(*4*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*5*) Use of an alternative fuel or raw material by a stationary source which;

(*i*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I.

(*ii*) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(*6*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, subpart I.

(*7*) Any change in ownership at a stationary source.

(*8*) [Reserved]

(*9*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*i*) The State Implementation Plan for the State in which the project is located, and

(*ii*) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(D) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (f) of this section for a PAL for that pollutant. Instead, the definition at paragraph (f)(2)(viii) of this section shall apply.

(E) For the purpose of applying the requirements of paragraph (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(F) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic

compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area. A reduction in emissions of volatile organic compounds may not be used to determine if a modification will result in a major modification.

(G) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph (a)(1)(iv)(C) of this section.

(vi) (A) *Net emissions increase* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(*1*) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(ii) of this section; and

(*2*) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (a)(1)(vi)(A)(*2*) shall be determined as provided in paragraph (a)(1)(xxxv) of this section, except that paragraphs (a)(1)(xxxv)(A)(*3*) and (a)(1)(xxxv)(B)(*4*) of this section shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(*1*) It occurs within a reasonable period to be specified by the reviewing authority; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(*3*) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in paragraph (a)(1)(iv)(C) of this section or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in paragraph (a)(1)(iv)(C) of this section and that are not, by themselves, part of a listed source category.

(D) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(*2*) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart or the State has not relied on it in demonstrating attainment or reasonable further progress;

(*4*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(G) Paragraph (a)(1)(xii)(B) of this section shall not apply for determining creditable increases and decreases or after a change.

(vii) *Emissions unit* means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit as defined in paragraph (a)(1)(xx) of this section. For purposes of this section, there are two types of emissions units as described in paragraphs (a)(1)(vii)(A) and (B) of this section.

(A) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(B) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (a)(1)(vii)(A) of this section. A replacement unit, as defined in paragraph (a)(1)(xxi) of this section, is an existing emissions unit.

(viii) *Secondary emissions* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ix) *Fugitive emissions* means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(x)(A) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of Volatile organic compounds or Nitrogen oxides
Lead	0.6 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of Sulfur dioxide emissions, 40 tpy of Nitrogen oxide emissions, or 40 tpy of VOC emissions, to the extent that any such pollutant is defined as a precursor for $PM_{2.5}$ in paragraph (a)(1)(xxxvii) of this section.

(B) Notwithstanding the significant emissions rate for ozone in paragraph (a)(1)(x)(A) of this section, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area, if such emissions increase of volatile organic compounds exceeds 25 tons per year when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(C) For the purposes of applying the requirements of paragraph (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs (a)(1)(x)(A), (B), and (E) of this section shall apply to nitrogen oxides emissions.

(D) Notwithstanding the significant emissions rate for carbon monoxide under paragraph (a)(1)(x)(A) of this section, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(E) Notwithstanding the significant emissions rates for ozone under paragraphs (a)(1)(x)(A) and (B) of this section, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area shall be considered a significant net emissions increase. A reduction in emissions of volatile organic compounds from discrete operations, units, or activities within the source may not be used to determine if a modification will result in a major modification.

(F) For the purposes of applying the requirements of paragraph (a)(13) of this section to modifications at existing major stationary sources of Ammonia located in a $PM_{2.5}$ nonattainment area, if the plan requires that the control requirements of this section apply to major stationary sources and major modifications of Ammonia as a regulated NSR pollutant (as a $PM_{2.5}$ precursor), the plan shall also define ''significant'' for Ammonia for that area, subject to the approval of the Administrator.

(xi) *Allowable emissions* means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards set forth in 40 CFR part 60 or 61;

(B) Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(xii) (A) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (a)(1)(xii)(B) through (D) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (f) of this section. Instead, paragraphs (a)(1)(xxviii) and (xxxv) of this section shall apply for those purposes.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(xiii) *Lowest achievable emission rate (LAER)* means, for any source, the more stringent rate of emissions based on the following:

(A) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(xiv) *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(xv) *Begin actual construction* means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(xvi) *Commence* as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(xvii) *Necessary preconstruction approvals or permits* means those Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(xviii) *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(xix) *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this part.

(xx) *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(xxi) *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs (a)(1)(xxi)(A) through (D) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(A) The emissions unit is a reconstructed unit within the meaning of § 60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit;

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

(C) The replacement does not alter the basic design parameters of the process unit; and

(D) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(xxii) *Temporary clean coal technology demonstration project* means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(xxiii) *Clean coal technology* means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(xxiv) *Clean coal technology demonstration project* means a project using funds appropriated under the heading ''Department of Energy-Clean Coal Technology,'' up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(xxv) [Reserved]

(xxvi) *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

(xxvii) *Significant emissions increase* means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (a)(1)(x) of this section) for that pollutant.

(xxviii)(A) *Projected actual emissions* means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (a)(1)(xxviii)(A) of this section before beginning actual construction, the owner or operator of the major stationary source:

(*1*) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(*2*) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(*3*) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (a)(1)(xxxv) of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(*4*) In lieu of using the method set out in paragraphs (a)(1)(xxviii)(B)(*1*) through (*3*) of this section, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (a)(1)(iii) of this section.

(xxix) [Reserved]

(xxx) *Nonattainment major new source review (NSR) program* means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this section, or a program that implements part 51, appendix S, Sections I through VI of this chapter. Any permit issued under such a program is a major NSR permit.

(xxxi) *Continuous emissions monitoring system (CEMS)* means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(xxxii) *Predictive emissions monitoring system (PEMS)* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(xxxiii) *Continuous parameter monitoring system (CPMS)* means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(xxxiv) *Continuous emissions rate monitoring system (CERMS)* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(xxxv) *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (a)(1)(xxxv)(A) through (D) of this section.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(*1*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*2*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(*3*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(*4*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (a)(1)(xxxv)(A)(*2*) of this section.

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this section or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(*1*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*2*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(*3*) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (a)(3)(ii)(G) of this section.

(*4*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used. For each regulated NSR pollutant.

(*5*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (a)(1)(xxxv)(B)(*2*) and (*3*) of this section.

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(A) of this section, for other existing emissions units in accordance with the procedures contained in paragraph (a)(1)(xxxv)(B) of this section, and for a new emissions unit in accordance with the procedures contained in paragraph (a)(1)(xxxv)(C) of this section.

(xxxvi) [Reserved]

(xxxvii) *Regulated NSR pollutant,* for purposes of this section, means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is identified under this paragraph (a)(1)(xxxvii)(C) as a constituent or precursor of a general pollutant listed under paragraph (a)(1)(xxxvii)(A) or (B) of this section, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*2*) Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.

(D) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(xxxviii) *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency authorized by the Administrator to carry out a permit program under this section and § 51.166, or the Administrator in the case of EPA-implemented permit programs under § 52.21. (xxxix) *Project* means a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be

economically or technically viable. In an extreme ozone nonattainment area, a ''project'' means each discrete operation, emissions unit, or other pollutant-emitting activity.

(xl) *Best available control technology (BACT)* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60, 61, or 63. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(xli) *Prevention of Significant Deterioration (PSD) permit* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.166 of this chapter, or under the program in § 52.21 of this chapter.

(xlii) *Federal Land Manager* means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(2) *Applicability procedures.* (i) Each plan shall adopt a preconstruction review program to satisfy the requirements of sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under subpart C of 40 CFR part 81. Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

(ii) Each plan shall use the specific provisions of paragraphs (a)(2)(ii)(A) through (G) of this section. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(2)(ii)(A) through (G) of this section.

(A) Except as otherwise provided in paragraph (a)(2)(iii) of this section, and consistent with the definition of major modification contained in paragraph (a)(1)(v)(A) of this section, a project is a major modification for a regulated NSR pollutant (as defined in paragraph (a)(1)(xxxvii) of this section) if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (a)(1)(xxvii) of this section) and a significant net emissions increase (as defined in paragraphs (a)(1)(vi) and (x) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase. (B) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type(s) of emissions units that could be affected by the project, according to paragraphs (a)(2)(ii)(C) through (G) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in paragraph (a)(1)(vi) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(C) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (a)(1)(xxviii) of this section) and the baseline actual emissions (as defined in paragraphs (a)(1)(xxxv)(A) and (B) of this section, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(D) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (a)(1)(iii) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (a)(1)(xxxv)(C) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(E) [Reserved]

(F) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(ii)(C) through (D) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (a)(1)(x) of this section).

(G) The ''sum of the difference'' as used in paragraphs (a)(2)(ii)(C), (D) and (F) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs. A decrease may only be accounted for in the significant emissions increase determination if it meets the requirements under 40 CFR 51.165(a)(1)(vi)(E)(*2*).

(iii) The plan shall require that for any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (f) of this section.

* * * * *

(6) Each plan shall provide that, except as otherwise provided in paragraph (a)(6)(vi) of this section, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (a)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in

paragraphs (a)(1)(xxviii)(B)(*1*) through (*3*) of this section for calculating projected actual emissions from any existing emissions unit. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (vi) of this section.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project that includes: the name of the project, the project's intended objective(s), each physical change and/or change in the method of operation associated with the project objective(s), and estimated timeline for the project, including an estimation of when the project would begin actual construction and begin regular operation;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and (C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(*3*) of this section and an explanation for why such amount was excluded, the potential to emit, as applicable, and any netting calculations, if applicable.

(ii) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (a)(6)(i) of this section to the reviewing authority. Nothing in this paragraph (a)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (a)(6)(i)(B) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at any existing emissions unit identified in 40 CFR 51.165(a)(6)(i)(B).

(iv) If the project involves an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph (a)(6)(iii) of this section setting out the annual emissions from each affected emissions unit during the calendar year that preceded submission of the report.

(v) If the project does not involve an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph (a)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section, by a significant amount (as defined in paragraph (a)(1)(x) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (a)(6)(i)(C) of this section. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(A) The name, address and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to paragraph (a)(6)(iii) of this section; and

(C) Any other information that the owner or operator wishes to include in the report (*e.g.,* an explanation as to why the emissions differ from the preconstruction projection).

(vi) A ''reasonable possibility'' under paragraph (a)(6) of this section occurs when the owner or operator calculates the project to result in either:

(A) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(B) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(*3*), sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (a)(6)(vi)(B) of this section, and not also within the meaning of paragraph (a)(6)(vi)(A) of this section, then provisions (a)(6)(ii) through (v) do not apply to the project; or

(C) The owner or operator accounts for a decrease in emissions from one or more emissions unit(s) in determining that the project is not a major modification for a regulated NSR pollutant regardless of the projected actual emissions increase.

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■ 3. Amend § 51.166 by:

■ a. Revising and republishing paragraph (a)(7);

■ b. Revising paragraph (b)(51); and

■ c. Revising and republishing paragraph (r)(6).

The revisions and republications read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(7) *Applicability.* Each plan shall contain procedures that incorporate the requirements in paragraphs (a)(7)(i) through (v) of this section.

(i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

(iv) Each plan shall use the specific provisions of paragraphs (a)(7)(iv)(*a*) through (*g*) of this section. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(7)(iv)(*a*) through (*g*) of this section.

(*a*) Except as otherwise provided in paragraph (a)(7)(v) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant

emissions increase (as defined in paragraph (b)(39) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase. (*b*) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type(s) of emissions units that could be affected by a project, according to paragraphs (a)(7)(iv)(*c*) through (*g*) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(*c*) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(40) of this section) and the baseline actual emissions (as defined in paragraphs (b)(47)(i) and (ii) of this section) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*d*) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(47)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*e*) [Reserved]

(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(7)(iv)(c) through (d) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*g*) The ''sum of the difference'' as used in paragraphs (a)(7)(iv)(*c*), (*d*) and (*f*) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs. A decrease may only be accounted for in the significant emissions increase determination if it meets the requirements under 40 CFR 51.166(b)(3)(vi)(*b*).

(v) The plan shall require that for any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (w) of this section.

(b) * * * (51) *Project* means a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable.

* * * * *

(r) * * *

(6) Each plan shall provide that, except as otherwise provided in paragraph (r)(6)(vi) of this section, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions from any existing emissions unit. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (vi) of this section.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information: (*a*) A description of the project that includes: the name of the project, the project's intended objective(s), each physical change and/or change in the method of operation associated with the project objective(s), and estimated timeline for the project, including an estimation of when the project would begin actual construction and begin regular operation;

(*b*) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(*c*) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(40)(ii)(*c*) of this section and an explanation for why such amount was excluded, the potential to emit, as applicable, and any netting calculations, if applicable.

(ii) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the reviewing authority. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(B) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at any existing emissions unit identified in 40 CFR 51.166(r)(6)(i)(*b*). (iv) If the project involves an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the annual emissions from each affected emissions unit during the calendar year that preceded submission of the report.

(v) If the project does not involve an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from

the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section) by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(*a*) The name, address and telephone number of the major stationary source;

(*b*) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(*c*) Any other information that the owner or operator wishes to include in the report (*e.g.,* an explanation as to why the emissions differ from the preconstruction projection).

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(*a*) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(*b*) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(40)(ii)(*c*) of this section, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(*b*) of this section, and not also within the meaning of paragraph (r)(6)(vi)(*a*) of this section, then the provisions under paragraphs (r)(6)(ii) through (v) of this section do not apply to the project; or

(*c*) The owner or operator accounts for a decrease in emissions from one or more emissions unit(s) in determining that the project is not a major modification for a regulated NSR pollutant regardless of the projected actual emissions increase.

* * * * *

Appendix S to Part 51—Emission Offset Interpretative Ruling

■ 4. Amend appendix S to part 51 by revising and republishing paragraphs II.A, IV.I, and IV.J to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. Initial Screening Analyses and Determination of Applicable Requirements

A. *Definitions*—For the purposes of this Ruling:

1. *Stationary source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

2. (i) *Building, structure, facility or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same ''Major Group'' (*i.e.,* which have the same two digit code) as described in the *Standard Industrial Classification Manual,* 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(ii) Notwithstanding the provisions of paragraph II.A.2(i) of this section, *building, structure, facility or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph II.A.2(ii), has the same meaning as in 40 CFR 63.761.

3. *Potential to emit* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

4. (i) *Major stationary source* means:

(*a*) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling), except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs II.A.4(i)(*a*)(1) through (8) of this Ruling.

(*1*) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(*2*) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(*3*) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(*4*) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(*5*) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator).

(*6*) 70 tons per year of PM–10 in any serious nonattainment area for PM_{10}.

(*7*) 70 tons per year of $PM_{2.5}$ in any serious nonattainment area for $PM_{2.5}$.

(*8*) 70 tons per year of any individual $PM_{2.5}$ precursor (as defined in paragraph II.A.31 of this Ruling) in any Serious nonattainment area for $PM_{2.5}$.

(*b*) For the purposes of applying the requirements of paragraph IV. H of this Ruling to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs II.A.4(i)(*b*)(*1*) through (*6*) of this Ruling apply in areas subject to subpart 2 of part D, title I of the Act.

(*1*) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(*2*) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(*3*) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(*4*) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(*5*) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(*6*) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(*c*) Any physical change that would occur at a stationary source not qualifying under paragraph II.A.4(i)(*a*) or (*b*) of this Ruling as a major stationary source, if the change would constitute a major stationary source by itself.

(ii) A major stationary source that is major for volatile organic compounds or nitrogen oxides is major for ozone.

(iii) The fugitive emissions of a stationary source shall not be included in determining

for any of the purposes of this Ruling whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(*a*) Coal cleaning plants (with thermal dryers);

(*b*) Kraft pulp mills;

(*c*) Portland cement plants;

(*d*) Primary zinc smelters;

(*e*) Iron and steel mills;

(*f*) Primary aluminum ore reduction plants;

(*g*) Primary copper smelters;

(*h*) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(*i*) Hydrofluoric, sulfuric, or nitric acid plants;

(*j*) Petroleum refineries;

(*k*) Lime plants;

(*l*) Phosphate rock processing plants;

(*m*) Coke oven batteries;

(*n*) Sulfur recovery plants;

(*o*) Carbon black plants (furnace process);

(*p*) Primary lead smelters;

(*q*) Fuel conversion plants;

(*r*) Sintering plants;

(*s*) Secondary metal production plants;

(*t*) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(*u*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(*v*) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(*w*) Taconite ore processing plants;

(*x*) Glass fiber processing plants;

(*y*) Charcoal production plants;

(*z*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(*aa*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

5. (i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in:

(*a*) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph II.A.31 of this Ruling); and

(*b*) A significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph II.A.23 of this Ruling) from any emissions units or net emissions increase (as defined in paragraph II.A.6 of this Ruling) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair, and replacement;

(*b*) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I; or

(*2*) The source is approved to use under any permit issued under this Ruling;

(*f*) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I;

(*g*) Any change in ownership at a stationary source.

(iv) For the purpose of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject with respect to ozone to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone. (v) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area. A reduction in emissions of volatile organic compounds may not be used to determine if a modification will result in a major modification.

(vi) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph IV.K of this ruling for a PAL for that pollutant. Instead, the definition at paragraph IV.K.2(viii) of this Ruling shall apply.

(vii) Fugitive emissions shall not be included in determining for any of the purposes of this Ruling whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph II.A.4(iii) of this Ruling.

6. (i) *Net emissions increase* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(*a*) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph IV.J of this Ruling; and

(*b*) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph II.A.6(i)(*b*) shall be determined as provided in paragraph II.A.30 of this Ruling, except that paragraphs II.A.30(i)(*c*) and II.A.30(ii)(*d*) of this Ruling shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(*a*) The date five years before construction on the particular change commences and

(*b*) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the reviewing authority has not relied on it in issuing a permit for the source under this Ruling, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(*a*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*b*) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(*c*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR 51.165; and

(*d*) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vi) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) Paragraph II.A.13(ii) of this Ruling shall not apply for determining creditable increases and decreases or after a change.

7. *Emissions unit* means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph II.A.21 of this Ruling. For purposes of this Ruling, there are two types of emissions units as described in paragraphs II.A.7(i) and (ii) of this Ruling.

(i) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph II.A.7(i) of this Ruling. A replacement unit, as defined in paragraph II.A.37 of this Ruling, is an existing emissions unit.

8. *Secondary emissions* means emissions which would occur as a result of the

construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Ruling, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

9. *Fugitive emissions* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

10. (i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of Volatile organic compounds or Nitrogen oxides

Lead: 0.6 tpy

Particulate matter: 25 tpy of Particulate matter emissions

PM_{10}: 15 tpy

$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of Sulfur dioxide emissions, 40 tpy of Nitrogen oxides emissions, or 40 tpy of Volatile organic compound emissions, to the extent that any such pollutant is defined as a precursor for $PM_{2.5}$ in paragraph II.A.31 of this Ruling.

(ii) Notwithstanding the significant emissions rate for ozone in paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area, if such emissions increase of volatile organic compounds exceeds 25 tons per year when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(iii) For the purposes of applying the requirements of paragraph IV.H of this Ruling to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs II.A.10(i), (ii), and (v) of this Ruling shall apply to nitrogen oxides emissions.

(iv) Notwithstanding the significant emissions rate for carbon monoxide under paragraph II.A.10(i) of this Ruling, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(v) Notwithstanding the significant emissions rates for ozone under paragraphs II.A.10(i) and (ii) of this Ruling, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area shall be considered a significant net emissions increase. A reduction in emissions of volatile organic compounds from discrete operations, units, or activities within the source may not be used to determine if a modification will result in a major modification.

(vi) In any nonattainment area for $PM_{2.5}$ in which a state must regulate Ammonia as a regulated NSR pollutant (as a $PM_{2.5}$ precursor) as defined in paragraph II.A.31 of this Ruling, the reviewing authority shall define ''significant'' for Ammonia for that area and establish a record to document its supporting basis. All sources with modification projects with increases in Ammonia emissions that are not subject to Section IV of this Ruling must maintain records of the non-applicability of Section IV that reference the definition of ''significant'' for Ammonia that is established by the reviewing authority in the nonattainment area where the source is located.

11. *Allowable emissions* means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(i) Applicable standards as set forth in 40 CFR parts 60 and 61;

(ii) Any applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(iii) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

12. *Federally enforceable* means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

13. (i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs II.A.13(ii) through (iv) of this Ruling, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph IV.K of this Ruling. Instead, paragraphs II.A.24 and 30 of this Ruling shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The reviewing authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

14. *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

15. *Commence* as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

16. *Necessary preconstruction approvals or permits* means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

17. *Begin actual construction* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

18. *Lowest achievable emission rate (LAER)* means, for any source, the more stringent rate of emissions based on the following:

(i) The most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or

operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(ii) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

19. *Resource recovery facility* means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this Ruling.

20. *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this part.

21. *Electric utility steam generating unit* means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

22. *Pollution prevention* means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain ''in-process recycling'' practices), energy recovery, treatment, or disposal.

23. *Significant emissions increase* means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph II.A.10 of this Ruling) for that pollutant.

24. (i) *Projected actual emissions* means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph II.A.24(i) of this Ruling before beginning actual construction, the owner or operator of the major stationary source:

(*a*) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(*b*) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(*c*) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph II.A.30 of this Ruling and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(*d*) In lieu of using the method set out in paragraphs II.A.24(ii)(*a*) through (*c*) of this Ruling, may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph II.A.3 of this Ruling.

25. *Nonattainment major new source review (NSR) program* means a major source preconstruction permit program that implements Sections I through VI of this Ruling, or a program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.165 of this part. Any permit issued under such a program is a major NSR permit.

26. *Continuous emissions monitoring system (CEMS)* means all of the equipment that may be required to meet the data acquisition and availability requirements of this Ruling, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

27. *Predictive emissions monitoring system (PEMS)* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

28. *Continuous parameter monitoring system (CPMS)* means all of the equipment necessary to meet the data acquisition and availability requirements of this Ruling, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

29. *Continuous emissions rate monitoring system (CERMS)* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

30. *Baseline actual emissions* means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs II.A.30(i) through (iv) of this Ruling.

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(*d*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph II.A.30(i)(*b*) of this Ruling.

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the reviewing authority for a permit required either under this Ruling or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(*a*) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(*b*) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(*c*) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an

attainment demonstration or maintenance plan.

(*d*) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(*e*) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs II.A.30(ii)(*b*) and (*c*) of this Ruling.

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph II.A.30(i) of this Ruling, for other existing emissions units in accordance with the procedures contained in paragraph II.A.30(ii) of this Ruling, and for a new emissions unit in accordance with the procedures contained in paragraph II.A.30(iii) of this Ruling.

31. *Regulated NSR pollutant,* for purposes of this Ruling, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a national ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(*a*) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(*b*) Any pollutant that is identified under this paragraph II.A.31(ii)(*2*) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*2*) Sulfur dioxide and Nitrogen oxides are regulated as precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

(*3*) For any area that was designated nonattainment for $PM_{2.5}$ on or before April 15, 2015, Volatile organic compounds and Ammonia shall be regulated as precursors to $PM_{2.5}$ beginning on April 15, 2017, with respect to any permit issued for $PM_{2.5,}$ unless the following conditions are met: The state submits a SIP for the Administrator's review containing the state's preconstruction review provisions for $PM_{2.5}$ consistent with § 51.165 and a complete NNSR precursor demonstration consistent with § 51.1006(a)(3); and such SIP is determined to be complete by the Administrator or deemed to be complete by operation of law in accordance with section 110(k)(1)(B) of the Act by April 15, 2017. If these conditions are met, the precursor(s) addressed by the NNSR precursor demonstration (Volatile organic compounds, Ammonia, or both) shall not be regulated as a precursor to $PM_{2.5}$ in such area. If the Administrator subsequently disapproves the state's preconstruction review provisions for $PM_{2.5}$ and the NNSR precursor demonstration, the precursor(s) addressed by the NNSR precursor demonstration shall be regulated as a precursor to $PM_{2.5}$ under this Ruling in such area as of April 15, 2017, or the effective date of the disapproval, whichever date is later.

(*4*) For any area that is designated nonattainment for $PM_{2.5}$ after April 15, 2015, and was not already designated nonattainment for $PM_{2.5}$ on or immediately prior to such date, Volatile organic compounds and Ammonia shall be regulated as precursors to $PM_{2.5}$ under this Ruling beginning 24 months from the date of designation as nonattainment for $PM_{2.5}$ with respect to any permit issued for $PM_{2.5}$, unless the following conditions are met: the state submits a SIP for the Administrator's review which contains the state's preconstruction review provisions for $PM_{2.5}$ consistent with § 51.165 and a complete NNSR precursor demonstration consistent with § 51.1006(a)(3); and such SIP is determined to be complete by the Administrator or deemed to be complete by operation of law in accordance with section 110(k)(1)(B) of the Act by the date 24 months from the date of designation. If these conditions are met, the precursor(s) addressed by the NNSR precursor demonstration (Volatile organic compounds, Ammonia, or both) shall not be regulated as a precursor to $PM_{2.5}$ in such area. If the Administrator subsequently disapproves the state's preconstruction review provisions for $PM_{2.5}$ and the NNSR precursor demonstration, the precursor(s) addressed by the NNSR precursor demonstration shall be regulated as a precursor to $PM_{2.5}$ under this Ruling in such area as of the date 24 months from the date of designation, or the effective date of the disapproval, whichever date is later.

32. *Reviewing authority* means the State air pollution control agency, local agency, other State agency, Indian tribe, or other agency issuing permits under this Ruling or authorized by the Administrator to carry out a permit program under §§ 51.165 and 51.166 of this part, or the Administrator in the case of EPA-implemented permit programs under this Ruling or under § 52.21 of this chapter.

33. *Project* means a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable. In an extreme ozone nonattainment area, a ''project'' means each discrete operation, emissions unit, or other pollutant-emitting activity.

34. *Best available control technology (BACT)* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR part 60, 61, or 63. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

35. *Prevention of Significant Deterioration (PSD) permit* means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of § 51.166, or under the program in § 52.21 of this chapter.

36. *Federal Land Manager* means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

37. *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs II.A.37(i) through (iv) of this Ruling are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of § 60.15(b)(1) of this chapter, or the emissions unit

completely takes the place of an existing emissions unit;

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

(iii) The replacement does not alter the basic design parameters of the process unit; and

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

IV. Sources That Would Locate in a Designated Nonattainment Area

* * * * *

I. *Applicability procedures.*

1. To determine whether a project constitutes a major modification, the reviewing authority shall apply the principles set out in paragraphs IV.I.1(i) through (vi) of this Ruling.

(i) Except as otherwise provided in paragraph IV.I.2 of this Ruling, and consistent with the definition of major modification contained in paragraph II.A.5 of this Ruling, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph II.A.23 of this Ruling), and a significant net emissions increase (as defined in paragraphs II.A.6 and 10 of this Ruling). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(ii) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type(s) of emissions units that could be affected by the project, according to paragraphs IV.I.1(iii) through (vi) of this Ruling. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in paragraph II.A.6 of this Ruling. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(iii) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph II.A.24 of this Ruling) and the baseline actual emissions (as defined in paragraphs II.A.30(i) and (ii) of this Ruling, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(iv) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph II.A.3 of this Ruling) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph II.A.30(iii) of this Ruling) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(v) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs IV.I.1(iii) through (iv) of this Ruling as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph II.A.10 of this Ruling).

(vi) The ''sum of the difference'' as used in paragraphs IV.I.1(iii), (iv) and (v) of this Ruling shall include both increases and decreases in emissions calculated in accordance with those paragraphs. A decrease may only be accounted for in the significant emissions increase determination if it meets the requirements under paragraph II.A.6(v)(*b*) of this Ruling.

2. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph IV.K of this Ruling. J.

Provisions for projected actual emissions. Except as otherwise provided in paragraph IV.J.6(ii) of this Ruling, the provisions of this paragraph IV.J apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph IV.J.6 of this Ruling, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs II.A.24(ii)(a) through (c) of this Ruling for calculating projected actual emissions from any existing emissions unit.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information: (i) A description of the project that includes: the name of the project, the project's intended objective(s), each physical change and/or change in the method of operation associated with the project objective(s), and estimated timeline for the project, including an estimation of when the project would begin actual construction and begin regular operation;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and (iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph II.A.24(ii)(*c*) of this Ruling and an explanation for why such amount was excluded, and the potential to emit, as applicable, and any netting calculations, if applicable.

2. Before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph IV.J.1 of this Ruling to the reviewing authority. Nothing in this paragraph IV.J.2 shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph IV.J.1(ii) of this Ruling; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at any existing emissions unit identified in paragraph IV.J.1(ii) of this Ruling.

4. If the project involves an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority within 60 days after the end of each year, during which records must be generated under paragraph IV.J.3 of this Ruling setting out the annual emissions from each affected emissions unit during the calendar year that preceded submission of the report.

5. If the project does not involve an existing electric utility steam generating unit, the owner or operator shall submit a report to the reviewing authority if the annual emissions, in tons per year, from the project identified in paragraph IV.J.1 of this Ruling, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling) by a significant amount (as defined in paragraph II.A.10 of this Ruling) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph IV.J.1(iii) of this Ruling. Such report shall be submitted to the reviewing authority within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph IV.J.3 of this Ruling; and

(iii) Any other information that the owner or operator wishes to include in the report (*e.g.,* an explanation as to why the emissions differ from the preconstruction projection).

6. A ''reasonable possibility'' under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a

significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(*c*) of this Ruling, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph IV.J.6(ii) of this Ruling, and not also within the meaning of paragraph IV.J.6(i) of this Ruling, then provisions in paragraphs IV.J.2 through IV.J.5 of this Ruling do not apply to the project; or

(iii) The owner or operator accounts for a decrease in emissions from one or more emissions unit(s) in determining that the project is not a major modification for a regulated NSR pollutant regardless of the projected actual emissions increase.

7. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this paragraph IV.J of this Ruling available for review upon a request for inspection by the reviewing authority or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this chapter.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

§ 52.21 [Amended]

■ 6. Amend § 52.21 by:
■ a. Revising and republishing paragraph (a)(2);
■ b. Revising paragraph (b)(52); and
■ c. Revising and republishing paragraph (r)(6).

The revisions and republications read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(a) * * *

(2) *Applicability procedures.* (i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(*a*) through (*g*) of this section.

(*a*) Except as otherwise provided in paragraph (a)(2)(v) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section) and a significant net emissions increase (as defined in paragraphs (b)(3) and (23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(*b*) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.,* the first step of the process) will occur depends upon the type(s) of emissions units that could be affected by the project, according to paragraphs (a)(2)(iv)(*c*) through (*g*) of this section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.,* the second step of the process) is contained in the definition in paragraph (b)(3) of this section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(*c*) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41) of this section) and the baseline actual emissions (as defined in paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*d*) *Actual-to-potential test for projects that only involve construction of a new emissions unit(s).* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(48)(iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*e*) [Reserved]

(*f*) *Hybrid test for projects that involve multiple types of emissions units.* A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference for all emissions units, using the method specified in paragraphs (a)(2)(iv)(c) and (d) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section).

(*g*) The ''sum of the difference'' as used in paragraphs (a)(2)(iv)(*c*), (*d*) and (*f*) of this section shall include both increases and decreases in emissions calculated in accordance with those paragraphs. A decrease may only be accounted for in the significant emissions increase determination if it meets the requirements under 40 CFR 52.21(b)(3)(vi)(*b*).

(v) For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under paragraph (aa) of this section.

(b) * * *

(52) *Project* means a discrete physical change in, or change in the method of operation of, an existing major stationary source, or a discrete group of such changes (occurring contemporaneously at the same major stationary source) that are substantially related to each other. Such changes are substantially related if they are dependent on each other to be economically or technically viable.

* * * * *

(r) * * *

(6) Except as otherwise provided in paragraph (r)(6)(vi)(*b*) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects that involve one or more existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a

significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions from any existing emissions unit.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information: (*a*) A description of the project that includes: the name of the project, the project's intended objective(s), each physical change and/or change in the method of operation associated with the project objective(s), and estimated timeline for the project, including an estimation of when the project would begin actual construction and begin regular operation;

(*b*) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and (*c*) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section and an explanation for why such amount was excluded, the potential to emit, as applicable, and any netting calculations, if applicable.

(ii) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the reviewing authority. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(*b*) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at any existing emissions unit identified in 40 CFR 52.21(r)(6)(i)(*b*).

(iv) If the project involves an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the annual emissions from each affected emissions unit during the calendar year that preceded submission of the report.

(v) If the project does not involve an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section), by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(c) of this section. Such report shall be submitted to the Administrator within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (*e.g.,* an explanation as to why the emissions differ from the preconstruction projection).

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(*a*) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(*b*) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(*b*) of this section, and not also within the meaning of paragraph (r)(6)(vi)(*a*) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project; or

(*c*) The owner or operator accounts for a decrease in emissions from one or more emissions unit(s) in determining that the project is not a major modification for a regulated NSR pollutant regardless of the projected actual emissions increase.

* * * * *

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Part III

Department of Transportation

49 CFR Part 24
Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[Docket No. FHWA–2018–0039]

RIN 2125–AF79

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) regulations. The revisions are prompted by enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21), which increased statutory relocation benefits and reduced length of occupancy requirements. This final rule updates existing regulations on the use of those provisions. The FHWA is also updating the Uniform Act regulations in response to comments received during this rulemaking's public comment period and to reflect the agency's experience with the Federal-aid highway program since the last comprehensive rulemaking for the part, which occurred in 2005. The updates include streamlining processes to better meet current Uniform Act implementation needs and eliminating duplicative and outdated regulatory language.

DATES: This final rule is effective June 3, 2024.

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SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

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Executive Summary

The Uniform Act, as amended, 42 United States Code (U.S.C.) 4601 *et seq.,* provides important protections and assistance for people affected by Federal and federally assisted projects. Congress enacted this law to ensure that people whose real property is acquired, or who move as a result of Federal projects or projects receiving Federal funds, are treated fairly and equitably and receive just compensation for, and assistance in moving from, the property they own or occupy. The Government-wide regulation implementing the Uniform Act is 49 Code of Federal Regulations (CFR) part 24.

The Surface Transportation and Uniform Relocation Assistance Act (STURAA) (Pub. L. 100–17) of 1987 designated DOT as the Federal Lead Agency (Lead Agency) for the Uniform Act. Duties of the Lead Agency include developing, issuing, and maintaining the Government-wide regulation, providing assistance to other Federal agencies, and reporting to Congress on Uniform Act implementation issues. The DOT has delegated these responsibilities to the FHWA at 49 CFR 1.85(d)(7).

Acting as Lead Agency, FHWA is publishing this final rule to amend and update 49 CFR part 24, which affects the land acquisition and displacement activities of all Federal agencies subject to the Uniform Act, as well as the activities of the recipients of funding from those Federal agencies. The proposed changes to this regulation are necessitated in part by Section 1521 of MAP–21 (Pub. L. 112–141, July 6, 2012). Section 1521 included increases in benefit levels for displaced persons, authority to develop a regulatory mechanism to consider and implement future adjustments to those benefit levels, the requirement for an annual report on Government-wide real property acquisitions subject to the Uniform Act, and provisions for the funding of Lead Agency services. In addition to these required changes, FHWA is amending the regulations to clarify existing requirements for implementing the Uniform Act, meet modern needs, and improve the agencies' service to individuals and businesses affected by Federal or federally assisted projects.

The final rule's changes will also reduce the paperwork and administrative burdens of Federal Government regulations on agencies subject to the Uniform Act. The 10-year costs of the final rule for all Uniform Act agencies are estimated to be minor: $2.2 million when discounted at 7 percent and $2.4 million when discounted at 3 percent. The 10-year annualized costs are estimated to be: $311,000 per year when discounted at 7 percent and $283,000 per year when discounted at 3 percent. Therefore, the costs associated with this rule are minimal.

The larger impact of this rule is in the form of fund transfers from the displacing agencies to persons whose real property is acquired or whose personal property must be moved for Federal or federally assisted projects. The estimated amount of transfers resulting from this rule over a 10-year period are $169.5 million when discounted at 7 percent and $214.6 million when discounted at 3 percent. This rule can therefore be thought of as predominantly a transfer rule, as the estimated social costs are significantly smaller than those transfers between displacing agencies and those compensated. The FHWA was the only agency that provided data upon which to base estimates of the transfers. Therefore, the magnitude of the change in transfers for all Federal agencies may be larger than is reported here. The Regulatory Impact Analysis (RIA) for this rulemaking contains further breakdown of costs associated with FHWA's program and can be found on the docket. Other Federal agencies may have additional regulatory or administrative updates specific to their programs as a result of this rulemaking.

The benefits of this final rule primarily relate to improved equity and fairness to persons that are displaced from their properties or that move as a result of Federal projects or projects receiving Federal funds. For example, this final rule raises the maximum for payments to displaced persons to assist with the reestablishment of the business, farm, or nonprofit organization. There is strong evidence that displaced persons experience reestablishment costs well above the current maximum amount. Raising the maximum payment levels will compensate those displaced persons more fairly and equitably for the negative impacts they experience as a result of a Federal or federally assisted project. However, the fairness and equity benefits of the rule cannot be quantified or monetized. The higher level of payments may also contribute to more small businesses, farms, and nonprofit organizations being able to successfully reestablish after displacement.

Background

FHWA last updated 49 CFR part 24 in 2005. Since publication of the 2005 rule (70 FR 611), FHWA undertook a comprehensive effort to identify potential opportunities for improving implementation of the Uniform Act. FHWA initiatives included research on the need for regulatory and statutory change to the Uniform Act; co-sponsorship of national symposiums on Uniform Act implementation issues; implementation of pilot projects designed to determine the effect of changes in certain Uniform Act requirements and procedures; and an examination of the experiences of several State departments of transportation (State DOTs) in providing payments required by State law that supplemented Uniform Act benefits. These activities confirmed that there are a number of enhancements that could be made to clarify existing requirements, reduce administrative burdens, and improve the Government's service to individuals and businesses affected by Federal or federally assisted projects and programs.

The Uniform Act and the common rule govern the relocation and real property acquisition programs of all Federal agencies. For convenience, those Federal agencies that provide a cross reference to this part and the location of those cross-references, are listed below:

U.S. Department of Agriculture
7 CFR part 21
U.S. Department of Commerce
15 CFR part 11
U.S. Department of Defense
32 CFR part 259
U.S. Department of Education
34 CFR part 15
U.S. Department of Energy
10 CFR part 1039
U.S. Environmental Protection Agency
40 CFR part 4
U.S. General Services Administration
41 CFR part 105–51
U.S. Department of Health and Human Services
45 CFR part 15
U.S. Department of Housing and Urban Development (HUD)
24 CFR part 42
U.S. Department of Justice
41 CFR part 128–18
U.S. Department of Labor
29 CFR part 12
National Aeronautics and Space Administration
14 CFR part 1208
Tennessee Valley Authority
18 CFR part 1306
U.S. Department of Veterans Affairs
38 CFR part 25
U.S. Department of Homeland Security
44 CFR part 25

The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from Federal or federally assisted programs or projects; the Uniform Act's applicability is not affected by the absence of a cross reference to 49 CFR part 24 in an agency's regulations. Further, Federal or federally assisted activities involving land acquisition or displacement, undertaken by a newly constituted Federal agency, would be covered by the Uniform Act.

FHWA began a process more than 15 years ago to identify additional needs for regulatory updates and elicit input from Federal stakeholders and conducted research projects, which resulted in many of the regulatory changes proposed in the NPRM and incorporated in this final rule. The primary focus of the various efforts was to identify opportunities to streamline processes to better meet current Uniform Act implementation needs and eliminate duplicative and outdated regulatory language in that rule. Beginning in 2012, and culminating in 2018, FHWA held numerous working group meetings with representatives of the Federal agencies subject to the Uniform Act. The meetings included a section-by-section review of the regulation, consideration of comments received during the 2005 rulemaking process to identify potential areas of focus and change, review of listening session comments, and consideration of research findings. Contributions from working group members were based on their experiences implementing the rule and feedback they had received from their partners and customers. The review by the working group led to a compilation of potential changes to the rule. FHWA considered the group's recommendations and proposed changes for each of the regulation's subparts and developed an initial draft NPRM. Over a series of several working group meetings, the draft was refined and revised based on proposed edits and comments of the working group. When the working group meetings concluded, FHWA worked internally to finalize the draft NPRM and continued to share drafts and receive additional comments from the Federal agencies.

On December 18, 2019, at 84 FR 69466, FHWA published an NPRM in the **Federal Register**. FHWA received 103 submissions to the docket resulting in more than 250 comments on various aspects of the proposed rule.

Summary of Significant Changes Made in the Final Rule

This final rule was revised in response to comments received on the NPRM. The following paragraphs summarize the most significant of those changes. Editorial or minor changes in language are not addressed in this section. A detailed summary of the significant issues raised by the commenters and an explanation of the changes made in response to those comments can be found in the section-by-section analysis.

Subpart A—General

Section 24.2 was revised by removing the proposed definition of ''Federal down payment assistance'' and revising the definition of ''Federal Financial Assistance.'' The discussion of Federal down payment assistance in the proposed appendix was also removed.

Section 24.11 was revised to allow adjustments of waiver valuation limits, conflict of interest limits, and search cost reimbursements for nonresidential relocations. This section's title was revised to indicate these changes. This section was also revised by eliminating the fixed 5-year period for review and consideration of the need to update benefits.

Subpart B—Real Property Acquisition

Throughout subpart B the word ''develop(ed)'' was replaced with the word ''perform(ed)'' when referring to waiver valuations, appraisals, or appraisal reviews to avoid confusion with long standing interpretations in the Uniform Standards of Professional Appraisal Practice (USPAP). The USPAP recognizes performing valuation assignments involves two separate functions: (1) development of a valuation, appraisal, or appraisal review, and (2) reporting the results of a valuation, appraisal, or appraisal review to clients, and intended users of valuation services. The intent of this change is to ensure that readers of this regulation understand that performance of a valuation, appraisal, or appraisal review includes both development of the assignment results and reporting those results to the client and intended users of the product. This change will provide clarity and consistency between this rule and certain USPAP requirements.

In § 24.101, FHWA removed (b)(2) and (3) and reorganized (b)(1) to clarify the requirements and qualifications for determining when a voluntary acquisition may be advanced for all Federal and federally assisted programs and projects desiring to use voluntary

acquisition. FHWA revised and streamlined § 24.101(b)(1)(i), which clarifies that if eminent domain will not be used and if the additional requirements of this section are met, then an agency may use the voluntary acquisition requirements of this section. The FHWA also removed the § 24.101(b)(2)(iii) discussion of the use of eminent domain.

Section 24.102(c)(2)(ii)(C) was revised to increase the waiver valuation thresholds for property acquisitions with an estimated fair market value from $10,000 to $15,000 for the first tier, and $25,000 to $35,000 for the second tier, to address comments requesting additional waiver valuation flexibility.

Section 24.102(c)(2)(ii)(D) was revised to eliminate some of the NPRM's proposed requirements for waiver valuations above $35,000 and up to $50,000 (third tier).

Section 24.102(n)(3) was revised to increase the conflict of interest limits to $15,000 and $35,000 to allow additional flexibility and to align with the increase in waiver valuation limits changes in § 24.102(c)(2)(ii)(C).

Subpart D—Payments for Moving and Related Expenses

Section 24.301(g)(7) added a new provision for reimbursement of costs for rental replacement dwelling application fees and credit reports.

Section-by-Section Discussion

General Comments

One commenter indicated that they believed that ''market value'' and ''fair market value'' were not the same.

FHWA Response: FHWA believes that ''market value'' and ''fair market value'' refer to the same concept, *i.e.,* the value of the property. FHWA acknowledges that some jurisdictions may ascribe different legal definitions to these terms, however the terms ''fair market value,'' which is used throughout this final rule, and ''market value,'' which may be more commonly used in private transactions, are synonymous for purposes of this rule.

As a result, no changes were made to the final rule.

Section 24.2(a) Definitions

Appraisal

One commenter suggested that FHWA adopt the definition of appraisal in the USPAP rather than the definition of an ''appraisal'' in the NPRM.

FHWA Response: The definition of an ''appraisal'' can be found at 42 U.S.C. 4601(13). This final rule continues to include that definition. FHWA received questions and concerns about the definition of an appraisal as it relates to most State licensure boards' view that any opinion of value issued by one of their licensees is by their definition of an appraisal (see discussion in this preamble, below, on the definition of ''waiver valuation.'') FHWA continues to believe the definition of appraisal in this regulation is consistent with the statutory description of an appraisal for Federal and federally assisted projects and programs.

FHWA believes that adoption of USPAP definition of an appraisal would create administrative and fiscal burdens by effectively broadening the definition of appraisal in this regulation to include waiver valuations as appraisals. The programmatic consequence of redefining a waiver valuation as an appraisal would require those performing uncomplicated valuations for Federal and federally assisted projects or programs to comply with additional requirements for performing an appraisal, which would require additional time and increase costs to develop and report an opinion of value. FHWA does not believe that such increases in cost and time will afford any additional protections or benefits to those whose property is acquired for a Federal or federally assisted project or program. FHWA has more than 30 years of experience with the use of waiver valuations under this regulation. FHWA previously conducted national waiver valuation surveys, research, and several informal program reviews and has not noted any significant instances of abuse or mishandling of program responsibility by any agency authorized to implement this flexibility in their program.

As a result of the above analysis, no changes were made to this section of the final rule.

Comparable Replacement Housing—Unreasonable Adverse Environmental Conditions

FHWA received one comment suggesting that it revise the definition of comparable replacement dwelling by removing the term ''unreasonable.'' The commenter stated, in part, that ''unreasonable'' is undefined in the rule and therefore its use subjects this important protection to ambiguity, and consequently, uncertain or unpredictable implementation.

FHWA Response: FHWA believes that removing the word ''unreasonable'' from § 24.2(a)(6)(iv) in the definition of a ''comparable replacement dwelling'' is not necessary. The FHWA notes that this part of the definition of a ''comparable replacement dwelling'' has been in previous regulations for almost 40 years. In that time, FHWA has not noted any confusion about the definition or questions about correct application.

As a result of this analysis no change was made to the definition.

Comparable Replacement Housing—Government Housing Assistance

FHWA received one comment suggesting revising the definition of comparable housing for a displaced person receiving Government housing assistance before displacement. The commenter felt that changes to this section are needed to better reflect the reality of assisted units, unit availability, and the interests of assisted households who are displaced. The commenter felt the primary provisions of item (ix) in this definition (§ 24.2(a), Comparable Replacement Dwelling) were useful clarifications regarding application of housing assistance program rules to both previously assisted and previously unassisted households. However, the commenter felt that the proposed additions of paragraphs (ix)(A) through (C) (§ 24.2(a), Comparable Replacement Dwelling), are unnecessary and potentially harmful to displaced persons. The commenter believes that the proposed requirements of (ix)(A) through (C) may lead some displaced persons to view the potential absence of desired public housing units from these formal documented offers as confusing and may imply that utilizing public housing units as comparable dwellings are not an option. The commenter also was concerned that paragraphs (ix)(A) through (C) limits the units an agency may offer as a comparable unit, increasing costs and burdens of complying with the regulation. The commenter offered several suggestions for replacing paragraphs (ix)(A) through (C) to ensure that residents of subsidized dwellings are offered comparable replacement dwellings that are not limited to public housing. One proposal was to require that when a person is displaced from a privately owned dwelling which has unit-based assistance, at least one of the comparable replacement units offered may not be a public housing unit. The commentor also proposed that a displaced person who had tenant-based assistance must be provided at least one comparable privately owned unit where the displaced household's tenant-based assistance can be utilized.

FHWA Response: FHWA reviewed the proposed changes in this section and the commenter's proposed deletions and additions. FHWA does not agree that the NPRM's proposed addition of paragraphs (ix)(A) through (C) in this

section limits or restricts choices or eligibility determinations that a displacing agency may make when a person is receiving Government housing assistance before displacement. FHWA believes that it is important to endeavor to provide the displaced person with options, which may include government assisted housing units, which are at minimum similar to their displacement dwelling. The inclusion of the renumbered paragraphs (9)(i) through (iii) in this final rule ensures that certain comparability standards are understood and met. FHWA does not agree with the commenter's proposed changes to this section to set a required number of government housing units, or market sale comparable dwellings, as such a standard will not ensure that a displaced person understands their replacement housing options. Effective advisory services are a required part of a relocation and include a discussion and identification of a displaced person's needs and preferences (§ 24.205(c)(2)(ii)). These requirements will both guide an agency in identifying appropriate comparable dwellings and ensure that the displaced person understands their options and eligibility.

FHWA also does not view the language as drawing distinctions about the quality or desirability of certain types of Government housing assistance. FHWA believes the Federal funding agencies may want to develop additional policies or guidance to ensure that those displaced persons who are receiving Government housing assistance before displacement are provided comparable dwellings, which allows the agency to ensure that appropriate comparable housing has been made available.

FHWA revised this section to clarify that Government housing and assistance programs' requirements and considerations include fair housing and civil rights compliance. The revisions require that a displacing agency determine that owners of the comparable properties will accept a government housing subsidy when determining and selecting a comparable dwelling. FHWA also included portions of the NPRM's appendix A discussion in this section to further clarify these requirements.

Decent, Safe, and Sanitary (DSS)

Four commenters provided comments on the NPRM's proposed changes to the definition of ''DSS.'' One commenter expressed support for the changes to the definition and believed the changes will provide needed flexibility. Two commenters requested that all references to lead-based paint be moved to appendix A, with one stating that policies and practices to address lead-based paint should be considered to be a best practice. One commenter provided comments on the inclusion of a requirement to comply with local standards requiring the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, where they exist. This commenter was supportive of the requirement but believes that the final rule should be revised to require additional specific testing because few State and local jurisdictions have housing or public health codes requiring pre-occupancy lead hazard inspections. This commenter also proposed an alternative requirement be added to the final rule which would require a proactive inspection for lead-paint hazards in any replacement housing units to be made available to displaced persons, with remediation and cleaning as necessary. This commenter also proposed an addition to this definition to clarify that comparable and replacement dwellings should be free of other health hazards, including mold, infestations, and radon, and that comparable dwellings have operable fire and carbon dioxide alarms.

FHWA Response: FHWA appreciates the support for the proposed changes to this definition. FHWA also appreciates the comments and rationale that every measure should be taken to ensure that a displaced person is able to move to a dwelling where all known health risks have been identified and addressed. However, as was discussed in the NPRM's preamble, this rule and its definition of ''DSS'' are minimum requirements. Further, the NPRM also proposed to add that in cases where either local code or agency policy or regulation were more stringent, then the most stringent of those requirements must be applied. FHWA believes that the requirement to follow the most stringent policy or regulation ensures that agencies will take the required steps to ensure that a dwelling is DSS. FHWA does agree that if lead-based paint is specifically listed in this part of the regulation, other likely requirements, for example those related to asbestos or radon, should also be listed. Therefore, FHWA does not believe that adding additional specific requirements to this definition is practical. FHWA may develop one or more frequently asked questions (FAQ) listing examples where local code or agency requirements may be more restrictive. Where required, Federal funding agencies can develop the additional policies and requirements necessary to identify and address potential deficiencies in comparable and replacement dwellings that may impact a displaced person's health.

As a result of the above analysis, the term ''the most stringent of the local housing code, Federal agency regulations, or the agency's regulations or written policy'' was used throughout this section for clarity and consistency. No other changes were made to this section of the final rule.

DSS—Appendix A at Section 24.2(a)—Standards for Inclusion of a Kitchen

The FHWA received one comment expressing some concerns about the proposed addition in appendix A at § 24.2(a), DSS, addressing kitchens in comparable and replacement properties. The commenter believes that the proposed appendix A discussion that recommends and encourages agencies to select comparable replacement dwellings with a kitchen, when the displacement dwelling does not have one, and local codes do not require it, seems excessive. The commenter believes the recommendation and encouragement will needlessly increase the cost of a replacement dwelling and add unnecessary complexity and inconsistency in the program.

FHWA Response: FHWA considered the comment and reviewed the NRPM's description of the proposed addition in the appendix A language. FHWA notes that the NPRM's proposed addition in appendix A addresses instances where local code standards for occupancy do not require kitchens. Appendix A notes that even though it is not required by local code, providing a kitchen is recommended. FHWA believes the appendix A discussion is consistent with and supports the Uniform Act's expression of Congressional intent found at 42 U.S.C. 4621(c)(3), Declaration of findings and policy, which states that the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals. The NPRM's proposed addition, which will be included in this final rule, contains no mandatory language, but does express a goal that where practical and possible, displacing agencies should endeavor to meet. FHWA will consider whether an FAQ may be necessary to further clarify the intent and purpose of this appendix A item.

As a result of the above analysis, no changes were made to this section of the final rule.

Displaced Person (Persons Not Displaced)—Occupants of a Temporary, Daily or Emergency Shelter and Appendix A of This Part

Three commenters provided comments on the NPRM's proposal to address occupants of shelters. One commenter was concerned that the addition of an item in the definition of persons not displaced addressing shelter occupants might cause shelter operators to change their method of operation to a ''lottery based'' system to more clearly align with this rule's definition of persons not displaced. This commenter was further concerned that this potential change in agreement or operation methods would ensure that shelter occupants would not be defined as displaced persons and would thereby cause impacts to shelter occupants, both inside a project or program area and outside. The commenter believes that shelters currently have many regulatory and statutory methods of providing accommodation to shelter occupants which provides those occupants with necessary temporary housing resources. The commenter suggests adding additional language to the proposed addition of persons not displaced to include the many types of agreements shelter operators use to provide temporary shelter. One commenter believed that temporary shelter is not defined in the NPRM. One commenter indicated that anyone who has a place to stay and store their belongings for more than a single night should be provided some relocation benefits and at a minimum, be provided another shelter to use. One commenter stated that if someone is in occupancy for only one night, at a minimum, connecting them with similar services elsewhere should be required.

FHWA Response: FHWA reviewed the NPRM's proposed additions to address occupants of a shelter that is acquired for a Federal or federally assisted project or program. FHWA does not agree that the NPRM's proposed additions addressing occupants of a shelter will cause shelters to revise their operating methods or agreements because if it is determined that a shelter's occupants meet the definition of ''displaced persons,'' any additional administrative burden or relocation costs will be borne by the acquiring agency rather than the shelter's operators. Additionally, the final rule provides another potential resource, the replacement housing payment, that may be used to provide shelter or housing to those in need.

The FHWA notes that the NPRM's proposed language describes circumstances in which shelter occupants may be required to move or more commonly, no longer have access to or use of the shelter because of its acquisition for a Federal or federally assisted project or program. The NPRM language also stressed that the proposed language and discussion was simply a clarification. It did not create or require that new eligibilities be granted or conferred. Instead, it provided additional factors to be considered when determining if an occupant of a temporary, daily, or emergency shelter impacted by a Federal or federally assisted project or program, who in most instances would not meet the definition of a displaced person, may be displaced due to a fact-based determination.

FHWA believes those acquiring a shelter and making a determination of whether a person is displaced should consider factors including, but not limited to, whether the shelter has specific rules and requirements as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed. Shelters should not be advised or directed to change their operating agreements in order to conform to this rule's definition of persons not displaced.

FHWA also considered the commenter's concerns about requiring agencies acquiring a shelter to either ensure a replacement shelter is available to those required to move or to provide information on available shelters. FHWA notes that the final rule will include the NPRM's proposed requirement in the definition of ''Persons Not Displaced; L) Occupants of an Emergency Shelter'' to provide, at a minimum, all occupants of an acquired shelter with advisory assistance beginning at the initiation of negotiations.

FHWA notes that certain HUD programs use the term ''emergency shelter'' based on the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*). HUD defines ''emergency shelter'' in 24 CFR 91.5 as ''[a]ny facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless, and which does not require occupants to sign leases or occupancy agreements.''

Relatedly, the NPRM proposed defining ''Temporary, daily, or emergency shelter.'' The proposed definition stated in part that a shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and does not meet the definition of dwelling as used in this part. The final rule includes a revised definition that includes replacing the term ''typically'' with ''in most cases.'' FHWA believes that the proposed change more accurately reflects the unusual situations in which a person living in a shelter would be a displaced person as defined in this regulation.

FHWA may consider developing one or more FAQ to further provide guidance on how to determine when certain occupants of a temporary, daily, or emergency shelter are displaced persons and instances when they would not be displaced persons.

Dwellings

Eleven commenters expressed support for a modification to the definition of ''dwelling.'' The NPRM proposed a minor modification to this definition by removing the term ''non-housekeeping unit'' and also included language in the preamble which discussed and clarified that a DSS dwelling may be unconventional or non-standard. There were no comments on the proposed removal of the term ''non-housekeeping unit.'' The discussion of determining whether persons occupying a non-standard dwelling may qualify as a displaced person was the focus of most of the comments received on this proposed change. The primary focus of the comments was in refining the definition of dwelling. One commenter suggested including the word ''unconventional'' instead of inclusion of ''other residential units'' such as motels. Six commenters supported the addition of ''primary'' and ''customary place of abode'' in the definition of dwelling. Four commenters questioned the inclusion and meaning of ''local custom or law.''

One commenter asked for some guidance for dealing with individuals who are not occupying a legal dwelling, but who are living on their property in a temporary structure that does not meet the definition of a legal dwelling per local code. They stated that while it seems clear that the intent of the Uniform Act was not to treat these individuals as an owner-occupant eligible for a replacement housing payment, the Uniform Act and the regulations also do not provide any viable alternative.

The primary concern was that the definition would lead to lawful occupants of a non-DSS or non-standard displacement dwelling being determined to be a person not displaced under this regulation, resulting in a denial of Uniform Act relocation eligibility. One commenter requested temporary, transitional, or court-ordered housing be included in the definition.

FHWA Response: FHWA reviewed the regulatory history of these regulations and notes that the definition in this final rule, with the minor modifications proposed in the NPRM, is largely the same definition that has been in the regulations for almost 40 years. The primary purpose of the NPRM's proposed changes was to ensure that there is a clear understanding that great care must be taken in determining whether and when an occupant is a displaced person as defined under the regulation. A number of questions were raised about the meaning of the phrase ''. . . place of permanent or customary and usual residence according to local custom or law.'' FHWA believes that throughout the history of these regulations, agencies have understood the plain language of this phrase to be focused on the facts considered when determining if the dwelling was the occupant's permanent or customary and usual residence (also referred to as ''dwelling''). Local custom or law would therefore be determinative in making a fact-based determination as to whether the occupant was occupying a seasonal home, or a residence other than their place of permanent or customary and usual residence. The use of local law or custom can also be used to determine that a person is in a residential landlord-tenant relationship and therefore occupying a dwelling for purposes of determining eligibility under the Uniform Act. FHWA may develop one or more FAQs with fact-based information that can be used in making a determination as to whether a dwelling is an occupant's permanent or customary and usual residence.

Several commenters raised concerns that the proposed revisions to this definition could be interpreted in a manner which might deny eligibility for persons living in a non-standard and or non-DSS dwelling. FHWA notes that a non-standard or non-DSS unit can still meet the definition of ''dwelling'' when determining eligibility. For example, if an occupant resides in a non-standard dwelling, key information will include whether State or local law or code allows the person to lawfully occupy the otherwise DSS non-standard dwelling. For a dwelling for which State or local law or code allows occupancy but is non-DSS, an occupant might be determined to be in lawful occupancy and would then be a displaced person. If the occupancy of the dwelling were not permitted by State or local law or code in the same example or the occupants were not in lawful occupancy, they would not be displaced persons. For occupants found not to be in lawful occupancy, the final rule continues to allow that such persons may be provided advisory services which may assist them by identifying available replacement dwellings, local and State services, and other assistance which may be available to them. While these persons may not be displaced persons, agencies should provide such advisory services to the extent practical.

As a result of the above analysis, no changes were made to this section of the final rule.

Federal Down Payment Assistance

FHWA received four comments supportive of the NPRM's proposed addition of a definition of ''Federal down payment assistance.'' One commenter asked that the NPRM's proposed appendix A addition be revised in the final rule to include a further discussion and examples of what constitutes ''funds'' other than the funds subject to the Uniform Act requirement. Two commenters asked that the appendix A discussion of Federal down payment assistance be revised by separating the discussion of ''Federal down payment assistance'' and ''Federal financial assistance.'' The commenters reasoned that the combination of the two topics might lead to confusion in determining Uniform Act applicability. One commenter asked that FHWA clarify that the use of Uniform Act benefits does not create a displacing activity and eligibility for Uniform Act benefits.

FHWA Response: FHWA considered the comments and requests for clarification about the NPRM's proposed addition of a definition of Federal down payment assistance. FHWA believes that the comments, while generally supportive, also indicate uncertainty about the proposed concept. The uncertainty includes whether there is an established funding threshold to be used in determining if a purchase of property funded in some portion by Federal down payment assistance, would create a displacing activity. After further considering whether additional clarifications or changes in this final rule could address those questions, FHWA determined that the implementation of this proposed change may continue to raise questions and uncertainty, which will lead to an uneven understanding and application that may result in benefits and protections being provided to some but not all whose dwellings are acquired by those using Federal down payment assistance.

As a result of the above analysis, FHWA declines to adopt the proposed changes relating to ''Federal down payment assistance'' in the final rule.

Federal Financial Assistance (FFA)

One commenter requested that the definition of ''FFA'' be modified to include the concept of rental subsidies.

FHWA Response: The definition of FFA in part assists in determining whether the requirements of the Uniform Act apply. FHWA does not believe that revising the definition by adding a term, phrase, or benefit that is specific to one or more Federal agency's program is practical. The FHWA believes that Federal agencies should implement policies and procedures for program grants, loans, and contributions that are necessary to implement their program.

As a result of this analysis, the final rule will not include a definition of ''Federal down payment assistance'' as explained in the preceding preamble discussion on *Section 24.2(a), Definitions and Acronyms, Federal Down Payment Assistance.*

Federal Financial Assistance—Low Income Housing Tax Credits (LIHTC)

Two commenters provided comments on the NPRM's proposal to clarify that LIHTC are not FFA for purposes of determining eligibility for Uniform Act benefits and assistance. One commenter supported the proposed clarification that LIHTC are not FFA as defined in the Uniform Act and therefore, projects receiving LIHTC alone would not be subject to the Uniform Act. This commenter further stated that it is their understanding that LIHTC projects that do receive a federally assisted grant, loan, or other Federal contribution would still be subject to the Uniform Act. The other commenter did not support the proposed clarification. This commenter stated in part that the LIHTC program provides approximately $10 billion in direct, concrete financial assistance to housing developers for the acquisition, rehabilitation, and development of LIHTC projects around the Nation. This commenter also stated the LIHTC program serves a key public purpose—generating affordable housing development by federally subsidizing, or assisting, such development. This commenter additionally stated that the LIHTC program also plays an enormous role in financing the acquisition and rehabilitation of existing affordable housing units, noting that nearly 1 out of every 3 housing units funded by the LIHTC program in the United States involved the acquisition or rehabilitation of existing dwellings, some 950,000 units in all.

FHWA Response: FHWA noted in the NPRM that the LIHTC is described by the Office of the Comptroller of the Currency as a program ''established as part of the Tax Reform Act of 1986 and is commonly referred to as section 42, the applicable section of the Internal Revenue Code. The LIHTC program provides tax incentives to encourage individual and corporate investors to invest in the development, acquisition, and rehabilitation of affordable rental housing. The LIHTC is an indirect Federal subsidy that finances low-income housing. This allows investors to claim tax credits on their Federal income tax returns. The tax credit is calculated as a percentage of costs incurred in developing the affordable housing property and is claimed annually over a 10-year period. Some investors may garner additional tax benefits by making LIHTC investments.''

FHWA does not believe that LIHTC is FFA as it is defined in § 24.2(a) because of the nature of these tax credits and the fact that they are not a grant, loan, or contribution provided by the United States, and therefore not subject to Uniform Act requirements. Given that they are described as an ''indirect Federal subsidy'' and as a ''tax incentive'' by the Office of the Comptroller of the Currency, it follows that investors and developers would make self-directed determinations on where and how they should pursue development opportunities that maximize financial benefits for themselves. In considering the commenter's concern about the nature of the LIHTC program, FHWA does not believe that use of LIHTC alone would require the developer to comply with the requirements in this regulation. However, if other Federal funds are used on the same projects to incentivize the developer's participation, then the use of that Federal financial assistance may need to be subjected to a fact based determination of Uniform Act applicability. While the Uniform Act does not require relocation assistance when only LIHTC is used in a project, Federal funding agencies nonetheless may develop policy or requirements which authorizes relocation assistance to those displaced by a project or program which uses or receives LIHTC's, to the extent they are legally empowered to do so. FHWA does not believe that Federal funding agencies making such a determination to provide additional benefits or assistance would result in a reduction of required benefits and assistance available to others. FHWA may develop one or more FAQs to provide further assistance in determining when and if Uniform Act requirements would be applicable for individuals who claimed or will claim LIHTC credits for development, acquisition, and rehabilitation of affordable rental housing.

As a result of the above analysis, no changes were made to this section of the final rule.

Initiation of Negotiations—Voluntary Acquisition

The FHWA received seven comments on the proposed revision to the definition of ''Initiation of Negotiations'' related to voluntary acquisitions. One commenter supported waiting until there is a binding legal agreement before tenant relocation eligibility begins on voluntary acquisitions. The commenter reasoned that because purchase options/agreements can fail to result in a sale of the property for various reasons, it would not make sense for persons to be fully eligible for relocation assistance until closing. The commenter then posed the following question: ''Where is the relocation funding expected to come from for an agency that executes a purchase agreement (which triggers 'full eligibility' for a tenant who moves for the project) but has the project fall through before Federal funds are ever used?'' One commenter did not support the change to the tenant relocation eligibility because changing this eligibility would slow the relocation process and is too big of a deviation from the current rule. Two commenters requested clarification of the term ''Initiation of Negotiations,'' and one commenter believes the term is a misnomer since the Initiation of Negotiations does not start until the contract is executed (rather than the purchase option). Another commenter agreed that a purchase option or conditional contract has contingencies that must be satisfied before the buyer executes their right to purchase real property, but also commented that a written purchase agreement, as used in their acquisition activities, typically is a written contract that does bind the buyer and seller to the terms of the agreement. The commenter therefore requested that the reference to a purchase agreement be removed from this sentence or further clarification be provided as to what FHWA considers to be a binding agreement to purchase real property in lieu of a written purchase agreement. Two commenters raised questions, specific to the HUD program, about determining or establishing eligibility for a tenant who moves prior to a negotiation resulting in a binding agreement between the agency and the property owner.

FHWA Response: An agency pursuing a voluntary acquisition may use a conditional sale agreement or option to purchase agreement. Those agreements do not impose an obligation on the agency to purchase the property until either the agreement's conditions are met, or the agency elects to exercise its right to purchase. The previous rule's requirements were sometimes misunderstood as requiring an agency to provide relocation assistance for tenants occupying real property even when the agency ultimately could not acquire through a voluntary agreement. This final rule will clarify the date of relocation assistance eligibility for tenants who occupy real property that is acquired by voluntary acquisition. Such eligibility is established when there is a binding written agreement between the agency and the property owner that obligates the agency, without further election, to purchase the real property. These revisions in the final rule will allow an agency to more efficiently carry out voluntary acquisitions and ensure they will not incur costs for relocation assistance unless and until there is a binding legal agreement for the sale between the agency and the property owner.

FHWA notes that for acquisitions carried out under the authority of eminent domain, the meaning of the term ''Initiation of Negotiations'' and the date when negotiations begin was not proposed to be and has not been changed in this final rule.

FHWA included a clarification in the final rule that the term ''binding written agreement'' in the context of paragraph (iv) of the definition of *initiation of negotiations* requires several conditions to be true. To be a binding written agreement within the meaning of paragraph (iv), the agreement must be a legally enforceable commitment no longer subject to elections or conditions, in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees to make that purchase for a specified consideration. In other words, any elections and conditions have been satisfied, so that the agency is obligated to purchase the real property. Both parties have formally accepted the terms contained in the agreement, documented their agreement in writing, and acknowledged their acceptance with their signatures. FHWA will include the language proposed in the NPRM which stated in part that ''An option to purchase, conditional sale, or purchase agreement is not considered a binding agreement to purchase real

property''. However, FHWA believes that each Federal funding agency will need to develop policies or requirements identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons.

FHWA does not believe that clarifying the eligibility-triggering criteria for voluntary acquisition reduces benefits or assistance to tenants because it is not substantively different than the standard in the regulation adopted in 2005, 49 CFR 24.2(15)(iv). In addition, application of this provision's protection for displaced persons is supported by the requirements for a clearly written notification to the tenant of the process being followed, an explanation of the trigger date of their eligibility, and when negotiations fail, a required written notification that negotiations failed and assurance that the tenant will not be required to move from the property. (See § 24.2(a) Initiation of Negotiations and Appendix A, § 24.2(a) Initiation of Negotiations, Tenants (iv)). FHWA may develop one or more FAQs to ensure clarity about tenant eligibility for relocation assistance when a property is purchased voluntarily.

Initiation of Negotiations—Voluntary Acquisition, Other Federal Agency Programs

One commenter requested a clearer definition of the term ''Initiation of Negotiations'' for Section 8 contracts. The commenter was unclear about the relationship between the date that is the Initiation of Negotiations and the NPRM's new concept of a notice of intent to acquire/rehab/demolish.

One commenter had a question that appears to be related to a HUD program. The commenter asked about the overlap in the terms for Initiation of Negotiations when the acquisition is privately undertaken, which the commenter believes places Initiation of Negotiations under both subparagraphs, § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (i) and (iv). The commenter requests that FHWA clarify if a displaced tenant is eligible upon execution of a binding written agreement to purchase the property, § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (iv), or whenever the tenant receives a notice they will be displaced (or the date they actually move, if there is no notice), § 24.2(a) Definitions and Acronyms. Initiation of Negotiations, (ii).

FHWA Response: FHWA believes a discussion of HUD-specific policy for Section 8 tenants' eligibility for voluntary acquisition is beyond the scope of this rulemaking; however, FHWA notes that tenant eligibility requirements discussed in this rulemaking are applicable to Federal and federally assisted projects and programs. (see § 24.203(d)).

FHWA understands the questions about Federal participation in voluntary acquisition costs; however, because of the wide variation in the scenarios that may occur, FHWA cannot reasonably or comprehensively describe the applicability of initiation of negotiations or, more generally, policies for determining eligibility for Federal participation in voluntary acquisition costs for each Federal agency. FHWA has information on its website [1] which describes FHWA's Federal participation eligibilities for voluntary acquisitions and may develop one or more FAQs to generally respond to Federal eligibility questions and point to some FHWA informational resources. However, it is important to note that displacing agencies should check with the Federal funding agency to receive additional guidance on voluntary acquisition eligibility determinations.

As a result of the above analysis, no changes were made in response to these comments.

Mortgage

One commenter advised that use of the term ''mortgage'' for mortgages instead of ''lien'' is preferred as there are many types of liens, and not all create a possessory interest in the subject property.

FHWA Response: There was no proposed change in the NPRM to the definition of the term ''mortgage'' found in § 24.2(a). The definition found in the statute at 42 U.S.C. 4601(9), describes a mortgage as classes of liens commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby. The definition in the statute and regulation continues to provide the various Uniform Act partner agencies with a comprehensive definition, which meets their needs and ensures Uniform Act requirements are met.

As a result of the above analysis, no changes were made to this section of the final rule.

[1] *https://www.fhwa.dot.gov/real_estate/index.cfm.*

Reverse Mortgages (Also Known as Home Equity Conversion Mortgages (HECM)), and Section 24.401(e)

The NPRM included a preamble discussion of HECMs, a new definition (which acknowledged HECMs also are known as ''reverse mortgages''), and changes to other parts of the regulation and appendix A. One commenter was supportive of the proposed additions of a definition and a regulatory section describing requirements to calculate and document eligibility and reimbursement for costs associated with replacing a HECM.

The FHWA Response: The FHWA appreciates the comments. After publication of this final rule, FHWA will continue to monitor the development and growth of this market.

After further analysis, FHWA will revise the final rule by replacing the term ''HECM'' with ''Reverse Mortgage.'' The FHWA believes that making this change will help to provide a clearer reference in the final rule. ''Reverse Mortgage'' is a more generic term, while HECM is a specific term used in the Federal Housing Administration (FHA) Program for reverse mortgages. The more common term should be easier to understand and more clearly encompasses reverse mortgages that may not qualify as an FHA HECM. FHWA also thinks it is important to note that this rule does not guarantee that a displaced person will be eligible for an FHA reverse mortgage. Displaced persons seeking a replacement reverse mortgage will continue to have to meet the financial institution's lending and underwriting requirements. For example, those displaced persons who want to obtain an FHA-insured reverse mortgage will have to meet FHA's eligibility requirements at 12 U.S.C. 1715z–20 and HECM regulations at 24 CFR part 206.12. Appendix A for the final rule has also been revised to include additional discussion of FHA reverse mortgage counseling requirements that are applicable to a displaced person who wishes to purchase an FHA insured mortgage and other counseling resources that a displaced person with a reverse mortgage may utilize.

The NPRM also discussed development of a calculator for reverse mortgage interest differential payments. FHWA determined that development of such a tool is not immediately practical. FHWA may consider revisiting this determination once agencies have had more experience with reverse mortgages and more data on payments is available. FHWA will look for information and opportunities to develop best practices,

case studies, and other similar tools to document and share practical methods of calculation of eligibility and reimbursements due to displaced persons.

Owner's Designated Representative and Manner of Notices

FHWA received six comments on the proposal to allow owners to designate a representative. Three of the six comments supported allowing an owner to designate a representative and the requirement that the designation must be in writing. One commenter inquired about the authority of the representative to elect to receive electronic notices without express written authorization from the property owner and asked whether occupants can similarly designate a representative. Two commenters recommended keeping the current regulation's language requiring that offers be made to the property owner instead of the NPRM's proposal to allow either the owner or the owner's designated representative to receive the offer. They reasoned that this is the only time there will be a face-to-face meeting with the owner to explain the project and present the offer. (See § 24.102(f)).

FHWA Response: FHWA believes that allowing an owner or tenant to provide a written notice designating a representative to receive offers, required notices, correspondence, and information in no way diminishes a property owner's or tenant's rights. FHWA agrees that the preferred method of making an offer to acquire is to make the offer directly to the property owner, and at that time, the property owner may designate in writing, a representative to receive all subsequent required notifications and documents from the agency. This ensures the owner receives the offer and the owner designates the representative. However, FHWA recognizes that occasionally there may be instances where an owner may wish to designate a representative prior to the initial offer. For example, designation could be used when the owner may not be able to meet because of illness or may be out of the country. FHWA agrees that the ability to designate a representative should include displaced occupants.

This final rule will include a revision to the definitions at §§ 24.2(a) and 24.5(d) to clarify that tenants may also designate a representative. It is noted, however, that relocations require an interview during which the displaced person provides information on their needs and preferences. FHWA believes it is always preferable that the displaced person be present with their representative when a home inspection and interview are conducted because the purpose of the interview is to determine the displaced person's needs, which sometimes requires answers to questions concerning their preferences and the displaced person is likely the only person who can fully respond to such questions. FHWA believes that when the owner or tenant designates a representative, they should stipulate in writing specifically what the representative is authorized to do. As a best practice, FHWA also believes that the written designation should specifically state what the representative is not authorized to do. For example, if an owner does not want the representative to use electronic means to communicate, then it should be stipulated within the written designation.

Program or Project

FHWA received one comment requesting the addition of a definition for the word ''undertaking'' within the definition of ''program or project.''

FHWA Response: FHWA reviewed the use of the word ''undertaking'' in this NPRM and notes that the use of the term is not a proposed change. The term can be found in use in the definition of program or project and in an Appendix A discussion of § 24.103(b), Influence of the project on just compensation. The FHWA believes that in both instances where this term occurs in the regulation it does not carry any meaning beyond the commonly understood use of the term and its use does not change or impact either the definition or the appendix A item.

As a result of the above analysis, no changes were made to this section of the final rule.

Small Business

One comment agreed that signs on property to be acquired should be relocated as personal property, and without the reestablishment benefits such as utility hook-ups at a replacement location.

FHWA Response: The NPRM preamble discussion of the definition of small business acknowledges that FHWA has often been asked for guidance on the question of whether sites occupied solely by outdoor advertising signs, displays, or devices qualify for benefits as a small business under §§ 24.303 and 24.304. FHWA clarified that sites occupied solely by outdoor advertising signs, displays, or devices do not qualify for these benefits by adding a reference to § 24.303 in the last sentence of the definition of small business, as proposed in the NPRM. FHWA believes that outdoor advertising signs are to be treated as personal property. The final rule allows that owners of outdoor advertising signs may receive either an amount for a direct loss of an outdoor advertising sign, § 24.301(f), or when applicable the estimated cost of moving the sign to include those costs discussed in § 24.301(g), but with no allowance for storage.

As a result of the above analysis, no changes were made to this section of the final rule.

Temporary, Daily, or Emergency Shelter

FHWA received two comments regarding the definition of ''temporary, daily, or emergency shelter.'' One commenter expressed support of the definition and reasoned that it affirms the commenter's belief that persons with informal non-shelter living arrangements may be considered displaced. One commenter believed that ''temporary shelter'' is not defined in the NPRM.

FHWA Response: FHWA believes this definition only applies to occupants of emergency, temporary, or daily shelters. These shelters are typically intended as an overnight, short term, short duration accommodation, and therefore the persons utilizing these accommodations are in most cases not ''displaced persons'' because their accommodations do not meet the definition of a ''dwelling.'' This final rule will define a ''dwelling'' as ''the place of permanent or customary and usual residence of a person according to local custom or law.''

FHWA notes that the NPRM and this final rule include a discussion of those who temporarily occupy a shelter in the definition of displaced persons and persons not displaced. FHWA believes that the definition and the discussion of persons not displaced in this final rule provide details that will ensure displacing agencies can make the appropriate determination of whether a person is a displaced person or a person not displaced for those occupants who are required to move from a shelter.

Certain HUD-assisted emergency shelters do not allow for continued or prolonged occupancy and may not be considered dwellings under HUD programs or projects. The McKinney-Vento Homeless Assistance Act defines a ''homeless person'' to include ''an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate

shelters, and transitional housing).'' 42 U.S.C. 11302(a)(3).

As a result of the above analysis, no changes were made to this section of the final rule.

Waiver Valuation

Two commenters stated that the definition of ''waiver valuation'' needed to be augmented with language that clearly states that a waiver valuation is not an appraisal. One of those two commenters proposed moving language found previously in the appendix A explanation for the definition directly into the regulatory text. A third commenter suggested that the regulation be revised to acknowledge a waiver valuation is an appraisal. One commenter suggested that the waiver valuation language in §§ 24.102(c) and 24.102(d) was unnecessary if it was indeed an appraisal.

FHWA Response: The Uniform Act permits the Lead Agency to prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. In such circumstances, the current regulatory text allows the use of a waiver valuation procedure in lieu of an appraisal. State licensure boards have generally viewed any opinion of value issued by one of their licensees to be an appraisal. Those who are licensed find themselves looking for clarity as to when and how the Uniform Act regulation requirements intertwine with the standards of their State licensure boards. As a result, FHWA revised the definition by including declarative statements within the body of this final rule including those at § 24.2(a), definition of ''waiver valuation'' and § 24.102(c) ''Appraisal, waiver thereof, and invitation to owner'' that waiver valuations are not appraisals as defined in the Uniform Act and this rule. FHWA may also develop an FAQ to provide additional guidance and clarity on the requirements and use of a waiver valuation in this regulation.

Section 24.5 Manner of Notices and Electronic Signatures

Four commenters strongly supported the additional flexibility of using e-delivery and e-signatures as a positive change that should expedite service and reduce waste. They noted that allowing the use of electronic notifications are long overdue and supports allowing more flexibility in notice delivery, particularly the ability to notify tenants via electronic means. One commenter agreed that personal contact is the best practice but acknowledged that property owners sometimes do not want to meet or in some instances may prefer very limited meetings. One commenter noted that Appendix A provided examples of instances when electronic deliveries of notices are appropriate and suggested since the examples are not actual notices required by agencies, the examples should be stricken. One commenter requested clarification on whether agencies who have existing policies for providing electronic notices, with residents' or owners' permission, which meet the requirements outlined in the NPRM, are sufficient to permit the agency to serve notices by electronic means. One commenter was concerned that the NPRM, at times, seems to blend the e-delivery and e-signature requirements when they are two distinct processes, e-signature requiring more robust technology, more procedural adaptations, and greater financial investment than e-delivery. The commenter requested clarification on whether both are allowed and asked whether an agency could elect to use one and not the other. Also, the commenter suggested removal of the additional language in the appendix, *e.g.,* ''agencies must determine and document instances when electronic deliveries of notices are appropriate.''

FHWA Response: FHWA believes that delivery of notices by digital or electronic means can provide agencies and property owners and displaced persons with an optional communication method that can streamline the offer, negotiation, and notice processes while not reducing any benefits or protection to property owners and displaced persons. FHWA agrees that the examples listed in appendix A, § 24.5, are not examples of required notices. However, electronic delivery is not limited to agency required notices. In addition to notices, offers, correspondence, and information may be sent by electronic means. (See § 24.5(d)). FHWA revised the language in appendix A to provide some examples of the various acquisition and relocation assistance requirements and activities such as notices, offers, and documents that may be delivered by electronic means. Appendix A was also revised by adding in references and additional information on the process for approval and use of electronic signature.

FHWA agrees that an agency with an existing program for providing electronic notices to residents and owners that meets the final rule's requirements and is documented in the approved agency's policies and procedures, could meet the requirements in the final rule for serving notices electronically.

FHWA agrees with one commenter that the e-delivery and e-signatures are two distinct processes. FHWA believes the NPRM identifies those differences and discusses their use. Those changes have been incorporated into the final rule by revising the title of § 24.5 to include reference to electronic signatures, by revising the language in § 24.5(b) to refer to a required ''process'' instead of a ''method'' to clarify that a Federal funding agency must approve a process that would include methods used to comply with requirements, and by revising § 24.5(d) to clarify that this section applies to property owners and tenants, and that property owners and tenants may also elect to provide signatures needed by the agency electronically. The final rule includes a new § 24.5(e) which was included to specifically address electronic signature requirements.

An agency requesting use of electronic delivery of notices must include a process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention. In addition, an agency requesting to use electronic signature must include a method to link the electronic signature with an electronic document in a way that can be used to verify the signature and determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

As requested by one commenter, FHWA clarified in the final rule's appendix A that an agency may use electronic delivery or electronic signatures and must document the circumstances under which they are allowed.

Section 24.9(c) Recordkeeping and Reports

FHWA received one comment regarding the annual reporting of Uniform Act program activities required of Federal agencies. The commenter believes that the additional reporting requirement needs more clarification or a form to be used.

FHWA Response: As discussed in the NPRM preamble, the change in the reporting requirement in § 24.9(c) is being implemented in accordance with Section 1521(d) of MAP–21 and impacts Federal agencies only. The current regulatory text for this section states that the form for completing this activity is in appendix B. This final rule will include reporting options available to Federal agencies in appendix A. The two options are to use the reporting

form in subpart B or develop a narrative report on the Federal agency's efforts during the year to enhance delivery of Uniform Act benefits and services. Each Federal agency is required to provide an annual summary report of its acquisition and displacement activity to the Lead Agency by November 15. FHWA revised this section of appendix B by including a further discussion of some of the information that Funding agencies may want to include in their annual report.

Section 24.11 Adjustments of Limits and Payments

FHWA received eight comments on the adjustment of relocation benefits proposal in the NPRM.

One commenter requested that the 2012 MAP–21 statutory benefit updates be included in this final rule. This same commenter recommends that FHWA immediately adjust the statutory maximum rental assistance payment, irrespective of the proposed rulemaking, based upon the cost of living, and other factors, where the Lead Agency ''determines that cost of living, inflation or other factors indicate that the payments should be adjusted to meet the policy objectives of this chapter.'' (42 U.S.C. 4633(d)). One commenter stated that the maximum statutory benefit limit amount of $25,000 for eligible nonresidential reestablishment expenses should be raised to $50,000 because many businesses incur costs that exceed the current maximum benefit amount when required to relocate. Another commenter also recommended increasing the nonresidential re-establishment benefit limit of $10,000 to $65,000, based on a market average of $55,000, and the nonresidential fixed payment for moving expenses from $20,000 to $70,000, based on a market average of $60,000 and incidental inflation rates ranging from 2.1 percent to just over 6 percent over the past 5 years. This same commenter recommends increasing the Replacement Housing Payment (RHP) for 180-day homeowner-occupants from $22,500 to $75,000, based on a market average RHP of $55,000 for rural and suburban areas, and over $100,000 for the commenter's local urban markets, and average increases in property values in the commenter's State of around 4.9 percent per year; housing demand compared to supply; and listings selling for an average of 2–5 percent over the listing price.

One commenter asked if the final rule could include a method to develop an index to be used annually to automatically update certain payments and benefits in the final rule. One commenter asked for details on how and when updates to the regulatory amounts would be made and had concerns about how projects in process when the regulatory limits were updated would be handled, and specifically asked how the requirement for fair, uniform, and equitable treatment of all affected persons would be met when an update to certain benefits occurred. This same commenter also asked whether FHWA would adjust certain benefits downward or would only adjust upwards to account for inflation. Another commenter recommended that FHWA post proposed revised UA benefit levels for a public comment period prior to adopting them so that recipients can assess the impact and adequacy of the new benefit levels.

One commenter proposed that FHWA consider using other indexes for this section because the use of specific inflation measures is best suited to specific types of benefits, such as the Federal Housing Finance Administration House Price Index for replacement housing and rental assistance payments. The commenter believes that using more specific measures as the basis for payment adjustments would best reflect the cost of living and reduce hardship for displaced persons.

FHWA Response: FHWA noted some confusion from recipients about the effective dates for amendments to the Uniform Act in section 1521 of MAP–21. By law, these changes became effective on October 1, 2014. MAP–21 amended the maximum statutory benefit for replacement housing payments for displaced homeowners to $31,000, and replacement housing payments for displaced tenants to $7,200. The length of occupancy requirement for homeowners was reduced from 180 days to 90 days in occupancy before the initiation of negotiations. MAP–21 also amended the maximum statutory benefit for business reestablishment benefits to $25,000, and the fixed payment for nonresidential moves to $40,000. The confusion may stem from the fact that the current regulatory text was not amended after the passage of MAP–21 to reflect the new statutory amounts, until this rulemaking. These benefit amounts are established in the statute. However, it is important to note that this final rule does include authority to adjust certain benefit levels to account for inflation.

FHWA has included adjustments to certain benefit levels established by statute in this final rule. These have remained unadjusted since October 1, 2014, and consequently their ability to meet the policy objectives of the Uniform Act has been diminished by the effects of inflation. The adjustments to those benefit levels were made by calculations using the June 2023 Consumer Price Index for All Urban Consumers (CPI–U) adjustments.

In developing this regulation, FHWA considered the practical effects of updating certain benefit amounts periodically. FHWA notes that in past final rules for this part and implementation of certain MAP–21 updates to the Uniform Act, there has usually been an implementation period of one or more years. Recipients may need time to allow for local legislative changes necessary for implementation; others may require time to develop an update to their program manuals and to then have them approved by the Federal funding agency. However, FHWA agrees that limiting consideration of the need to update benefit limits to every 5 years may not allow FHWA to make necessary timely updates.

In response to the commenter who asked about making downward adjustments, this final rule does not contain a prohibition against making a downward benefit adjustment should a calculation indicate that a downward adjustment might be warranted.

FHWA reviewed the commenter's request to use other indexes as the basis for determining the necessity of an update to certain regulatory benefit amounts. As FHWA noted in the NPRM preamble, the CPI–U represents 87 percent of the total U.S. population, is available on a monthly basis free of charge, and is used by several other Federal agencies. FHWA understands that many indexes are available, and each may have some specific advantage or measure. In considering the measures that may currently best determine whether a benefit update is needed, at this time FHWA continues to believe that CPI–U best represents the costs incurred by our relocatees and therefore is a good indicator for determining the effects of inflation that are experienced by those displaced. However, FHWA also agrees with several comments suggesting that FHWA further consider whether there may be indexes that provide more specific measures as the basis for payment adjustments that would best reflect the cost of living and reduce hardship to displaced persons.

FHWA also received comments discussed in § 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation procedures; appraisal, waiver thereof, and invitation to owner which in part suggested that some waiver valuation limits should also be adjusted as described in this section.

As a result of the above analysis, FHWA has revised this section by

eliminating the language restricting consideration of benefit updates to no more frequently than every 5 years. The final rule will allow the head of the Lead Agency to carry out an evaluation when there is concern that certain benefit levels no longer support the policy objectives of the Uniform Act. Such determinations will in part consider implementation challenges and concerns including allowing appropriate time for Federal agencies and recipients to take the necessary administrative steps to implement benefit updates and changes. The FHWA believes that should an update to the benefit amounts be necessary, each Federal funding agency will need to develop policies and procedures for ensuring that the implementation of updates to benefit amounts is fair, uniform, and equitable. One method to ensure that the updating of benefits is fair, uniform, and equitable might be to decide that for projects underway before an update is effective, displaced persons will continue to be eligible for the amount in the regulations at the initiation of negotiations.

After publication of the final rule, FHWA intends to publish a Request for Information (RFI) to ask stakeholders whether there may be an index which better reflects costs associated with specific relocation benefits and which provide more precise indication of the effects of inflation. Based on the RFI, FHWA may consider further regulatory changes to address issues including whether additional or other indexes should be used to determine the need to update benefit levels, whether additional relocation benefits should be adjusted based on use of new indexes or other comments provided in the RFI, what basis should be used for the adjustments, and at what intervals adjustments should be made.

FHWA also revised this section by changing the section title and including additional benefit level payments that may be adjusted including waiver valuation limits and applicable sections on mobile homes at § 24.502 and § 24.503. FHWA believes that as discussed in response to comments in § 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation Procedures; appraisal, waiver thereof, and invitation to owner, allowing adjustment of waiver valuation limits in this section will ensure that the effects of inflation do not unnecessarily restrict appropriate use of waiver valuations. FHWA also revised this section by adding in specific references to tenants of mobile homes to more clearly provide applicable references to all tenant eligibilities which may be adjusted as described in this section of the regulation.

Subpart B—Real Property Acquisition

Section 24.101(b) Applicability of Acquisition Requirements—Voluntary Acquisitions

FHWA received 15 comments on this section of the regulations. The comments focused on several related questions regarding proposed changes including: application and interpretation of § 24.101(b); use of § 24.7, Federal agency waiver of regulations of this part; applicability to specific Federal funding agency programs, interpretation and applicability of § 24.101(b)(1)(i) through (iii); and the proposed addition of § 24.101(d)(2) and (3).

FHWA Response: FHWA developed the proposed changes in the NPRM to address questions it has received over the years about the intent and applicability of the voluntary acquisition provisions. These questions have been raised by both our Federal agency partners and the public. The NPRM preamble noted that one of the goals of the proposed reorganization was to clarify the meaning, interpretation, and application of the terms geographic area and site (§ 24.101(b)(1)(i)). The NPRM noted that some Federal agencies reported that terms were close enough in meaning that they caused confusion. Those Federal agencies stated that the term ''site'' did not accurately describe the type of project needs encountered in delivering their programs and recommended changing the term to ''property.'' The NPRM further noted that some agencies possess the power of eminent domain but do not use it for specific projects. FHWA received questions about the interpretation of this paragraph from several agencies. Some agencies have interpreted this paragraph to mean that if an agency possesses the power of eminent domain but will not use it on the project, the agency would not be able to use the voluntary acquisition authority for its project or program.

FHWA's approach in the NPRM was to attempt to clarify and simplify the language in § 24.101(b)(1)(i) through (iii). The comments received on various issues related to or involving voluntary acquisitions led FHWA to believe that the NPRM's proposed changes addressed some of the issues and questions, but not all. In considering the comments and the variety of questions, FHWA proposes to further revise this section in the final rule. The FHWA removed §§ 24.101(b)(2) and (3) and reorganized § 24.101(b)(1) in the final rule to clarify the requirements and qualifications for determining when a voluntary acquisition may be advanced for Federal and federally assisted programs and projects. FHWA believes these revisions streamline the voluntary acquisition requirements and clarify applicability. FHWA will include a new § 24.101(b)(1) which clearly states that if eminent domain will not be used and certain other conditions are met, then an agency may use the voluntary acquisition requirements provided by this section. FHWA is proposing no change to § 24.101(a) applicability and requirements. FHWA will address all other questions related to aspects of voluntary acquisition separately in this preamble and will incorporate the revised requirements of § 24.101(b)(1) in the responses and changes to the regulatory text.

Section 24.101(b) Applicability of Acquisition Requirements—Voluntary Acquisitions, Comments Related to Federal Agency Policies and Procedures

FHWA received several comments requesting clarification of voluntary acquisition requirements applicability to HUD programs. The commenters suggested that they had significant difficulties in applying the Uniform Act's voluntary acquisition regulations to HUD programs. One commenter asked how an existing Section 8 contract being transferred to an owner acquiring and rehabbing a project fit into § 24.101(b) since Section 8 contract funds are rental subsidies that cover operating costs; the funds are not being used to acquire real property for a project or program. The commenter also noted that the acquisition notice at § 24.101(b)(2)(iii) has been applied by HUD to transactions between private parties. The commenter does not believe this application is consistent with the voluntary acquisitions requirements and further explains that there is no need for a private buyer to inform a private seller that they are not using their eminent domain authority to acquire their property because it is an authority they do not have.

Another commenter believes that the Uniform Act presumes a Federal agency is the acquiring party and a private homeowner, business, or farm owner is the seller. The commenter noted that this dynamic is entirely distinct from the Federal affordable housing programs when an owner of existing federally assisted rural housing is selling or refinancing their rural affordable multifamily property. The commenter requested that the following be exempt from § 24.101(b) compliance: ''transfers,

rehabilitations or demolitions of affordable housing assets restricted, subsidized or otherwise assisted or to be restricted, subsidized or otherwise assisted under Federal housing programs.''

FHWA Response: Because several Federal agencies have programs, policies, and procedures that have aspects unique to that Federal agency, this rulemaking does not address the interplay between these requirements and other Federal agency programs. Some programs focus on planned and federally assisted rehabilitation which requires a temporary move. Others may require demolition and rebuilding of the structure which also may require a temporary move or permanent displacement. There are many scenarios that are not clearly either a voluntary acquisition or an acquisition of real property rights. To qualify as a voluntary acquisition under § 24.101(b)(1) an acquisition of real property rights would be pursuant to a Federal or federally assisted project or program and would not use the authority of eminent domain to acquire the real property rights. Voluntary acquisitions that meet these two requirements would be subject to compliance with the voluntary acquisition requirements of this rule.

In another commenter's example, another Federal agency was providing Federal financial assistance to support the rehabilitation or redevelopment of privately owned real property. After redevelopment or rehabilitation of that property, it would continue to be privately owned but would be required to be used for Section 8 housing. In this instance, an agency must determine whether and how the use of Federal funding or Federal financial assistance provided would require compliance with the requirements of the Uniform Act. Generally, when Federal funding or Federal financial assistance is used for a project or program and there is either an acquisition of real property rights or occupants will be displaced the Uniform Act requirements would apply. If the Uniform Act requirements apply, then tenants and owners who were in occupancy on the real property that is being redeveloped would be eligible for assistance because they would be either displaced persons or persons required to move temporarily.

If the determination was made that the acquisition of real property rights was done in anticipation of receiving subsequent Federal financial assistance for a planned or anticipated project or program, then tenants and owners occupying the real property would be either displaced persons or persons required to move temporarily as defined in this rule and would be entitled to benefits and assistance under this regulation. Similarly, FHWA does agree that a private market sale carried out between a willing buyer and seller, which was not done in anticipation of later incorporating that property into a planned or anticipated project or program which would receive Federal financial assistance, would not be subject to the voluntary acquisition requirements of this part because the purchase of the real property rights was not a part of or required by a Federal or federally assisted project or program.

While the Uniform Act's overarching goal is to ensure equitable treatment of those impacted by Federal and federally assisted projects and programs, each Federal funding agency may have programs with unique characteristics and requirements and the Federal funding agency would need to provide specific guidance on Uniform Act compliance. HUD should be consulted for guidance on voluntary acquisition for HUD-funded or -supported projects and programs.

As a result of the above analysis, no changes were made to the final rule in response to these comments.

Section 24.101(b)(1) Applicability of Acquisition Requirements—Voluntary Acquisitions; Waiver of Regulations To Use Eminent Domain

FHWA received nine comments on the proposal to allow, in limited instances, a waiver of regulations to allow the use of eminent domain to acquire needed property when a voluntary acquisition did not result in an agreement. One commenter supported the proposed ability to seek a waiver to use eminent domain if a voluntary acquisition cannot be finalized. Four commenters object to an agency using eminent domain authority after a failed voluntary acquisition and believed that it rewards poor policy and planning, will lessen public respect and trust for the agency, and it could be used coercively. Commenters also noted that if an agency was to use a waiver, it would naturally lead to inconsistent treatment of property owners if some properties on a project are acquired by voluntary acquisition and others are acquired under threat of eminent domain.

One commenter agrees that if the NPRM provision is adopted, a waiver of regulations could be justified when an unanticipated and unplanned need arises. The commenter specifically mentioned a scenario where a voluntary acquisition resulted in an agreement to sell but there are liens or other encumbrances on the property's title. The commentor noted that agencies sometimes make what is referred to as a friendly condemnation in order to clear the property's title.

All commenters requested additional guidance clarifying when such waivers may be acceptable. One commenter believes the NPRM's proposed revisions to §§ 24.101(b)(1) and (2) are more ambiguous as to when the voluntary acquisition project should comply with the various requirements and in determining when these criteria are applicable in different acquisition scenarios, such as when an agency has eminent domain authority and when an agency does not.

Two commenters focused on the term ''voluntary acquisition''. One commenter requested that the opening paragraph of § 24.101(b) use the term ''voluntary'' acquisitions since this is the common term used in the regulations. Also, one commenter requested further clarification or examples for the use of voluntary acquisitions.

FHWA Response: The intent of the proposed changes was to address questions FHWA received in the past about use of eminent domain authority and voluntary acquisitions and to clarify interpretations of long-standing policy and requirements.

The purpose of the voluntary acquisition regulations and requirements is to allow a streamlined method for acquiring real property for public projects when a property owner is not compelled or required to sell his real property. This streamlined method ensures that property owners are informed in writing that their property will not be acquired if negotiations fail to result in an amicable agreement and are provided a statement of what the acquiring agency believes to be the fair market value of the property.

FHWA believes that the comments received indicate that the NPRM's proposed changes to this portion of the rulemaking focused on possible use of eminent domain after a voluntary acquisition offer raised as many additional questions as were answered. FHWA understands and agrees with the commenters' concerns about allowing acquisitions by eminent domain when negotiations were initially undertaken as a voluntary acquisition. FHWA also agrees that opportunities for coercive actions using the threat of possible eminent domain is an important concern. However, FHWA does not agree that the intent of the NPRM proposal was to more frequently allow an agency to simply change its mind about using eminent domain. FHWA

views the clear purpose of the provision as ensuring that voluntary acquisitions are not simply preludes to an eminent domain acquisition, should voluntary acquisition negotiations fail. However, FHWA also recognizes that there may be an extraordinary circumstance in which use of eminent domain may be necessary. For example, the use of eminent domain may be necessary in the aftermath of a major disaster or a presidentially declared national emergency, as indicated in § 24.404(b) of this final rule, or to clear properties with clouded titles or similar defects in the title. In those instances, the Federal funding agency may consider granting a waiver of regulations under authority of § 24.7 of this part. The Federal funding agency will make a fact-based, case-by-case determination as to whether a waiver of the regulation's requirements may be allowed.

FHWA believes that the best way to clarify this section of the regulation is to simplify the discussion by removing the discussion of use of eminent domain and waiver of regulations from this section. As a result of this analysis, the final rule will be modified by eliminating the provisions describing the use of eminent domain both in the regulation and in Appendix A to focus only on the use of voluntary acquisition and its requirements. As discussed earlier in this preamble, FHWA removed §§ 24.101(b)(2) and (b)(3) and reorganized § 24.101(b)(1) in the final rule to clarify when a voluntary acquisition may be used for a Federal and federally assisted program or projects. The Appendix A discussion of Section 24.101(b)(2)(iii) was also removed. FHWA believes these revisions streamline the voluntary acquisition requirements and clarify applicability.

Section 24.101(b)(1) Applicability of Acquisition Requirements—Voluntary Acquisitions; Owner Occupant Eligibility as a Displaced Person as a Result of a Voluntary Acquisition Project

One commenter asked about owner-occupants whose property was acquired by voluntary acquisition not being eligible for relocation assistance as a displaced person if an agency should later acquire adjoining properties owned by the same person by eminent domain for a public improvement project.

FHWA Response: FHWA believes that agencies, when acquiring property through voluntary acquisition, are obligated to advise owner-occupants that, as a willing seller, they are not eligible for relocation assistance as displaced persons, prior to making the offer to acquire. FHWA notes that as stated in the NPRM preamble if eminent domain will not be used, then an agency may use the voluntary acquisition requirements provided by this section. FHWA believes that whether an agency has such authority is not the relevant issue in determining whether this section's requirements are being met. The relevant issue is that eminent domain may not be used as part of the offer and negotiation to acquire property needed for the project. An agency using voluntary acquisition provisions of this rule must, in part, inform the owner of the property or the owner's designated representative in writing if the agency will not acquire the property if negotiations fail to result in an amicable agreement.

FHWA believes an initial use of voluntary acquisition of a property to advance a project or program, in most, if not all instances, prohibits the later use of eminent domain authority to acquire the property in order to advance that same project or program.

As a result of the above analysis, no changes were made to the final rule in response to this comment.

Section 24.101(b) and 24.101(d); Questions About Inconsistency of Requirements

One commenter believes there is a conflict between §§ 24.101(b) and (d) when compliance with subpart B is discussed. The commenter requested additional information in this section to explain when acquisitions are exempt from this subpart and if agencies can still require appraisals for these transactions as stated in appendix A § 24.101(b).

FHWA Response: FHWA believes the language in §§ 24.101(b) and (d) do not conflict. The applicability of subpart B and those instances where the requirements of subpart B may not apply are described in § 24.101(b). Section 24.101(d) continues to apply to projects and programs that are not exempted in § 24.101(b). The language in § 24.101(d) was discussed in the 1989 final rule which notes that the discussion of applicability and to the greatest extent practicable under State law is the same as that found in section 46555(a) of the Uniform Act. FHWA interprets this to mean an agency must comply if compliance is legally possible under State law. This should be considered in an agency's assurances pursuant to § 24.4(a). This section does not duplicate or nullify the requirements of § 24.101(b).

While voluntary acquisitions do not require appraisals, agencies may continue to decide that an appraisal or wavier valuation is necessary to support their determination of the fair market value of these properties. However, properties acquired in advance of approval of a Federal or federally assisted project or program (including prior to a NEPA decision where such acquisitions are allowed under an agency's programs) with the purpose or intent of being incorporated into a Federal or federally assisted project or program must meet the applicable Subpart B requirements.

As a result of this analysis, no changes were made to these sections of the regulation.

Sections 24.101(b)(1) and 24.101(d)(2) and (3); Acquisition of Real Property in Advance of Federal Authorization or a Federal Project Designation With the Intent of Later Incorporated Into a Federally Assisted Project.

FHWA received three comments on determining the intent of some real property acquisitions completed in advance of Federal authorization or of a Federal project designation which these commenters identified as acquisitions that are completed prior to a project or program that will receive Federal financial assistance. One commenter requested clarification on whether determining the intent of the original acquisition of property matters, and if so, what documentation would be needed. The commenter further noted that the word ''intent'' is used to clarify that property acquired with the intent of including it in a Federal or federally assisted project or program, would require compliance to the requirements in subparts B–F; however, the commenter noted the NPRM proposal simply states that any property acquired which may later be incorporated requires compliance. The second commenter requested that additional language be added to 49 CFR part 24 regarding the applicability of the Uniform Act when an agency contracts with a private third-party to satisfy the necessary environmental wetland mitigation requirements. Specifically, whether the Uniform Act applies at all, and if so, whether voluntary acquisitions under § 24.101(b)(2) can be utilized to comply with the Uniform Act. One commenter suggested that owners of property for sale on the open market before the acquisition began or that intend to sell their property despite the transportation project be considered as a voluntary acquisition and excluded from receiving relocation benefits because a property owner that intends to sell his/her property despite the transportation project is already planning for these expenses.

FHWA Response: FHWA believes that an agency's or person's intent when acquiring real property is relevant in determining if and how the requirements of 49 CFR part 24 apply. The FHWA currently has guidance in the form of an FAQ for 49 CFR part 24 as referenced in the NPRM's Section-by-Section Discussion of Proposed Changes. The guidance states that the funding agency will review the acquisition records and consider the relevant facts for the properties acquired by the local agencies or third parties to determine if the intent of the acquisition was to incorporate the real property into, or in some other way support or otherwise advance, a Federal or federally assisted program or project. If the property is being acquired with the intent of incorporating it into a federally assisted project or program and the agency is certain that eminent domain authority will not be used for the intended project or program, then the limited requirements of voluntary acquisition would apply. However, the agency must also consider that acquiring the property and applying only the voluntary acquisition requirements would in most cases preclude the agency from later using eminent domain authority to acquire the property should voluntary acquisitions not result in an agreement to sell the property to the agency. However, there are a very limited number of cases where an agency can start the process of a voluntary acquisition under § 24.101(b) before later using eminent domain, such as in the aftermath of a major disaster or a presidentially declared national emergency, as indicated in § 24.404(b) of this final rule. If the property was acquired by other means (*e.g.,* local government acquisition via tax delinquency or exaction), documentation may be provided to show that the property was not acquired with the intent of including it in a Federal or federally assisted program or project. However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility.

FHWA believes there is not one answer that fits all third-party environment mitigation scenarios. These determinations are fact-based by nature. However, the key issue is whether the acquisition of property for wetlands is specifically for mitigation of impacts on federally assisted projects or programs.

Private entities who acquire property to create wetlands for wetland banking purposes cannot be required to comply with the Uniform Act if there is no planned or anticipated use by federally assisted projects or programs. Establishment of such wetland banks, which may include a Federal or federally funded project or program among its future users, does not necessarily trigger application of the Uniform Act requirements. When making a fact-based determination, the purpose of the wetland bank, the existence of any agency funding for the bank or commitment to use the bank, and whether the wetland bank restricts who may purchase mitigation credits from it, are among the factors to consider in determining applicability of Uniform Act requirements.

If an agency provides Federal financial assistance for creating a wetland bank or has a prior agreement that the banked wetlands will be used to mitigate impacts on a specific federally funded or assisted project(s) or programs(s), then the property acquisitions for the wetland bank must conform to Uniform Act requirements. If an agency contracts with a private third-party provider that does not use the power of eminent domain, the acquisition may qualify for treatment as a voluntary acquisition and only the limited requirements as set forth in § 24.101(b)(1) would apply.

If the wetland bank has received Section 404 of the Clean Water Act (33 U.S.C. 1344) approval, was established without any Federal-funding participation prior to use of Federal funds for acquisition of wetland mitigation credits and was not planned to be used only for mitigation of impacts due to Federal and federally assisted projects and programs, the Uniform Act requirements do not apply. The actions that the wetland bank developer took in carrying out their private activity can be viewed with regard to the Uniform Act in the same manner as other actions taken by private parties without the anticipated or actual benefit of Federal financial assistance.

FHWA does not believe that a property for sale on the open market before the acquisition began or that an owner intended to sell despite the transportation project would automatically make this property subject to the voluntary acquisition provisions of this regulation and therefore would not require relocation assistance be provided to the property owner. As discussed in responses to other comments in this section, the applicability of the voluntary acquisition requirements is determined primarily by consideration of whether the acquisition of the property will be carried out under authority or subject to use of eminent domain authority. The fact that the property is listed for sale is in almost all cases not a factor that can be used to deny a property owner relocation assistance they would otherwise be entitled to receive.

As a result of the above analysis, FHWA deleted the proposed §§ 24.101(d)(2) and (3) provisions because they were identified in comments as confusing and raised questions about applicability and purpose. As discussed earlier in this preamble, FHWA revised § 24.101(b) to address properties acquired in advance and in anticipation of a Federal or federally funded project or program and added a discussion on wetlands banking to § 24.101(b)(1)(iii), appendix A.

Appendix A, Section 24.102(c)(2) Appraisal, Waiver Thereof, and Invitation to Owner

FHWA received four comments regarding the appendix A explanations of waiver valuations. Three of those four comments discussed the term ''uncomplicated'' while one comment objecting to the idea that waiver valuations should have similar unit values to appraisals of similar property on the same project.

FHWA Response: FHWA appreciates the supportive comments about the explanation of uncomplicated valuations found in appendix A and recognizes that agencies can further define the term in their approved procedures and manuals. FHWA does not believe that the final rule should further explain or define uncomplicated. agencies and recipients should develop procedures and policies where necessary to better understand the determination of what qualifies as an uncomplicated valuation. FHWA does not believe that a national standard defining an uncomplicated valuation should be included in this final rule, as such determinations are fact-based determinations based on State law and local real estate market practices, which may include determinations of what is real property and what is personal property.

FHWA believes that waiver valuations should reflect the land value conclusions of similar properties on a project reflected in appraisal reports provided on behalf of the acquiring agency for other properties which it will be acquiring for the project. This is fundamental to project consistency and uniform treatment of property owners.

As a result of the above analysis, no changes were made to appendix A.

Section 24.102(c)(2)(ii) Basic Acquisition Policies—Negotiation Procedures; Appraisal, Waiver Thereof, and Invitation to Owner

Thirteen commenters indicated support for increased regulatory limits for the waiver valuation. One commenter cautioned against increases in the waiver valuation limits suggesting that ''most State DOTs are not adequately staffed with talented and trained individuals to handle any increase in their program parameters.'' Five commenters suggested the different tiers of the waiver valuation limits should be tied to inflation. They reasoned that if the limits are not adjusted through another rulemaking or regulatory process, the effects of inflation would effectively reduce some flexibility this rule seeks to provide. Commenters suggested many alternatives including using CPI–U as the appropriate index, increasing the limits each year by 2 percent, or establishing a schedule to review and adjust the limits every 5 years to avoid the administrative confusion and burden of having limits adjusted annually. Other commenters suggested specific valuation limit amounts or suggested valuation limits be established based on local market real estate prices.

FHWA Response: While there was support from some of the commenters for raising the waiver valuation limits, there is little uniformity in the comments and recommendations other than the references to inflationary pressures since the last publication of this rule in 2005 and the streamlining effect any increase in waiver valuation limits would have on land acquisition programs. FHWA believes the appraisal waiver requirements have proven to be an effective tool in containing costs and in fostering accelerated project delivery which have proven to be consistent with the overarching goal of protecting the rights of property owners whose property is acquired for a Federal or federally assisted project or program. A national survey and various FHWA process reviews of State DOT programs confirmed this to be the case.

In response to comments received, and in consideration of the feedback from a recently completed national waiver valuation survey and research, FHWA will revise the waiver valuation regulations by making four changes, which are changes to the first tier waiver valuation limit (§ 24.102(c)(2)(ii)), changes to the second tier waiver valuation limits (§ 24.102(c)(2)(ii)(C)), changes to requirements to implement the third tier of the waiver valuation limits (§ 24.102(c)(2)(ii)(D)), and the addition of a process for updating the waiver valuation limits in § 24.11. Three of these four changes are described in the following paragraphs with the fourth change which relates to the third tier of the waiver valuation requirements discussed in responses to comments on § 24.102(c)(2)(ii)(D) *Basic Acquisition Policies; Requirements for use of the Third Tier of Waiver Valuation* later in this preamble.

After reviewing and considering comments received during the NPRM comment period, FHWA has revised the final rule by increasing the waiver valuation limits for the first tier to $15,000, the second tier to $35,000, and the third tier limits to allow for properties with an uncomplicated valuation problem and fair market value estimate of more than $35,000 and up to $50,000.

FHWA has also revised the final rule to include a process for updating of waiver valuation limits in § 24.11. FHWA believes including waiver valuation limits adjustment provisions in § 24.11 will ensure that the effects of inflation do not unnecessarily restrict appropriate use of waiver valuations.

Future determinations on the need for adjustments will be based on the CPI–U, which includes a measure of the average change in the consumer prices for a fixed market basket of goods and services that includes costs of shelter. The CPI–U considers the cost of shelter for renter-occupied housing. For an owner-occupied unit, the cost of shelter is the rent that owner-occupants would have to pay if they were renting their homes. Because market rent is a function of, and linked to market value, FHWA believes use of CPI–U is appropriate for this adjustment. FHWA does not believe that adjustments based on local market conditions are appropriate. FHWA believes that a single national standard ensures equitable treatment for those whose real property rights are acquired and reduces opportunities for confusion in understanding and applying the appropriate waiver valuation limits. FHWA also notes that such a scheme would likely create administrative burden which would outweigh any programmatic benefits that might be achieved.

Section 24.102(c)(2)(ii) Basic Acquisition Policies; Competency Requirement

Two commenters indicated support for the language that clarifies that the agency employee or contractor making the determination to use the waiver valuation option must understand valuation principles, techniques, and use of appraisals in order to be able to determine whether the proposed valuation is uncomplicated. One commenter suggested that more definitive decision-making processes be developed for waiver valuations.

FHWA Response: FHWA believes it is important to emphasize that the person making the determination of whether the waiver valuation is the appropriate valuation tool to develop and report an amount believed to be just compensation must themselves have sufficient understanding of the local markets; knowledge of appraisal principles; and the proper use of valuation methodologies to be able to determine whether the valuation problem is uncomplicated and whether the use of a waiver valuation would be appropriate. FHWA will consider developing an FAQ to clarify that waiver valuations follow a multi-step decision-making process emphasizing that it must be apparent the valuation problem is uncomplicated, and that the compensation limits for the waiver valuation cannot be exceeded.

As a result of the above analysis, FHWA replaced the reference to employee or contractor with ''representative'' to clarify that responsibility to ensure competency in the administration of the waiver valuation program remains the agency's responsibility, regardless of the title of the person making the valuation assignment.

Section 24.102(c)(2)(ii)(A) Basic Acquisition Policies; Uniform Act and USPAP Compliance

FHWA received ten comments related to the interrelationship between the Uniform Act regulations and the USPAP with a wide diversity of opinions about how licensed and certified appraisers can perform waiver valuations and appraisals while remaining compliant with both the USPAP and the regulation. At least one comment acknowledged that more clarification is needed.

FHWA Response: FHWA understands that licensed and certified appraisers continued to perceive a conflict between the requirements of the regulatory provisions and USPAP standards, and FHWA addressed most of those concerns with the modifications to the regulation discussed under the definitions of appraisal and waiver valuation. These concerns primarily focus on an appraiser's need to comply with USPAP licensure standards while

simultaneously meeting the requirements of this rule. One remaining conflict for license holders is that USPAP recognizes performing valuation assignments involves two separate functions: (1) development of a valuation, appraisal, or appraisal review, and (2) reporting the results of a valuation, appraisal, or appraisal review to clients, and intended users of valuation services. By comparison, the regulation has traditionally viewed the terms developing and reporting when used in reference to valuations, appraisals, and appraisal reviews, as meaning the same thing. To address this conflict, FHWA revised Subpart B by replacing the word ''develop(ed)'' with the word ''perform(ed)'' when referring to waiver valuations, appraisals, or appraisal reviews to avoid confusion with long standing interpretations in the USPAP. The intent of this change is to ensure that readers of this regulation understand that performance of a valuation, appraisal, or appraisal review includes both development of the assignment results and reporting those results to the client and intended users of the product. This modification will provide clarity regarding the interrelationship and applicability of Uniform Act requirements to USPAP.

Section 24.102(c)(2)(ii)(A) Basic Acquisition Policies; Jurisdictional Exception Language and USPAP Compliance

FHWA received six comments related to the proposed Jurisdictional Exception language which states that licensed or certified appraisers preparing or reviewing a waiver valuation are precluded from complying with Standards Rules 1, 2, 3, and 4 of the USPAP, as promulgated by the Appraisal Standards Board of The Appraisal Foundation.[2] Four commenters indicated support for the language, while two commenters opposed the proposed language, with one commenter suggesting that the Jurisdictional Exception language in USPAP was never intended to be used in this manner. The second commenter opposed the jurisdictional exceptions indicating that the proposed language is likely to have unintended negative consequences.

FHWA Response: FHWA believes performing appraisals when a waiver valuation would be sufficient can cause unnecessary delay, add unnecessary cost to an acquisition, and deliver no appreciable benefit to the property owner. FHWA notes that the final rule's revised definition of a waiver valuation and the language precluding compliance with Standard Rules 1, 2, 3, and 4 of USPAP will allow a licensed or certified appraiser to perform or review a waiver valuation which, by definition in this rule, is not an appraisal. One ongoing concern that has been raised over the years is that those with an appraisal license or appraisal certification are unsure how to meet seemingly different requirements of USPAP and the Uniform Act.

As a result of the above analysis, FHWA has revised the definition of ''waiver valuation'' in § 24.2(a) to clarify that waiver valuations are not appraisals. The language precluding compliance was added to § 24.102(c)(2)(ii)(A) to provide appraisers with the clear language necessary to remove any confusion with regard to violation of professional standards and State licensure requirements when an appraiser complies with the Jurisdictional Exception requirements. The severability clause in USPAP's Jurisdictional Exception Rule allows the appraisers' obligation to comply with the rest of USPAP to remain intact, including the requirements to be competent, ethical, and to not produce misleading reports. FHWA believes the final rule language will provide States, and licensed or certified appraisers, with clarity about the requirements of this regulation, and the implications of performing a waiver valuation. FHWA recognizes that while a formal review of a waiver valuation is not required by the regulation, some agencies may adopt a formal review of waiver valuations as part of their quality control process. In those instances, the final rule will also provide clarity to licensed or certified appraisers regarding their obligations to comply with USPAP under the Jurisdictional Exception language while performing a waiver valuation review assignment. FHWA will also develop FAQs to demonstrate how appraisers may comply with USPAP's Jurisdictional Exception Rule while performing this type of assignment.

As a result of the comments received, FHWA will also change the term ''licensed or certified appraisers'' to ''persons'' when describing the requirements for performing waiver valuations to clarify that the final rule's requirements apply to all who perform waiver valuations.

Section 24.102(c)(2)(ii)(B) Basic Acquisition Policies; Minimum Qualifications of Waiver Valuation Preparer

FHWA received two comments on minimum qualifications of a waiver valuation preparer. One commenter indicated a desire for language that clarifies that a highly regulated State agency can approve persons performing waiver valuations. Another commenter recommended that all persons performing waiver valuations receive basic training in appraisal principles.

FHWA Response: FHWA believes that Federal agencies, States, and other recipients can continue to make necessary policy determinations on the most effective methods for training and qualifying those performing waiver valuations.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.102(c)(2)(ii)(D) Basic Acquisition Policies; Requirements for Use of the Third Tier of Waiver Valuation

FHWA received 12 comments related to the proposed requirements for the new third tier of the waiver valuation. Eleven comments voiced concerns about the requirements proposed for this tier. One comment was supportive of the proposed requirements but suggested that the requirement for quarterly reports be changed to milestone reports in the right-of-way phase of the project. Of the 11 comments that voiced concerns about the requirements for use of this tier, 4 of those commenters did not support limiting this tier's use only to Federal agencies and their recipients, suggesting that subrecipients should also be allowed to use this tier. Two comments were in favor of not allowing subrecipients to use this tier. Five comments were received that indicated complying with the six requirements for Federal agency approval to use the third tier would be overly burdensome.

FHWA Response: FHWA believes a primary purpose of the Uniform Act is to ensure that just compensation offers are provided to property owners fairly, timely, and efficiently. After considering the commenters' concerns of administrative burden created by the NPRM's proposed requirements for use of the third tier of waiver valuations, FHWA revised the final rule requirements for use of the third tier of waiver valuations by eliminating the documenting and reporting of names or credentials of individuals who will be performing the waiver valuations; eliminating the administrative/

[2] *https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/TAF/Standards.aspx.*

managerial oversight mechanisms used to assure proper use and review of this additional level of authority; eliminating the development and use of the quality control procedures to be utilized; and revising the reporting requirements.

As noted in the response to comments pertaining to § 24.102(c)(2)(ii) Basic Negotiation Procedures; Appraisal, Waiver Thereof, and Invitation to Owner'' and in this part seeking to increase the limits for the third tier waiver valuations, the final rule includes a revised third tier of the waiver valuations which includes properties with an estimated compensation amount of more than $35,000 and up to $50,000.

FHWA agrees with several commenters that some of the requirements related to reporting could be revised by streamlining or eliminating some of the requirements. FHWA revised the reporting requirement to require that within 6 months of completion of acquisition activities, the agency must submit a close-out report measuring cost/time benefits; condemnation rate; settlement rate; and any other relevant metric which can document both the administrative savings, and accuracy and efficacy of the waiver valuations.

FHWA acknowledges that recipient agencies continue to have oversight responsibilities with their subrecipient agencies and can best provide oversight and stewardship of those subrecipient agencies. The FHWA agrees with several commenters that limiting the use of the third tier waiver to Federal agencies and their recipients may be unnecessarily restrictive and eliminated the proposed requirements limiting the use of the third tier of waiver valuations to Federal funding agencies and recipients. Therefore, recipient agencies should consider developing policies for allowing the use of the third tier waiver valuations by subrecipients.

Section 24.102(c)(2)(ii)(E) Basic Acquisition Policies; Requirements for Agencies To Offer Property Owners the Option To Have the Agency Provide Appraisals Instead of Waiver Valuations

One commenter indicated that the regulatory language as proposed may have caused an unintended consequence. They noted that § 24.102(c)(2)(ii)(E) is a subsection of § 24.102(c)(2)(ii), which authorizes the agency to determine that an appraisal is unnecessary for acquisitions under $10,000. The commenter noted that it appears that § 24.102(c)(2)(ii)(E), as proposed, would require the agency to perform an appraisal in all instances where an owner elects to have the property appraised, including acquisitions under $10,000.

FHWA Response: FHWA agrees that the requirement to perform an appraisal when requested by the property owner does not apply to waiver valuations for acquisitions under the limit specified in § 24.102(c)(2)(ii), which is raised in the final rule to $15,000. FHWA acknowledges that the structure and organization of the paragraphs was unclear and has modified the language in this final rule to clarify that § 24.102(c)(2)(ii)(E) applies only to §§ 24.102(c)(2)(ii)(C) and (D).

Section 24.102(f) Basic Negotiation Procedures; Appendix A, Minimum Negotiation Period

One commenter requested FHWA strengthen the statement in appendix A, § 24.102(f), regarding the 30-day minimum negotiation period to find a balance between fairness and project delivery in the acquisition phase.

FHWA Response: FHWA believes the current language is sufficient in that it addresses a need to ensure fairness in allowing the property owner a reasonable amount of time to consider the agency's offer regardless of project delivery pressures. The current appendix A language allows that the time needed to consider an offer can vary significantly depending on the circumstances but that 30 days would seem to be the minimum time these actions can be reasonably expected to require. It also notes that regardless of project time pressures, property owners must be afforded this opportunity. (appendix A, § 24.102(f)). The current language also makes it permissible to complete negotiations in less than 30 days if the parties can reach an agreement. FHWA believes that it is important to note that this requirement is not satisfied by simply establishing a minimum or maximum number of days for a negotiation process. Instead, it is focused on developing policies and practices necessary to ensure that an agency does not cause those whose property is being acquired to suffer an undue burden or to be treated in a manner that is coercive in nature.

As a result of the above analysis, no changes were made to this section or appendix A of the final rule.

Section 24.102(g) and (i)—Updating Offer of Just Compensation & Administrative Settlements

One commenter described a court case related to a State's use of its administrative revision process and requested guidance on the proper use of administrative revisions and when they are appropriate.

FHWA Response: FHWA declines to comment on ongoing State court litigation but notes the underlying and applicable Uniform Act requirement for good faith negotiations, the provisions on revising appraisals, and making an administrative settlement. Section 24.102(f) requires that a property owner be given a reasonable opportunity to consider the agency's offer and to present relevant material which they believe provides a basis for a change or update in the agency's offer of the amount believed to be just compensation and offer to purchase. Agencies must update their waiver valuations and appraisals and, when necessary, obtain a new appraisal or waiver valuation if new or relevant information on the real property's value is presented by the owner, a material change in the character or condition of the property occurred, or a significant delay has occurred since the time of the appraisal or waiver valuation was developed. If the updated or new appraisal or waiver valuation information indicates that a change in the value of real property being acquired, the agency shall promptly revise its offer of the amount believed to be just compensation and make that offer to the owner in writing (§ 24.102(g)). Section 24.102(i) of this final rule continues to permit use of an administrative settlement as a means to reach a negotiated settlement when possible. The use of an administrative settlement is consistent with the Uniform Act (42 U.S.C. 4651), which has an underlying goal of encouraging and expediting the acquisition of real property by reaching agreements with owners, avoiding litigation, assuring consistent treatment for owners and to promoting public confidence in Federal land acquisition practices.

In addition, appendix A section 24.102(i) advises that appraisers, including review appraisers, must not be pressured to adjust or revise their opinions of value and recommendations (or approvals) of the amount believed to be just compensation for the purpose of justifying such administrative settlements.

As a result of the above analysis, no changes were made to the final rule.

Section 24.102(j)—Payment Before Taking Possession

One commenter suggested a language change to clarify what is intended by ''shall pay'' at § 24.102(j).

FHWA Response: FHWA reviewed the relevant regulations and believes the current regulations accurately list the

different ways payment can be made to a property owner depending on the circumstances. FHWA believes the appropriate language for negotiated agreement is the agency ''shall pay'' the agreed purchase price to the owner. In the case of condemnation, in contrast, the agency ''makes the funds available'' for the benefit of the owner, by depositing with the court an amount not less than the approved fair market value. In addition, FHWA notes that the use of the word ''pay'' in this regulation is consistent with the description found in section 4651(4) of the Uniform Act, which states that no owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property (for additional Federal condemnation see also §§ 3114(a) through (d) of Title 40). FHWA does not believe that making the agreed purchase price available to the owner as opposed to paying the owner are synonymous and believes that that ''paying'' more accurately describes this requirement.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.102(n) Conflict of Interest

FHWA received four comments on the NPRM's proposed changes to the conflict of interest requirements. One commenter indicated a desire for clearer explanation of the difference between conflict of interest provisions for acquisitions of $10,000 and below, and acquisitions from $10,001 to $25,000. Another commenter recommended that the final rule increase the previous rule's limit for conflict of interest from $10,000 to $15,000 and eliminate the NPRM's proposed second tier because the requirements are too complicated and would not be used. A third commenter suggested the existing limits be increased to account for inflation and to eliminate the proposed requirements for the second tier as they would increase administrative costs and slow down project delivery. A fourth commenter suggested increasing the existing limits to $25,000 and eliminating the proposed additional requirements for the sake of simplicity.

FHWA Response: The FHWA's experience is that the conflict of interest limit has been managed effectively and that protections for property owners' rights have not been diminished by this process. In recognition of that experience and in response to comments on this part, FHWA revised this final rule to increase the upper limit of the first tier of the conflict of interest provision to $15,000 and the second tier to $35,000. FHWA believes increasing the limits of the second tier of the conflict of interest provision to $35,000 to coincide with the new second tier limits of the waiver valuation in § 24.102(c)(2)(ii), offers agencies opportunities for single agent activities that can be performed in a way that encourages efficient results, and does not unnecessarily burden them with administrative costs. Use of this tier will continue to require an appraisal, and review of the appraisal, if the valuation preparer is also acting as the negotiator.

These changes will align the conflict of interest limits with the increased limits of both the first tier of the waiver valuation in this final rule at § 24.102(c)(2)(ii), and the second tier of the waiver valuation at § 24.102(c)(2)(ii)(C).

FHWA believes that additional requirements for use of the second tier of the conflict of interest provision are prudent and necessary to minimize opportunities for waste, fraud, and abuse. FHWA revised this section for clarity by moving the discussion on providing approval for use of conflict of interest provisions to subrecipients to § 24.102(n)(4). FHWA also revised appendix A to § 24.102(n)(2) to include mention of prohibitions against negotiators supervising the persons performing waiver valuation.

Section 24.103 (a) Criteria for Appraisals

FHWA received four comments on criteria for appraisals. Three commenters indicated a desire for language that more strongly emphasized the importance of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). One commenter recommended that FHWA update all USPAP references to the 2020–2021 version of USPAP.

FHWA Response: FHWA believes the appraisal standards outlined in the UASFLA continue to be suitable for Federal and federally assisted projects and programs. The recognition of USPAP as an appraisal standard in the 2005 version of these regulations was not intended to diminish the UASFLA's importance but instead to ensure that it is understood that licensed and certified appraisers could comply with these regulations, and to the extent appropriate, the UASFLA, while still complying with their State's appraisal licensing requirements under USPAP. FHWA is aware that the final rule language modification in 2005 was seen by some appraisers performing assignments for Federal agencies to indicate that compliance with the UASFLA was not required because the language was interpreted to mean that compliance with USPAP alone was sufficient. FHWA may develop FAQs to emphasize and clarify that non-compliance with UASFLA standards is neither required nor suggested by this rule. The FAQs would offer clarity regarding the importance for appraisers to understand their obligation for competency in the jurisdictional area they are working.

As a result of this analysis, no changes were made to this section of the final rule.

Section 24.104(a) Review of Appraisal

FHWA received two comments on the review of appraisal. One commenter indicated that since appraisal review was not identified specifically in the law, it should be eliminated from the regulation to save time and costs to the acquiring agency, or alternatively, that appraisal review only be imposed upon all appraisals that estimated compensation above $250,000. One commenter thought that the acquiring agency should be allowed to determine when an appraisal review should be required.

FHWA Response: FHWA notes that the previous final rules also recognized a need for appraisal review and its important role in ensuring agencies provide just compensation. The 2005 final rule preamble, 70 FR 599 (January 4, 2005), noted that FHWA does not believe that it has flexibility under the Uniform Act to make appraisal review optional. The discussion described the Uniform Act's requirement for an approved appraisal, which FHWA interprets and implements as requiring a technically reviewed appraisal. The discussion also noted that while the Uniform Act specifically grants authority for waiver of the appraisal, it does not do so for approving an appraisal and that for over 30 years, the regulation has been consistent in the description and requirements for this function.

FHWA continues to believe that the appraisal review function's primary purpose is to serve as a necessary quality control tool. The appraisal review requirement is not a requirement to perform a second appraisal, or in some other way duplicate the effort and work necessary to perform and report an opinion of value.

The appraisal review requirement ensures that agency officials charged

with approving amounts believed to be just compensation have reliable, relevant, and consistent information which is necessary to approve an amount believed to be just compensation, and when necessary, in approving administrative settlements. The appraisal review process also ensures that opinions of value are appropriately supported and meet agency requirements, and that offers to property owners are based on coherent and consistent land values. The appraisal review process also ensures that appraisals are competently scoped, developed, and documented.

As a result of the above analysis, no changes were made to this section of the final rule.

Subpart C—General Relocation Requirements

Section 24.202(a) Persons Required To Move Temporarily

FHWA received 13 comments with suggested changes and general support for the proposed temporary relocation reorganization and clarification. The comments were grouped below into smaller subcategories in order to provide succinct responses to each of the comments received.

Section 24.202(a) Persons Required To Move Temporarily—Temporary Displacement vs. Permanent Displacement

Two comments supported the proposed addition and use of ''persons required to move temporarily.'' One commenter suggested that the term ''temporarily displaced'' be replaced with ''temporarily relocated.'' Two commenters asked for clarification on the NPRM's proposal to add a new § 24.202(a), ''Persons temporarily displaced,'' which they felt needed to be revised because they interpreted the rule to say that a person required to move temporarily is not displaced and therefore not eligible for assistance under this rule. One commenter suggested revising the title of the section to clarify applicability of the requirements, while another commenter requested examples be added to aid in determining who is temporarily displaced. One commenter expressed concern that the NPRM's proposed changes and addition of regulatory requirements for persons who are temporarily displaced create deep structural disconnects between Uniform Act terms and requirements and conditions that housing authorities and others working within affordable housing programs and other similar programs encounter. The commenter expressed concern that the NPRM also fails to recognize the overlapping regulatory and contractual requirements of owners of properties assisted by the Federal loan and subsidy programs to provide notices and avoid displacement that exist outside of the Uniform Act.

FHWA Response: FHWA revised the final rule to consistently use the term ''persons required to move temporarily'' to ensure that there is clarity and consistency in describing the benefits and assistance that would be provided to those who are temporarily displaced.

FHWA considered the request to include examples of persons required to move temporarily in this rule. FHWA believes that the definition of ''displaced person'' provides agencies with the factors used in determining when a person is permanently displaced. To ensure that there is a clear distinction between ''displaced person'' and ''persons required to move temporarily'', FHWA added the word ''permanently'' to the definition of ''displaced person'' in § 24.2 to more clearly describe those who are permanently displaced. This same definition has separate provisions that can be applied when a person is required to either temporarily discontinue the use of their property or to move temporarily from their property. FHWA understands that some of the activities that may require a person to move temporarily or to temporarily discontinue the use of their property are either unique, episodic, or in some other fashion impose temporary limits on the use of real property. FHWA has added language in §§ 24.202 through 24.204 to more clearly indicate which requirements apply to those who are temporarily displaced. Because temporary relocations can be episodic or unique in nature, FHWA has also added language which clarifies when certain actions require determinations of applicability by the funding agency. The FHWA believes that Federal funding agencies can develop policies or guidance which may assist it and its recipients in making a determination of when their Federal and federally assisted projects or programs cause persons to move temporarily or to temporarily discontinue use of their property.

FHWA considered the proposed use of the term temporarily ''relocated'' in place of temporarily ''displaced.'' In reviewing the proposed addition of requirements for those who are required to move temporarily or to temporarily discontinue the use of their real property FHWA notes that the definition of displaced person now includes a subsection which addresses those required to move temporarily.

As a result of the above analysis, FHWA has revised the final rule by adding a definition in § 24.2(a)(ii) to discern the differences between those permanently displaced and those required to move temporarily and by revising the requirements in § 24.202 to explain what benefits and assistance are provided to persons required to move temporarily.

The final rule also includes a section describing moving costs and allows for storage for persons required to move temporarily with Federal agency approval.

FHWA believes the final rule's requirements for persons required to move temporarily, the discussion and clarification about development of funding agency specific policies, and the revision of the title of the notice at § 24.203(b) ensure that those carrying out relocations have the tools necessary to correctly implement the funding agency's program in compliance with Uniform Act requirements. As noted in the NPRM's preamble at 84 FR 69476, FHWA believes this change aligns the regulation more closely with the language and requirements of Section 4621 of the Uniform Act. These requirements include a recognition that assistance policies must provide for fair, uniform, and equitable treatment of all affected persons. In addition, FHWA believes that providing services and assistance to persons required to move temporarily is necessary to minimize the impacts of displacement and to maintain the economic and social well-being of communities.

FHWA will consider development of FAQs describing requirements for persons required to move temporarily under the final rule.

Section 24.202(a) Persons Required To Move Temporarily—Payment for Temporarily Closing of a Business

Two commenters noted some businesses that might temporarily discontinue use of their property would not qualify for assistance because a business might only be eligible for payment of expenses when a person's business is required to move temporarily due to rehabilitation of a site. These same commenters suggested the final rule should be revised to ensure that businesses required to move temporarily for reasons other than rehabilitation of a site be eligible for temporary relocation benefits as well. One commenter requested clarification in the final rule focused on temporary business displacement. This commenter suggested allowing payment to

businesses to compensate the business for temporarily closing instead of moving temporarily. The proposed payment would be determined by using average daily income. The commenter reasoned that the proposed payment would allow the business to remain in place but closed for business until the project or program activity is completed.

FHWA Response: FHWA believes that this regulation does not contain language that would limit eligibility for temporary nonresidential moves to when the temporary displacement was caused by rehabilitation. The NPRM's preamble discussion of proposed changes to the definition of displaced person addresses eligibility for those who are required to move temporarily.

The preamble discussion at 84 FR 69476 noted that several Federal agencies have programs or projects that do not require the acquisition of real property, but instead may require the rehabilitation or demolition of real property, and that FHWA proposed adding the terms ''rehabilitate or demolish'' to the definition of a displaced person. The addition would clarify that the term ''displaced person'' includes those required to move, or move their personal property, or who are required to temporarily move from or to temporarily discontinue use of their real property as a result of a written notice of intent to rehabilitate or demolish, even if the real property is not being acquired. The final rule adopts the NPRM proposals addressing businesses that are required to move temporarily at § 24.202(a).

The term ''displaced person'' is used in the Uniform Act to describe persons who move permanently because of a Federal or federally assisted project or program. ''Persons not displaced'' is a term used to describe persons who do not qualify for Uniform Act benefits. FHWA revised and reorganized the definition to specifically address persons who are required to move temporarily and included a new addition in the final rule, § 24.202(a), to describe the required assistance and services that must be made available for persons who are required to move temporarily. FHWA notes that the final rule will continue to include a notice of intent to rehabilitate or demolish but does not agree or believe that the notice would restrict eligibility for those required to move temporarily to only residential occupants.

FHWA considered the comments on allowing a business owner to decide to claim a payment for temporary closure of a business in lieu of temporary relocation and does not agree that such a payment should be allowed. Such a payment is specifically disallowed under the current regulations in § 24.301(h), Loss of profits, and FHWA sees no rationale for allowing such a payment to a business required to move temporarily. FHWA also believes that determination of a temporary loss of business payment due to temporary closure of a business raises questions about calculation methodology. Several considerations would make such a determination and calculation imprecise, unworkable, and impractical to document including uncertainty about determining if businesses' customers would all return after the temporary closure, calculation of temporary loss of temporary loss of goodwill, and whether such payments would be available to all businesses required to move temporarily or only certain types of businesses that have machinery and equipment requiring substantial costs to move and reinstall.

FHWA recognizes that a temporary move and a return to the site may not be practical or possible for some businesses for several reasons, including, but not limited to, prohibitive costs to move and equipment that cannot be relocated temporarily due to cost or specific requirements related to installation (including the need for new pits, pads, utility service requirements, modifications necessary due to code requirements, etc.). The FHWA believes that, in these instances, displacing agencies will need to make a fact determination and document the reasons why a temporary displacement may not be possible for a business and determine that instead, such a business should be provided relocation assistance to permanently relocate the business.

FHWA similarly does not agree that a business required to move temporarily for reasons other than rehabilitation of a site would be ineligible as defined in this rule. Such an eligibility determination would be a fact-based determination which would consider the project's impacts on the business in making an eligibility determination.

As a result of the above analysis, no change was made to this section of the final rule.

Section 24.202(a) Persons Required To Move Temporarily—12 Month Time Limit

Two commenters raised concerns about the 12-month time limit for temporary relocations. Both commenters were concerned that some projects might require a temporary relocation longer than 12 months. One commenter reasoned that § 24.207(f) would prohibit an occupant from agreeing to a temporary relocation of longer than 12 months.

FHWA Response: The FHWA considered the comments raising concerns that some projects may require a temporary relocation for a period of more than 12 months. The commenters raised additional concerns that the language in the proposed rule might be interpreted to prohibit a displaced person from agreeing to a temporary relocation longer than 12 months after being informed of their eligibility as a displaced person. FHWA agrees that projects often experience unexpected delays for a number of reasons. Given the longstanding regulatory flexibility, history, and application, FHWA does not agree that the requirements in § 24.207(f) would prohibit an occupant from agreeing to a temporary relocation of longer than 12 months after being informed of their eligibility as a displaced person. The 2005 final rule preamble discussion of § 24.2(a)(9)(ii)(D) Temporary Relocation, 70 FR 592 (January 4, 2005), provided details on how and why a temporarily displaced person may elect to continue to be temporarily displaced. The rule reasoned that ''Such tenants may be given the opportunity to choose to continue to remain temporarily relocated for an agreed to period (based on new information about when they can return to the displacement unit), choose to permanently relocate to the unit which has been their temporary unit, and/or choose to permanently relocate elsewhere with Uniform Act assistance.'' FHWA continues to believe that when a person who is required to move temporarily, or temporarily discontinue use of their property, is fully informed about their eligibilities, that they may make a choice which can include to remain temporarily displaced for more than a 12-month time period. This choice must be documented by having the person required to move temporarily, or to temporarily discontinue use of their property, sign a written agreement documenting their intent to elect to remain temporarily displaced while they wait for the project to conclude.

Appendix A, § 24.207(f) also addresses the commenters' concern that a person required to move temporarily could not agree to remain classified as a ''person required to move temporarily'' for more than 12 months after being informed of their eligibility as a displaced person. The appendix A discussion points out that while the regulation prohibits an agency from proposing or requesting that a displaced person waive their rights or entitlements

to relocation assistance and payments, an agency may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled in anticipation of returning to their dwelling or a similar dwelling in the building when the project is completed. The written statement must clearly document that the individual knows which benefits and assistance they are entitled to receive, a copy of the Notice of Eligibility that was provided may serve as documentation, and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the agency.

The 2005 final rule allows waiver of regulatory requirements when that waiver does not reduce benefits or assistance otherwise available to an owner or displaced person. This provision, found at 49 CFR 24.7, has been a part of the Uniform Act regulation for almost 40 years. The 1989 final rule preamble at 54 FR 8917 (March 2, 1989); section 24.7 Federal agency Waiver of Regulations, noted that requirements imposed by the Uniform Act may, necessarily, create some delay and administrative burden and that it would be inappropriate to grant a waiver based on the general proposition of delay and administrative burden. A waiver proposal would need to be specific, protect the rights of owners and displaced persons, and not be designed to provide administrative relief to the acquiring agency. The 1989 preamble also noted that the waiver provision, in turn, is explicit regarding two major considerations. The first is that the Federal agency, before waiving any requirement, must determine that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this regulation. The second is that any request for a waiver shall be justified on a case-by-case basis. FHWA noted in this passage that it does not interpret case-by-case to mean, necessarily, a parcel-by-parcel basis, neither does it encompass the waiver of a requirement on a program-wide scope, and therefore the broader the scope of the waiver, the more carefully the Federal agency must weigh its effect on the assistance and protection to be provided an owner or displaced person. This final rule does not propose changes to the § 24.7 waiver provisions or any changes in interpretation and application of the wavier of regulations.

Federal agencies should develop policies for determining when a waiver of the 12-month requirements may be allowed. FHWA notes that previous regulatory preambles also addressed the question of whether a waiver of regulations in § 24.7 allows for project- or program-based waiver of regulations by the funding agency. FHWA continues to believe that Federal funding agencies considering approving a waiver of regulations must ensure that any waiver of regulations does not reduce any benefits or assistance due to displaced owners and tenants. FHWA believes that Federal funding agencies may grant approval to allow a waiver of the 12-month requirement on a project by project basis. Such a waiver would need to establish the new maximum duration for requiring a person to move temporarily and be approved by the funding agency prior to initiation of the project because each person who is or will be required to move temporarily, or temporarily discontinue use of their property, and must be informed of their eligibilities and entitlements. To the extent practicable, agencies should consider the need for a waiver of the 12-month requirement in advance of the project's initiation. This must include documentation of why the waiver is necessary and why a waiver would not reduce required benefits or assistance. In some cases, the need to extend temporary relocation beyond 12 months will not be foreseeable at the initiation of the project but will become apparent at some later stage of the project. In such instances, agencies are not required to request a § 24.7 waiver, if the agency fully informs the temporarily displaced persons of their eligibility as a permanently displaced person before giving them the option of continuing in a temporarily displaced status. If that option is selected, it should be memorialized in a written agreement between the agency and the temporarily displaced person.

Given the history and longstanding interpretation of the waiver of regulations provisions, FHWA does not believe that additional regulatory changes are necessary and that agencies can develop further policy and procedures that describe safeguards necessary to ensure that displaced persons are provided all eligibilities and assistance required under this rule. Such policies and procedures should include consideration of what the agency believes to be the maximum duration that a person can required to remain a person required to move temporarily and when such waivers may and may not be granted.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.202(a) Persons Required To Move Temporarily—Requirement for Notices

One commenter raised a question about notice requirements for those who are required to move temporarily, or to temporarily discontinue use of their property, and specifically asked about the applicability of the 90-day notice requirement for those required to move temporarily or to temporarily discontinue use of their property.

FHWA Response: FHWA considered the commenter's questions about notices for persons who are required to move temporarily or to temporarily discontinue use of their property. The final rule includes specific eligibilities in § 24.202(a) for persons required to move temporarily as proposed in the NPRM, which include notice requirements.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.202(a) Persons Required To Move Temporarily—Advisory Services

Two commenters raised a question about meeting the requirements for providing advisory services to persons required to move temporarily.

FHWA Response: FHWA believes that the requirements of § 24.205(c) provide detailed requirements for advisory services for those displaced are applicable in part to those persons required to move temporarily. However, the primary purpose of advisory services is to ensure that a displaced person is fully informed about the assistance and benefits that may be available to them. Such advisory services necessarily require an agency to develop and maintain ongoing communication with a person required to move temporarily. Such communication will ensure that the agency understands the needs of the person required to move temporarily and addresses those needs as required and allowed in this rule.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.203 Relocation Notices

FHWA received responses from two commenters on relocation notices. One commenter asked that the final rule clarify when and how notice requirements in this rule should be applied to Federal rental housing programs. This commenter pointed out that some programs do not have a readily identifiable initiation of negotiations. One commenter suggested the elimination of the notice of intent to

acquire, rehabilitate, or demolish, and reasoned that the General Information Notice already serves the same purpose; and also asked that the final rule include a discussion of timing for the various notices. This commenter reasoned that the NPRM contains a description of notices, which do not always clearly fit into Federal agency acquisition and relocation processes, and which are sometimes dissimilar to what is described in the final rule. One commenter suggested that Federal funding agencies ensure that notices are written in easily understood terms and organized in a way to ensure that displaced persons or occupants are provided with information they need in as basic a manner as possible.

FHWA Response: The requirement for notices is one of the most basic, but also one of the most important, requirements in this rule. Notices serve to ensure that those impacted by a Federal or federally assisted project or program receive information and assistance that they will need to successfully relocate.

FHWA understands the concerns about how some of the requirements are not easily applied to all Federal programs but does not believe that changes to the final rule can adequately address concerns that are specific to each Federal agency's program. FHWA believes agencies should develop policies and guidance to clarify how requirements in this rule are implemented, as necessary.

FHWA agrees with the commenter who suggested that notices should be written in a manner that ensures that those impacted or affected by a Federal or federally assisted project or program receive notices that are clear, concise, and ensure that the necessary information is efficiently and effectively provided. FHWA believes that the final rule provides the requirements necessary to develop such notices but believes that each Federal agency must develop its own processes and policies to ensure that the notices being provided serve the purpose of providing needed information as effectively and efficiently as possible.

Similarly, FHWA does not agree that the notice of intent to acquire, rehabilitate, or demolish be removed from this regulation. As indicated in the regulatory language, the notice's specific purpose is to provide written assurance that the agency intends to acquire the real property, in whole or in part. This notice is provided to an occupant who is either required to move temporarily or who may be permanently displaced. An important purpose of this notice is to allow a person who may be either required to move temporarily or who may be permanently displaced to move in advance of offers or other notices while not jeopardizing any potential relocation assistance to which they may be entitled.

As a result of the above analysis, FHWA revised § 24.203(d) to specifically include persons who are required to temporarily move. FHWA believes that the modifications to § 24.203(d) will clarify the purpose, intent, and timing of this notice. The FHWA does not believe an additional discussion in § 24.203 on timing of notices is warranted.

Section 24.205(c) Relocation Planning Advisory Services and Coordination

FHWA received one comment requesting that as part of relocation assistance advisory services, and to ensure active citizen participation throughout the whole project, agencies should establish a relocation committee to include agency personnel, community residents, and community leaders. The commenter noted such a committee could be essential in cultivating a bond of trust with the residents, moving proposed projects forward in a timely manner, and in helping to identify the needs of displaced persons.

FHWA Response: FHWA appreciates this information on best practices but does not believe that such a process should be a requirement. However, FHWA does agree with the commenter's insight that establishing trust with tenants encourages participation and provides a good method to ensure successful relocation outcomes and advance projects in a timely manner. The FHWA notes that the relocation planning requirements remained largely unchanged for almost 40 years, in this final rule and the rulemakings that preceded it; beginning with the final rule in 1989, 59 FR 8909 (March 2, 1989), and in the 2005 rulemaking, 70 FR 590 (January 4, 2005). The 1989 final rule preamble explained in part that ''. . . FHWA believes that most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. FHWA does not view relocation planning as a complicated, time-consuming activity. FHWA sees relocation planning as a process which provides meaningful information to program and project decisionmakers. It does not need to result in a detailed document containing unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of agency resources.''

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 notes that ''This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.'' 42 U.S.C. 4621. This section also includes congressional findings and declarations which note that the: ''. . . (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons; (3) the displacement of businesses often results in their closure . . .''

While this final rule will not include additional requirements for relocation planning, FHWA believes that modern projects and attendant right-of-way needs are becoming more complex and, in some cases, more impactful to those displaced and the surrounding communities. Such planning necessitates a thorough analysis and understanding of the potential displacements a proposed project or its alignments may cause. Such analysis and understanding are critical to ensuring that those displaced do not suffer disproportionate injuries and that they receive uniform, fair, and equitable treatment.

FHWA encourages each funding agency to carefully review its policies and procedures while implementing this rule in order to ensure that the relocation planning requirements are being caried out. FHWA believes that the consequences of not carrying out the requirements of relocation planning may cause disproportionate injury to those displaced, project delay, escalation of project costs, and difficulty in timely development and advancement of projects. FHWA will consider developing new FAQ and other supporting materials to explain the need for effective relocation planning, emphasize best practices and success stories, and to examine lessons learned.

FHWA also revised the appendix A, § 24.205(a) discussion by adding a reference to those who live in other federally subsidized housing to ensure that agencies are aware of the need to assess and plan for effective advisory

services. The FHWA encourages agencies to creatively and collaboratively develop methods to provide advisory services that meet the needs of those displaced.

Section 24.205(c) Relocation Planning Advisory Services and Coordination

FHWA received one comment requesting that as part of relocation assistance advisory services, and to ensure active citizen participation throughout the whole project, agencies should establish a relocation committee to include agency personnel, community residents, and community leaders. The commenter noted that at the public corporation where the commenter works, a housing committee was established. The commenter relayed that the committee was essential in cultivating a bond of trust with the residents, moving proposed projects forward in a timely manner, and in helping to identify the needs of displaced persons.

FHWA Response: FHWA appreciates the information about the housing committee and its processes and best practices. FHWA however does not believe that such a process should be a requirement. In addition, appendix A § 24.205(a) addresses the need to ensure that relocations that may take additional time for advisory services and coordination are properly addressed through the relocation planning process.

However, FHWA agrees with the commenter's insight about the importance of the relationship with residents to ensure active citizen participation and to move the proposed project in a timely manner. FHWA also agrees with the commenter that residents can help identify the specific needs of some families.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.205(c)(2)(II)(C) Relocation Assistance Advisory Services; Services To Be Provided—Inspection Criteria

One commenter believes that improvements could be made to the requirements necessary to establish that a dwelling is DSS. They reasoned that updating, revising, and clarifying inspection requirements in the Uniform Act would be consistent with current requirements in many federally assisted housing programs. They noted that the Housing Opportunity Through Modernization Act of 2016 (Pub. L. 114–201) designated both lead-based paint, and missing or defective carbon monoxide detectors, as life-threatening conditions for the purposes of initial housing quality standards inspections for Housing Choice Voucher and Project-Based Voucher units. They also noted that the Lead Safe Housing Rule, 24 CFR 35.80 *et seq.,* which applies to all target housing that is federally owned or assisted, also requires lead paint inspections, and risk assessments/remediation, if necessary, prior to occupancy in all programs (excluding mortgage insurance), except the Housing Choice Voucher Program and project-based units receiving less than $5,000. The commenter believes that updating Uniform Act inspection language to include similar provisions would be consistent with current requirements.

The FHWA Response: A DSS inspection in this final rule requires a determination that the dwelling meets the more stringent requirements of this rule, local housing code, Federal agency regulations, or the agency's regulations or written policy. For example, in instances in which the funding agency has established requirements or standards for DSS that are more stringent than the regulation's requirements, the funding agencies' requirements would need to be met. Displacing agencies will need to ensure that they understand which DSS requirements are most stringent and apply them when making a DSS inspection and determination.

FHWA appreciates that some agencies require that a DSS inspection include inspection and determination protocol in addition to those required by this rule. These additional considerations or requirements may be established through specific agency policy, regulation, or statute. FHWA, however, does not believe that requiring a certain inspection criterion, in this case a criterion for lead-based paint, in this final rule is necessary. FHWA believes that such inspections and testing should best be done by providers who have the requested training and tools to ensure effective lead-based paint testing. FHWA believes that the regulation's requirement that the dwelling meets the more stringent requirements of this rule, local housing code, Federal agency regulation or the agency's regulations or written policy, ensures that each Federal funding agency and its recipients will be aware of and use the required criteria that ensure a dwelling is DSS. Funding agencies may determine that additional guidance or requirements, which require additional considerations or standards be met when making DSS determinations, are necessary for their program.

As a result of this analysis, no additional change was made in the final rule.

Section 24.205(c)(2)(II)(C) Relocation Assistance Advisory Services; Services To Be Provided—Comparable Inspection

One commenter understands the proposed changes to allow an agency to forego the required DSS inspection. One commenter felt that the requirement for the agency to inspect a comparable dwelling prior to using it in any eligibility determination is overly burdensome to the agency. One commenter advised that the agency currently relies on an outside visual inspection and review of MLS listing information when selecting comparable replacement housing. This commenter has the belief that most displaced persons do not choose the comparable housing made available to them, and when they do select a replacement dwelling, the agency requires the dwelling to pass an extensive DSS inspection prior to occupancy and a replacement housing payment being made. One commenter stated if agencies do not inspect comparable replacement units, the rule should specify that the maximum replacement housing payment must be recalculated if the unit upon which it was based is later found to not be DSS. Two commenters were uncertain if the new language regarding inspection of the dwellings used in the comparable replacement housing determination means that all the comparable dwellings must be inspected, or if only the selected comparable dwelling must be inspected. One of these commenters requested guidance on what would be an acceptable reason for not being able to walk through and physically inspect the interior and exterior of comparable dwellings.

FHWA Response: Prior to requiring a residential occupant to move from their dwelling, an agency must make at least one DSS comparable replacement dwelling available to them. This final rule at § 24.205(c)(2)(ii)(C) continues to require that where feasible, comparable housing should be inspected prior to being made available. A walkthrough and physical inspection of the interior and exterior of the displaced person's replacement dwelling also continues to be required to ensure that the replacement dwelling is DSS prior to a payment being provided to the displaced person. The requirement for a physical inspection of the replacement dwelling is unchanged in this final rule. FHWA also believes that given the importance of ensuring displaced persons are treated fairly, consistently, and equitably, so they will not suffer disproportionate injuries as a result of

projects designed for the benefit of the public as a whole, an agency should develop policies that limit or prohibit the use of uninspected comparable dwellings. As a result of this analysis, FHWA has reorganized the appendix A sections of both § 24.205(c)(2)(ii)(C) and § 24.403(a)(1) to more clearly relate to the relevant regulation section requirements and for purposes of organizational clarity.

As a result of this analysis, no additional change was made in the final rule.

Section 24.205(c)(2)(ii)(C), Relocation Advisory Assistance Services—Notification Requirements When DSS Inspection of Comparable Replacement Housing Is Not Performed

One commenter advised that the notice requirement may suggest the agency is not providing all relocation services to the displaced person. One commenter suggested that providing a written justification of why a DSS inspection was not done for a comparable dwelling before determination of the RHP should not be a requirement in the final rule. This commenter felt that the agency should be allowed to provide an alternative justification in the RHP calculation and package that is eventually presented to the displaced person.

FHWA Response: The NPRM proposal required that in unusual or extraordinary circumstances when a physical inspection of a comparable dwelling is not possible, the agency is required to provide the displaced person written justification. FHWA does not believe that acknowledging that a comparable dwelling was not physically inspected in unusual or extraordinary circumstances and requiring a written notice in these instances will limit required assistance and services to those displaced. FHWA notes that the required written notice must be provided to a displaced person as soon as possible but not later than the notice of relocation eligibility, § 24.203(b). FHWA also notes that the primary question here is typically whether the interior of the comparable dwelling was physically walked through and inspected.

FHWA understands that not all comparable dwellings may be available for physical inspection for a variety of practical reasons but believes agencies must balance that against the critical requirement that a comparable dwelling must be DSS in order to be deemed made available. FHWA believes that a walk through and physical inspection of the interior and exterior are the only realistic and reliable ways an agency can ensure that it has met the requirements to ensure a comparable replacement dwelling is DSS. Therefore, it is important to emphasize that instances in which a physical walk through and inspection of a comparable dwelling is not possible, should be the exception and not the normal course of business. When possible, agencies should consider removing uninspected comparable dwellings from consideration. Nothing in this rule prohibits agencies from establishing additional policies or requirements for physical inspection of comparable dwellings.

In addition, an agency should provide clear direction and policy or requirements on how to document and communicate why an inspection was not made both to the displaced person and in the agency's records. Should the selected comparable dwelling later be found to not be DSS then the agency's policies and procedures must ensure that a displaced person's eligibility determination will be recalculated. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure that a decent, safe and sanitary dwelling be made available are met.

As a result of this analysis, FHWA has reorganized the appendix A sections of both § 24.205(c)(2)(ii)(C) and § 24.403(a)(1) and added language to more clearly indicate the relevant regulation section requirements and for purposes of organizational clarity.

As a result of this analysis, no additional change was made in the final rule.

Section 24.205(c)(2)(ii)(D)—Relocation Planning, Advisory Services, and Coordination; Appendix A

One comment was received regarding language in the NPRM encouraging agencies ''. . . whenever possible . . .'' to provide minority persons who reside in communities of minority concentration with opportunities to relocate to DSS housing in areas other than those of minority concentration. The commenter believes these preferences should be up to the persons being relocated. Further, they state that there is a likelihood that this will lead to non-uniform treatment of displaced persons. The commenter further raised concerns that the requirement to document efforts to meet the goals of this section would be administratively burdensome.

FHWA Response: FHWA believes the needs and preferences of all displaced persons are determining factors in developing a relocation assistance eligibility comparable determination. The role of the acquiring agency is to give displaced persons reasonable opportunities to relocate to comparable housing without mandating or limiting areas of that housing. However, it is the displaced person's right to make the final replacement dwelling selection for themselves. FHWA notes that the goals and statements in this section of the current final rule have been consistently stated in preceding final rules for almost 40 years. During that time, FHWA received little indication that this section's goals and permissive language were unclear or impractical. FHWA reviewed the statutory language in the Uniform Act at Section 4621(b)(2) and (3), Declaration of Findings and Policy. The primary purpose of the relocation assistance is described as ensuring that displaced persons do not suffer disproportionate injuries as a result of being displaced for programs or projects undertaken by a Federal agency or with Federal financial assistance. It further states that ''the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible . . .''

FHWA revised appendix A to more clearly indicate that agencies should continue to, where practical and feasible, provide those displaced persons who live in areas of minority concentration opportunities to improve their housing conditions and living situations, and that agencies should maintain adequate written documentation of efforts made to locate such comparable and replacement housing.

Section 24.208(c) Aliens Not Lawfully Present in the United States

FHWA received five comments on this section's proposed changes. One commenter expressed concerns that the NPRM's proposed changes might involve the collection of sensitive personally identifiable information and would require implementing new processes to ensure the information is appropriately safeguarded. One commenter asked that the word ''alien'' not be used as it may be perceived to be offensive. One commenter felt that the proposed changes to the verification process would be administratively burdensome and suggested simply retaining the requirement for verification on a case-by-case basis. One commenter noted that they viewed the proposed change as creating a new requirement. One commenter noted that they run an essentially parallel system, which results in a certification from their recipients verifying citizenship

and immigration status, and believes it meets the requirements of this section.

FHWA Response: FHWA appreciates the comments, perspectives, and concerns expressed. FHWA believes that it is important to note that this section of the regulation continues to require that displaced persons provide a certification that they are a citizen or national of the United States, or an alien lawfully present in the United States. The statutory requirement found at 42 U.S.C. 4605 was added to the regulations by a final rule in 1999 (64 FR 7127, February 12, 1999). Should the agency deem an alien's certification to not be credible or invalid, the regulation continues to require that the agency take the additional step of verifying the person's United States citizenship status. The primary change in this final rule is to the method for verification. The final rule requires agencies to utilize the United States Citizenship and Immigration Services (USCIS) Systematic Alien Verification System (SAVE) rather than the previous requirement to contact the local Bureau of Citizenship and Immigration Services office for verification. Agency processes for obtaining and handling personal information as part of their Uniform Act programs should be secure and collect the fact-specific information required for verification.

FHWA acknowledges a need to ensure that in verifying citizenship status, a displaced person should be afforded deference and consideration to ensure that derogatory or otherwise insensitive language is not used. The use of the term ''alien'' as it relates to this rule can be found in statute in Public Law 105–117, November 21, 1997. FHWA considered whether other terms might reasonably be used. FHWA notes that the term ''alien not lawfully present in the United States'' appears in the Uniform Act, 42 U.S.C. 4605(a). Moreover, the term ''alien'' has a specific legal meaning and is used in several other Federal agency regulations and statutes describing citizenship status for those who live in the United States. (See Title 8, U.S.C. and 8 CFR Chapter I). Consequently, FHWA has not made any changes in this final rule.

Subpart D—Payments for Moving and Related Expenses

Section 24.301(b)(2) Moves From a Dwelling, Self-Moves; Section 24.301(c)(2) Moves From a Mobile Home, Self-Moves: Use of Commercial Moving Bids or Agency Staff Prepared Estimates for Self-Moves

FHWA received responses from eight commenters regarding the proposed alternative reimbursement methodology for residential self-moves. The NPRM included a request for comments on adding an option for residential self-moves based on either the amount of the lower of two commercial moving bids, or an estimate prepared by a qualified agency staff person. FHWA also asked for comments on whether a commercial mover's overhead and profit should be subtracted from a self-move payment eligibility determination or if the self-move payment should be based on the full amount of the lowest bid. FHWA received a wide variety of suggestions in response.

One commenter stated that reducing the administrative burden on the displaced person is a positive thing and that payment to the displaced person for a residential self-move should be based on either the lower of two moving bids, or the average of the two bids. Another commenter was concerned that allowing a residential self-move payment based on the lower of two bids from a commercial mover would result in an increase in administrative burden to agency personnel. The commenter believes that it may be preferable to only add or adopt the use of a moving cost finding for nonresidential moves as described in the preamble that allows a qualified agency staff person to prepare estimates.

Five commenters believe that determining a moving company's overhead costs would be difficult and impractical. One commenter suggested that any adjustment to the bid amount should be a flat percentage deduction, and that overhead in this rule should only include administrative expenses and office space costs, while another suggested that 20 percent of the lowest bid amount is a fair amount to deduct for a commercial mover's overhead. This same commenter stated that this percentage is used in their State and is based on their poll of several commercial movers.

One commenter believes that the administrative costs should not include costs of vehicle, gas, labor, etc., used during a move. The commenter reasoned that the costs for vehicle, gas, and labor are costs that are also borne by the displaced person as part of a self-move and should be compensated.

One commenter asked whether FHWA would monitor the hourly fees charged to a consumer when using self-moves. The commenter further wanted to know if a person can submit a Freedom of Information Act request to FHWA for movers' rates. The commenter also wanted to know what the displaced person's eligibility for reimbursement would be if the rates are not within the limit scales of the U.S. Department of Labor's Consumer Price Index.

One commenter did not support using commercial moving bids to determine eligibility for reimbursement of a residential displaced person's self-move. Another commenter believes that adding an additional residential self-move payment option may have drawbacks and would add additional complexity to each residential relocation. This same commenter expressed the belief that residential displaced persons may be less able than nonresidential displaced persons to determine whether a self-move would be advantageous.

One commenter noted, that in their experience, reimbursement based on actual costs is not a viable option for a residential self-move, because it is often very difficult to obtain actual cost receipts from the displaced person, or alternatively for a displaced person to obtain information and documentation from commercial movers, which would be needed to calculate reimbursement eligibility.

FHWA Response: FHWA appreciates the supportive and constructive comments received and program insight offered. FHWA believes the addition of a self-move option is beneficial in that it provides more choices to the displaced person. FHWA believes it is the responsibility of the agency to provide adequate advisory services to ensure that the displaced person clearly understands the moving options available and makes a selection that best meets their needs. FHWA noted both the support and concerns raised about use of commercial bids to determine reimbursement amount eligibility for residential self-moves and about whether and how to adjust the amount of the lowest commercial bid to account for overhead. FHWA notes that overhead costs across the Nation and in individual markets vary based on a number of factors. FHWA does not believe that establishing a national and Federal Government-wide flat percentage to account for overhead in this final rule is practical. For these reasons, the final rule will not require a deduction from a move cost estimate to account for overhead. FHWA considered whether allowing reimbursement on this basis might lead to waste, fraud, or abuse and believes that proper funding agency oversight and stewardship will ensure that this provision is appropriately and effectively administered. Federal funding agencies that believe more financial control is needed may develop policies and procedures that include the

deduction of an amount from the commercial bids which represents overhead and profit but are not required to do so.

The current regulation allows a qualified staff person to prepare the moving cost payment estimate for a nonresidential self-move; therefore, allowing similar method to establish reimbursement eligibility for a residential move should not be burdensome. FHWA also notes that the self-move reimbursement for labor based on hourly rates, etc. is not new to this rulemaking. The Federal funding agencies may also utilize policies and guidance on how best to administer this requirement. For example, in its role as a Federal funding agency, FHWA provides stewardship and oversight by requiring approved manuals that describe approved processes its grantees follow in determining actual reasonable and necessary reimbursement. FHWA received little or no feedback over the years that would lead FHWA to conclude that this additional residential move cost reimbursement option may create waste, fraud, or abuse.

FHWA revised the final rule by making similar revisions in § 24.301(b)(2)(ii) through (iv) (moves from a dwelling) and (c)(2)(ii) through (iv) (moves from a mobile home). Section 24.301(b)(2)(ii) and (c)(2)(ii) add criteria needed to determine and document self-move reimbursement eligibilities. Section 24.301(b)(2)(iii) and (c)(2)(iii) adds new flexibility to allow use of a move cost estimate prepared by qualified agency staff. Section 24.301(b)(2)(iv) and (c)(2)(iv) adds new flexibility to base residential self-move cost reimbursement eligibility on the lower of two commercial moving cost bids.

Section 24.301(d) Moves From a Business, Farm, or Nonprofit Organization—Moving Cost Finding and Nonresidential Moving Cost Schedule

FHWA received three comments on whether a moving cost finding for nonresidential moves should be reinstated, or if a nonresidential moving cost schedule should be developed and included in the final rule. Both methods were proposed to streamline the process for determining moving cost benefit amounts for low-cost, uncomplicated nonresidential moves. One commenter was opposed to a Fixed Moving Cost Schedule for Nonresidential Moves because there are too many variables but supported adding a nonresidential fixed moving cost schedule for use when developing a benefit amount for personal property located in storage facilities. Another commenter concurred with the proposal to adopt the use of a moving cost finding for businesses and to consider development of a nonresidential moving cost schedule for uncomplicated moves because these methods would provide streamlined approaches that will reduce the burden for both the nonresidential displaced person and the agency. A final commenter supported development of a tool similar to the Fixed Residential Moving Cost Schedule and preferred any type of schedule to take jurisdictional cost differences into account. This same commenter believed that the proposed schedule would reduce administrative burden and expedite the payment of moving expenses to displaced businesses and use of such a tool would eliminate the time-consuming tasks of soliciting at least two commercial moving bids or seeking backup documentation from displaced businesses to support their reimbursement requests.

FHWA Response: FHWA appreciates receiving the comments regarding the proposal to reinstate a nonresidential move cost finding and to develop a nonresidential moving cost schedule. FHWA recently completed a research project examining possible nonresidential moving cost estimation and reimbursement methods in use by a study group of nine State DOTs and four Federal agencies. The comments received in the NPRM are in line with the findings in the study's final report, which will be published shortly.

FHWA agrees that including additional streamlining methods for developing moving cost eligibility determinations can provide additional options and reduce administrative burden to both displaced persons and agencies. However, FHWA does not have enough supportive materials and data to institute a fixed cost schedule for nonresidential moves in this final rule. FHWA will continue to explore potential options and may consider at a later date the possibility of adding a nonresidential moving cost schedule option to a future rulemaking.

FHWA believes that for nonresidential moves, a move cost finding would only be appropriate for moves of personal property which are uncomplicated and therefore do not require disconnect and reconnection, and for items which do not require specialty movers, such as a rigger, or equipment to provide specialty moving services. FHWA believes that it is important to establish a maximum amount for nonresidential move cost findings. The final report of nonresidential moving cost methods included a survey group of nine State DOTs and identified any current move cost finding threshold levels currently used with respect to nonresidential moving costs. The criteria for the use of these findings vary by State DOT for an uncomplicated move. State DOTs used thresholds to determine uncomplicated moves which could be accomplished using a schedule ranging from $2,500 to $10,000 in costs. Several State DOTs also used additional criteria to further identify non-complex moves that could be accomplished using a schedule move. Based on this research and information, FHWA included in the final rule a move cost finding option that may be used for uncomplicated nonresidential moves of no more than $5,000 in estimated cost. FHWA revised the final rule at § 24.301(d)(2) by adding § 24.301(d)(2)(iii) Move Cost Finding.

The FHWA will develop FAQ to provide additional examples of when a move cost finding may be appropriate for nonresidential moves.

Section 24.301(e) Payment for Actual Reasonable Moving and Related Expenses—Personal Property Only

FHWA received seven comments regarding the use of the additional room method to establish moving cost eligibility when moving personal property located outside of a dwelling. Five commenters supported using the additional room method as a sensible way to deal with small, residential personal property only—outside moves. Three of these commenters believe that use of the additional room method would be much more convenient and cost effective as opposed to doing a separate residential personal property only—outside move. One commenter suggested that the use of the additional room method be allowed for moving personal property outside the dwelling when the occupants will be displaced. This same commenter asked if it would be appropriate to use the additional room method to establish a minimum payment or if there would be a way to pro-rate that amount for a smaller residential personal property only—outside move where an additional room could be considered a windfall.

FHWA Response: FHWA's NPRM proposed changes to appendix A section 24.301(e), Personal Property Only, recognize that in some instances the costs of obtaining moving bids for moving personal property located outside of the dwelling are prohibitive. The appendix A discussion provides examples of when it may be appropriate to use the additional room method to determine moving cost reimbursement eligibility. FHWA does not believe that the moving cost schedule can be used to

either establish a minimum payment or to determine a fractional or a percentage payment amount for personal property moves. The fixed residential moving cost schedule is meant to be a simplified method for determining eligibility and documenting determinations of eligibility; therefore, attempting to establish a minimum payment or calculating a fractional amount is not allowed. The appendix A link to the schedule on the FHWA website will be updated when the new schedule is published, however, the current schedule is available on the FHWA website via this link: *www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.*

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.301(e) Personal Property Only

One comment was received suggesting agencies be permitted to prepare relocation plans and negotiate directly with property owners when relocation is for personal property only move, such as moving a shed. The commenter believes that allowing some types of simple moves of personal property should not necessarily need to wait until the project commences. The commenter expressed concern with the time necessary for the agency to meet the relocation planning requirements and the added costs of plan preparation that may impact project budgets and project delivery.

FHWA Response: Any real property acquisition and relocation activity must be completed in compliance with Uniform Act requirements if Federal funding or Federal financial assistance will be used for the program or project, even if such funds have not yet been approved as of the date of the displacement. Agencies are required to identify and plan for displacements in the early stages of project development, and prior to any action that will cause displacements, as discussed in § 24.205(a). The planning includes scoping the nature and complexity of any displacements, and evaluation of agency resources available to carry out timely and orderly relocations. This necessarily includes providing moving expenses of personal property only.

As proposed in the NPRM, this final rule in appendix A, § 24.301(e), includes a streamlined method for residential moves where only a limited amount of personal property is moved. For these residential moves, agencies may make an eligibility determination and payment based upon the use of the ''additional room'' category of the Fixed Residential Move Cost Schedule. This option provides the owner of the personal property the option of performing a self-move. Agencies may also use a single commercial bid or estimate may be used for low-cost, uncomplicated residential moves as discussed in §§ 24.301(b) and (c) and for nonresidential moves, § 24.301(d) allows similar options.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.301(g)(7) Payment for Actual Reasonable Moving & Related Expenses—Tenant Replacement Housing Search Costs, Credit Checks

One commenter expressed concern that some tenant occupants cannot afford to pay out-of-pocket costs for numerous credit checks when searching for a replacement rental dwelling, which often require credit checks for each adult that will be residing in the dwelling. The commenter proposed the addition of a credit check allowance of at least $500 as a ''related expense.'' Under the commenter's proposal, the tenant occupant would be required to provide receipts to the agency showing actual costs for any credit checks completed, and if not provided, that amount would be deducted from their moving cost reimbursement.

FHWA Response: FHWA recognizes that a credit check or application fee are a typical cost for the process of obtaining tenant replacement housing. The FHWA revised the final rule by adding a new § 24.301(g)(7) to allow reimbursement of a tenant's credit checks and applications fees incurred while searching for a replacement rental dwelling; revising § 24.301(h)(9) to list ineligible costs associated with a tenant's search for a replacement rental dwelling, and renumbering § 24.301(g)(7) accordingly. FHWA anticipates that there will be differences in fees depending on the location and that in some markets, tenants may have to make several applications to lease a dwelling. Agencies may also consider making advanced payments for necessary tenant credit checks to relieve a hardship as allowable under § 24.207(c).

Section 24.301(g)(12) Payment for Actual Reasonable Moving and Related Expenses—New Construction Permits

FHWA received a response from one commenter who believes excluding new construction permit fees from moving cost reimbursement eligibility creates a hardship for the displaced person, since they are being required to relocate.

FHWA Response: The NPRM did not propose a change to the eligibility of new construction permit fees. In most instances, such fees are not an eligible expense. FHWA notes that the NPRM clarified that permit fees are eligible expenses when a construction permit is necessary for repairs, improvements, or modifications to make to the replacement property suitable for the operation of the displaced person's business, farm, or nonprofit organization. FHWA believes that construction or substantial reconstruction of a structure at the replacement site to make it fit for occupancy is not generally an allowable moving cost expense, except in justifiable circumstances, such as, when no replacement site with existing improvements fit for occupancy is available to accommodate the business, farm, or nonprofit organization, or if determined to be reasonable and necessary under § 24.304 or if required by local law, code, or ordinances.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.301(g)(13) Payment for Actual Reasonable Moving and Related Expenses—Professional Services

FHWA received one comment on § 24.301(g)(13) recommending that professional services eligibility determinations be pre-approved and in writing.

FHWA Response: FHWA believes that the actual, reasonable, and necessary test for eligibility for reimbursement of expenses is generally explained and discussed with a displaced person when providing advisory services. The purpose of the discussion is to ensure that the displaced person is informed about both eligibility and the relevant agency procedures for establishing eligibility. FHWA agrees that it is good practice to maintain written documentation during a relocation. For a complicated relocation, Agencies may want to provide certain written approvals or explanations of eligibility to a displaced person. However, FHWA believes requiring written preapproval of professional services in this rule is unnecessary. Agencies may establish policies and procedures as they deem necessary, which may require certain preapprovals; however, FHWA notes that each move and determination of actual reasonable and necessary costs are fact specific issues.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.301(g)(15)(i)–(ii) Eligible Actual Moving Expenses—Actual Direct Loss of Tangible Personal Property

FHWA received two comments regarding the proposed changes related to calculating a payment for actual direct loss of tangible personal property. One commenter supports the proposal to expressly reimburse for moving items not currently in use but disagrees with the proposal to exclude reimbursement for storage. One commenter agrees with the proposal to modify these paragraphs to allow for a new two-part consideration and provide separate paragraphs for calculating payments for property currently in use and items not currently in use. The commenter also concurs with the proposal to have a separate subordinate paragraph for goods held for sale, and believes these changes clarify the payment calculation requirements.

FHWA Response: The final rule will incorporate the NPRM's proposed changes including separate methods for calculating payments for items currently in use and for items not currently in use. For items in use, reimbursement will be based on the lesser of the cost to move and reinstall the item or fair market value of the item in place at the displacement site ''as is for continued use.'' For items not currently in use, the reimbursement will be based on the cost to move the item, as is, with no allowance for storage. FHWA believes that basing the reimbursement eligibility for nonresidential personal property items not currently in use on the cost to move the item ''as is,'' with no allowance for storage, is appropriate in most circumstances. However, FHWA included clarifying language in § 24.301(g)(15)(ii) addressing instances when storage may be appropriate because the replacement site is not yet ready. This final rule change allows an agency to address those instances where the process of moving from the acquired nonresidential site to the replacement site is delayed. In those instances, the final rule will require an agency to approve storage before these costs can be reimbursed.

Section 24.301(g)(18)(i) Searching for a Replacement Location

Five comments were received regarding the increase of the maximum eligibility for search expenses to $5,000. Two comments were received regarding the addition of attorney's fees as an eligible cost when searching for a replacement location. Two commenters support the payment being increased to the maximum of $5,000. One of those commenters added that if the amount is increased, documentation of the expenses should be required. One commenter noted that attorney's fees should not be included as an eligible expense because the bulk of the eligibility could be used for attorney's fees and limit other costs incurred by the displaced person. This commenter indicated that attorney's fees associated with the purchase and closing should be eligible under § 24.301(g)(8), Other Moving and Related Expenses. One commenter believes that the inclusion of attorney's fees within search expenses would cause confusion between eligibility in this section and those for professional services eligible under § 24.303(b). The commenter suggests that attorney's fees which are determined to be reasonable and necessary be made explicitly eligible under § 24.303(b). One commenter expressed concern about the current FAQ being proposed for incorporation into § 24.301(g)(18)(i)(F) in appendix A, to provide clarification that search expenses may be incurred anytime the business anticipates it may be displaced will create eligibility issues, especially with a project that eventually does not go forward. The commenter speculated that businesses would not keep track of their expenses prior to agency involvement with them and suggested limiting the period of time from anytime to 90 days prior to the Initiation of Negotiations.

FHWA Response: FHWA believes the increased reimbursement limits will allow a displaced person to be reimbursed for more of the search costs they may incur. The FHWA also believes the option to use legal counsel to negotiate the purchase or lease of a replacement site is an option elected by the business owner and eligibility would be subject to an agency's determination that the costs are actual reasonable and necessary.

The final rule includes eligibility for attorney's fees in § 24.301(g)(18)(i)(F) with clarification in the corresponding section of appendix A, by striking ''time spent'' and inserting ''expenses'' to allow eligibility for attorney's fees necessary for negotiating the purchase of a replacement site. The changes clarify that expenses for reimbursement of documented, reasonable, and necessary attorney's fees for such negotiations is an eligible expense up to the $5,000 maximum for search expenses in this final rule. FHWA believes attorney's fees are separate and distinct from negotiations under searching expenses when applied under § 24.303(b) as a professional service for determining the suitability of the replacement site for the nonresidential relocation. The FHWA believes incorporating these changes in this final rule will allow clarity and flexibility for displaced nonresidential occupants. As discussed in the NPRM preamble, FHWA will incorporate a current FAQ into the appendix A to clarify that search expenses may be incurred anytime the business anticipates it may be displaced, to include the period prior to project authorization or the initiation of negotiations if the agency determines them to be actual, reasonable, and necessary.

FHWA believes displaced nonresidential occupants may need the opportunity to search for a suitable replacement site at the earliest opportunity. These changes in the final rule allow that should the nonresidential person be displaced, such expenses may be eligible for reimbursement when the business received the notice required in § 24.203(b) and may only qualify for payment after the agency determined such costs to be actual, reasonable, and necessary.

Section 24.301(g)(18)(i)–(ii) Searching for a Replacement Location—One Time Minimal Documentation Payment

FHWA received responses from six commenters regarding the proposed addition of an alternative $1,000 payment eligibility, requiring little or no documentation, for costs associated with searching for a replacement location. One commenter supported the change and, in concert with two other commenters, requested the words ''up to'' be removed from the language for this section, so the minimum payment would be $1,000. One of these same commenters also suggested the word ''little'' be replaced with minimal. Several commenters suggested that FHWA consider the little or no documentation search payment eligibility be a minimum of $2,500.

Two of the commenters stated that the flexibility of not requiring documentation will relieve an administrative burden for both the displaced person and agencies. One of these commenters reasoned that increasing the alternative payment amount to $2,500 is supportable because the payment amount of $1,000 does not provide adequate incentive for the displaced person to accept the lower amount, and it is likely a business will incur searching expenses that exceed the $1,000. This same commenter cited the FHWA's 2010 Business Relocation Assistance Retrospective Study, which found that the administrative burden placed on both businesses and agencies by the extensive documentation

required to claim searching expenses caused a number of businesses not to claim them.

One commenter was not supportive of the $1,000 alternative search expense payment option and believes that most business relocations result in search costs in excess of $1,000. This commenter also does not find the existing documentation requirement for search expenses to be too burdensome and stated the additional option would create more complexity in relocation notices and advisory services.

FHWA Response: FHWA supports displaced persons having flexibilities and options, and the opportunity to make informed choices about benefits the Uniform Act provides to meet their needs. FHWA also supports streamlining efforts that benefit displaced persons and funding agencies where possible. As an alternative to § 24.301(g)(18)(i) reimbursement, the proposed provision at § 24.301(g)(18)(ii) provides Federal agencies with the option to allow, on a project or program wide basis, a one-time alternative searching expense payment of $1,000 with little or no documentation. FHWA agrees that ''up to'' should be removed from the paragraph, and that ''little'' documentation be replaced with ''minimal'' documentation where applicable.

FHWA agrees with several comments that stated, in part, that businesses sometimes elect not to request reimbursement for search costs due to the perceived administrative burden of making the claim. The FHWA also agrees with the comments that noted businesses frequently incur search costs well above $1,000. FHWA believes that a minimal documentation option for search costs addresses both concerns while balancing the need for funding agencies to ensure that waste, fraud, and abuse do not occur when making Uniform Act payments. This new flexibility will reduce administrative burden on both the displaced person and the agency. FHWA does not agree that this alternative search expense payment option should be increased to a minimum of $2,500. FHWA believes that should a displaced person expect to have more than $1,000 in search costs, they should elect to document those costs in order to claim reimbursement for actual, reasonable, and necessary search expenses associated with their relocation.

As a result of the above analysis, FHWA revised § 24.301(g)(18)(ii) as noted above.

Section 24.301(h)(5) Payment for Actual Reasonable Moving and Related Expenses—Ineligible Moving and Related Expenses; Loss of Trained Employees

One commenter requested the inclusion of the cost to train new employees as an eligible nonresidential moving cost expense when a move to a nonresidential replacement site location results in a loss of trained employees. The commenter shared that some businesses relocated further away than expected due to lack of availability of suitable replacement property, resulting in many businesses losing trained employees. Since it is not cost effective to relocate all the employees, a suggested alternative to cover training costs of new employees could be allowed as an eligible reestablishment or moving cost.

FHWA Response: The loss of trained employees continues in this final rule to be an ineligible expense under § 24.301(h)(5); however, an agency may request a waiver of the requirement under § 24.7 from the Federal funding agency, when appropriate.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.302(a) Fixed Payment for Moving Expenses—Residential Moves

FHWA received two comments related to the Fixed Payment for Moving Expenses—Residential Moves. One commenter asked if the proposed change means an agency will pay to move items into storage instead of to replacement housing with no allowance for moving them out. One commenter did not agree with the proposed change as it would limit fixed residential move payments to one move, and when storage is deemed reasonable and necessary, the displaced person should be entitled to two moves; one to put personal property into storage, and again to move personal property to their replacement home/rental from storage.

FHWA Response: FHWA believes the fixed schedule allows for a one-time self-move but not additional moves from storage. FHWA notes that the fixed schedule move is a simplified and streamlined method of reimbursement and is predicated on the cost of moving personal property from the acquired property. In most cases, the need for storage may best be met by using other moving eligibilities that have been provided to allow for storage as necessary.

Agencies should ensure that adequate advisory services are provided so that a displaced person can make an informed decision about which moving cost eligibility would best meet their needs.

As a result of the above analysis, FHWA reviewed this section of the regulations and has edited the section to improve clarity about the requirements. No substantive changes were made to this section of the final rule.

Section 24.303(a) Related Nonresidential Eligible Expenses; Connections to Utilities at the Replacement Site

FHWA received three comments in relation to eligible nonresidential moving expenses for connection to utilities when the replacement site is being developed, or when constructing a new building or structure at the replacement site. The commenters asked for clarification of whether fees for connecting to local municipal water and sewer infrastructure is an eligible expense when the nonresidential displaced person is constructing a new building. A commenter also requested clarification of whether a new construction site would no longer be eligible for utilities to be connected from the right-of-way or property line to a newly constructed building as discussed in § 24.303(a) and appendix A. This commenter also requests that the regulation specify that utility connections are for the operational needs of the business, and that appendix A specify whether capital improvements, such as storm water improvements, are an eligible expense. One commenter appreciated the change for utility installation eligibility from ''nearby'' to ''from the replacement site's property line,'' while another did not based on the belief that this change is too restrictive for nonresidential displaced persons and would cause financial hardship.

FHWA Response: The NPRM's proposed change to this section clarified that costs associated with upgrading or installing needed utility service from the property line to the structure are eligible costs under this part when the agency determines them to be actual, reasonable, and necessary. The previous rule was unevenly applied by agencies, with some agencies using a liberal interpretation of ''nearby'' and others being more conservative. Over the years, FHWA found that determining what ''nearby'' meant, and consequently what costs might be reimbursable, was impractical. FHWA believes that the NPRM's proposed change reasonably describes the types of costs that may be eligible for reimbursement under this part because it focuses on costs incurred on the replacement property and further specifies that this section allows for

only those costs from the property line to the structure. FHWA also believes that costs for connecting utilities from the right-of-way line to a newly constructed or to be constructed building are neither clearly eligible nor ineligible. The regulation and appendix A both require an agency to make actual, reasonable, and necessary determinations which rely on the individual facts of each case. FHWA agrees with commenters' understanding that such a determination includes consideration of what costs are essential to the continuing operation of the business. FHWA also does not believe that installation of storm water management improvements on real property are eligible costs as contemplated in §§ 24.303(a) or (c) because they are neither costs necessary to connect to utilities nor impact fees and one-time assessments as described in this section of the regulation. The FHWA adopts the NPRM's language as proposed. FHWA may however, develop one or more FAQs to respond to additional practical questions that are raised during the introduction and implementation of this rule.

Section 24.303(c) Related Nonresidential Eligible Expenses; Impact Fees or One-Time Assessments for Anticipated Heavy Utility Usage

FHWA received two comments regarding impact fees or one-time assessments for anticipated heavy utility usage. One commenter disagrees with limiting eligibility of impact fees or one-time assessments for utilities to anticipated heavy utility usage as it may discourage business relocation. One commenter asked for clarification about whether the fees were reimbursable under this part and noted that the fees often can be tens of thousands of dollars or more.

FHWA Response: FHWA is not making a change in requirements or imposing new limits on eligibility for § 24.303(c) reimbursement for impact fees or one-time assessments for anticipated heavy utility facility service usage such as water, sewer, gas, electric, steam, etc. FHWA notes that current Uniform Act, FAQ #75 (*https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm*) discusses and clarifies eligibility for reimbursement of impact fees and one-time assessments under this part. FHWA believes that the current policy, as articulated in FAQ #75, provides sufficient reimbursement for impact fees or one-time assessments for anticipated heavy utility facility service usage. FHWA also notes that both the NPRM's preamble and appendix A for this section provide additional details on impact fees or one-time assessments for anticipated heavy utility facility service usage eligibility. FHWA will consider developing additional FAQs to further clarify the eligibility. FHWA believes providing information on the potential eligibility of impact fees for anticipated heavy utility usage and increased costs are important advisory services.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.304(b)(5)) Reestablishment Expenses—Nonresidential Moves; Ineligible Expenses, New Construction or Reconstruction of a Replacement Site Structure

FHWA received four comments related to reestablishment and moving expenses eligibilities for new construction or reconstruction of a structure for a nonresidential replacement site. One commenter asked for the terms ''substantially construct'' and ''substantially reconstruct'' to be defined. One commenter expressed an opinion that building out a shell for office space should be approved as part of reestablishment when it does not qualify as a reimbursable expense for modifying the structure so that personal property can be reconnected. One commenter believes there are times when substantial reconstruction or building out of a shell is necessary as it relates to personal property, such as a dental practice where installation of water and gas lines for connection to the dental chairs is necessary. This commenter interprets the clarification related to new construction or reconstruction of a structure for a nonresidential replacement site as too stringent and believes that those costs should be allowed as an eligible moving expense.

FHWA Response: FHWA proposed a new § 24.304(b)(5) in the NPRM to clarify that costs to construct or substantially reconstruct a building are considered capital expenditures and are generally ineligible for reimbursement as a reestablishment expense for a nonresidential displacement. The FHWA revised the regulatory language and discussion in appendix A in this final rule to more clearly focus the discussion of ineligible expenses on construction, reconstruction, and rehabilitation of a building. The FHWA removed the terms ''substantially construct'' and ''substantially reconstruct'' and in this final rule uses the terms ''construct,'' ''reconstruct,'' or ''rehabilitate'' to more clearly focus on ineligible reestablishment expenses. FHWA does not believe that it is practical to try to define or describe all the scenarios where an agency may determine these costs to be ineligible due to the need to ''construct,'' reconstruct,'' or ''rehabilitate.''

FHWA believes that construction or reconstruction or rehabilitation of a building are usually ineligible expenses; however, there may be special cases where construction, reconstruction or rehabilitation may be necessary. Such instances usually arise when a replacement building suitable for occupancy cannot be found. Eligible costs for making a building suitable for occupancy, as discussed in this regulation, may require the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items, either because they are required by Federal, State, or local codes, ordinances, or because the agency determines that such costs are reasonable and necessary for the operation of the business. Agencies will need to consider eligibility and requests for reimbursement of costs to construct, reconstruct, or rehabilitate a building on a case-by-case basis and determine whether that eligibility should be requested via a § 24.7 waiver of the requirements of § 24.304(b)(5). As proposed in the NPRM, FHWA incorporated two current FAQs into a new appendix A item with an example of when such a waiver is requested and discusses the costs that may be determined eligible for reimbursement pursuant to such waiver.

Section 24.305(e); Fixed Payment for Moving Expenses—Nonresidential Moves; Average Annual Net Earnings Appendix A

FHWA received one comment regarding an addition in appendix A § 24.305(e) expressing support for the expansion of flexibility being provided for benefits to businesses in operation for less than 2 full years.

FHWA Response: FHWA believes the revision to appendix A § 24.305(e) clarifies that a business must only contribute materially to the income of the displaced person for a period of time during the 2 taxable years prior to displacement but does not have to be in existence for 2 full years prior to displacement in order to be eligible for relocation benefits. FHWA notes that there is no change to the definition of ''contributes materially'' or §§ 24.305(a)(6) and (e), in this final rule, because as currently written, they give clear direction for equitable treatment of businesses in operation either seasonally or for less than 2 full years, and for calculating a prorated benefit payment. FHWA believes the final rule's

revision to appendix A, § 24.305(e), confirms and supports the regulatory allowance that a displaced business may be eligible to receive payment for a business that is open for less than 2 full years, and provides a more detailed discussion and practical examples of calculating benefits for a variety of circumstances, including prorating the average annual net earnings of a business or farm operation, and sample calculations for businesses with less than 2 full years in operation, and seasonally operated businesses.

As a result of the above analysis, no change was made to appendix A.

Subpart E—Replacement Housing Payments

Section 24.402(b) Replacement Housing Payment for 90 Day Tenants and Certain Others; Low-Income Rental Replacement Housing Calculations

FHWA received one comment regarding the determination of whether a tenant occupant is determined to have low income for the purpose of the rental replacement housing payment calculation based on 30 percent of the displaced household's income. The commenter stated that the proposed change ties the income calculation to a new index.

FHWA Response: The NPRM did not include a proposal to change low-income calculation and determination methodology. The change in the NPRM's proposed regulatory text only included a corrected URL reference to the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for Public Housing and Section 8 Programs at: *www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm.*

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.402(b)(2)(i) Replacement Housing Payment for 90 Day Tenants; Tenant RHP for Little or No Rent

One commenter requested that FHWA provide guidance on what constitutes ''little rent'' as discussed in § 24.402(b)(2)(i), which requires that if a tenant is paying ''little to no rent,'' a fair market rent must be determined. The commenter asked for clarification of whether ''little rent'' is 50 percent or 25 percent below fair market rent for this instance.

FHWA Response: FHWA does not believe that ''little rent'' can be defined in this rule in a way that could reasonably be expected to apply to all instances an agency may encounter. However, FHWA believes that when little or no rent is paid, the important aspect is not the definition of the term, but rather ensuring that the agency establishes policies and procedures to ensure that a uniform process exists to make that determination. After an agency determines fair market rent and establishes base monthly rent, a hardship determination can be made. Agencies making the determination would consider whether the use of the base monthly rent for the rental replacement housing payment calculation would create a hardship for the displaced person. Such hardship is discussed in §§ 24.402(b)(2)(i) for low income or other circumstances.

FHWA does not believe that changing ''little or no rent'' to ''less than fair market rent or no rent'' would resolve the commenter's concern. The FHWA agrees that the word ''little'' does not have a meaning specific to the regulation; however, it has been used in several instances throughout the regulatory history of this part. Over that period of time, FHWA has not noted requests for clarifications or questions about interpretations on the meaning of ''little rent.'' Often, fair market rent is defined within a range of value, so determining if the amount of rent being paid is within that range and using the amount paid should be appropriate.

FHWA will prepare an FAQ to provide examples of best practices and potential scenarios that may assist an agency in uniformly identifying and addressing instances when little rent is paid.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.402(b) Replacement Housing Payment for 90 Day Tenants; Tenant RHP—Base Monthly Rent, Utilities

FHWA received four comments about calculating base monthly rent and the utility costs portion of that payment. One commenter believes that the best method to calculate monthly utility costs are to use the actual costs to the owner or tenant at the replacement site. One commenter thinks an ''apples to apples'' comparison using either estimates or actual bills needs to be made. They pointed out that it would be unfair to mix actual vs. estimated costs. Two commenters stated that in the event that different utility providers are in use at the replacement and the acquired subject property, then the regulations should permit the use of an existing methodology available for estimating these costs such as the HUD Utility Schedule Model, a tool based on a national survey of energy consumption produced by the U.S. Energy Information Administration. The commenters believe that such a tool is familiar and can be used in the public housing and Section 8 programs to expedite rental assistance payment calculations. Another commenter's preferred method is a utility allowance schedule for a city/county that would be used to determine estimated utility payment obligations. The commenter believes it is fairer to the tenant and allows an apple (displacement) to apples (comparable) to apples (replacement) comparison regarding utility costs and consideration of a rent/utility cost differential. The commenter expressed concern that utility allowance schedules consistently show costs that are lower than the actual utility costs tenants pay for their dwellings, and consequently they often end up being penalized and receive less rental assistance if differing sources for utility costs are used. Another commenter expressed the view that the NPRM language requiring actual utility costs be used ''to the extent practicable'' in determining the base monthly rental at the displacement dwelling is extremely burdensome.

FHWA Response: The NPRM notes that § 24.402(b) charges the agency with making the determination of the appropriate method to use for determining the estimated average monthly utility costs. The NPRM also states the base monthly rental shall be established solely on the criteria in § 24.402(b)(2)(i) of this section for persons with income exceeding the U.S. Department of Housing and Urban Development's Annual Survey of Low Income Limits for Public Housing and Section 8 Programs ''low income'' limits, or for persons refusing to provide appropriate evidence of income, or for persons who are dependents. FHWA agrees that, when possible, the use of actual utility costs will provide the most accurate basis for calculating eligibility and reimbursement. FHWA also recognizes that information or documentation of actual costs may not always be available for various reasons. FHWA will continue to encourage agency to document, file, and then utilize an estimate to develop a base monthly rent at the displacement dwelling when documentation of those costs is not available. This final rule does not require use of a specific method or source for estimating utility costs but encourages each agency to develop policies and procedures to ensure uniformity in calculation.

As a result of the above analysis, no changes were made to this section of the final rule.

Section 24.402(c) Replacement Housing Payment for 90 Day Tenants and Certain Others; Tenant RHP—Down Payment Assistance Payment; Less Than 90-Day Owner Occupant

FHWA received one comment regarding a down payment assistance payment for a less than 90-day owner-occupant. The commenter pointed out that the NPRM proposed to add clarifying language to appendix A to describe rental assistance payment eligibilities for a displaced homeowner who fails to meet the 90-day occupancy requirements, which is not in appendix A. Also, the appendix A section only refers to displaced homeowners who elect to rent and does not include the proposed clarifying language.

FHWA Response: FHWA revised the language in § 24.402(c) and appendix A of this part to include a reference to the last resort housing requirements when a displaced person has been in occupancy less than 90 days as discussed in § 24.404(c)(3) for such owners and tenants.

Section 24.403(a)(1)—Additional Rules Governing Replacement Housing Payments—Number of Comparable Dwellings To Be Used and Related Inspection Requirements

One commenter asked about using the same three dwellings for more than one replacement housing computation.

FHWA Response: FHWA believes that considering three or more comparable dwellings for a replacement housing computation ensures there are several comparable dwellings available for the displaced person, and that if the selected comparable is no longer available, provides the agency with alternative comparable dwellings that it can use to recalculate a displaced person's eligibility. FHWA also notes that the requirements of § 24.403(a)(1) were not proposed for change in the NPRM. FHWA does agree with the commenter's apparent concern about using the same comparable dwellings for several displacements and agrees that such a practice is generally inconsistent with the requirements of this final rule. Agencies must, at minimum require that the comparable dwellings they use are available by frequently checking to ensure that the comparable dwellings remain available while the displaced person continues their search for a replacement dwelling. The final rule will continue to require that at least three comparable replacement dwellings be considered and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling.

As a result of this analysis, no changes were made to this section of the regulation.

Section 24.403(a)(1)—Additional Rules Governing Replacement Housing Payments—Inspection Requirements

One commenter stated that the proposed new appendix A language for 49 CFR 24.403(a)(1) regarding inspections of comparable replacement dwellings for the purposes of computing the cost is extremely unclear as to the standards and requirements for DSS inspections under this section. Although the proposed language states that ''[r]eliance on an exterior visual inspection, or examination of an MLS listing does not, in most cases constitute a full DSS inspection,'' the standards for what constitutes a full inspection are not stated and also lack a description of the proper protocol if the housing unit fails inspection.

FHWA Response: Appendix A at § 24.403(a)(1) explains that the purpose and limits of a DSS inspection ''. . . as required by this part is a visual inspection to ensure that certain requirements as they relate to the definition of DSS in the rule are being met.'' These DSS inspections are not the same as a full home inspection that a home inspector would be hired to do. Some Federal funding agency requirements, such as those of the Department of Housing and Urban Development, prohibit reliance on an exterior visual inspection when selecting a comparable replacement dwelling or as part of determining the cost of comparable replacement dwellings.

As a result of this analysis, FHWA has reorganized both this section and § 24.205(c)(2)(ii)(C) of appendix A and added language to more clearly relate the requirements in the relevant section of the regulation and to clarify the sections.

Section 24.403(a)(2) Additional Rules Governing Replacement Housing Payments, Carve-Outs and Major Exterior Attributes

FHWA received one comment requesting additional guidance for agencies in addressing major exterior attributes at the residential displacement property that are not readily available in comparable replacement housing. Examples include, but are not limited to, properties that contain more than one dwelling unit and parcels that are larger than a typical dwelling site for the area. The commenter requested additional guidance for determining the portion of a mixed-use property that will be attributed to the residential portion of the property for the purposes of calculating a replacement housing payment. The commenter noted that such determinations are typically referred to as ''carve-outs'' in practice, however the words ''carve-out'' never actually appear in the Uniform Act. The commenter further asked if the residential portion, or the business portion should be carved out from a mixed-use property involving relocations. The commenter stated that in practice, the value of the property rarely equals the sum of the two parts, causing the determination of which part is carved out to potentially change the price differential payment significantly. The commenter suggested instructions such as those contained in the May/June 2009 IRWA magazine article titled, ''Residential Carve-Outs, Uncovering the Mystery'', by David Leighow, or a well-written FAQ, be provided to address this concern.

FHWA Response: FHWA believes the discussion in § 24.403(a)(2) is clear on the requirement that the contributory value of major exterior attributes must be subtracted from the acquisition price of the displacement dwelling, for purposes of computing the Replacement Housing Payment when the comparable dwelling site lacks a major exterior attribute. However, FHWA believes that the addition of language in this final rule, additional new discussion in appendix A, and a few general examples in appendix A will ensure that the users of the regulation are able to consistently develop carve-out calculations. The agency's first effort should always be to attempt to locate a comparable dwelling with the attribute before selecting a dwelling without the attribute. The FHWA will also consider revising current FAQ #108, *https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm,* which addresses major exterior attributes and or adding an additional FAQ, if necessary.

Section 24.403(a)(3) Additional Rules Governing Replacement Housing Payments; Acquisition of a Portion of a Typical Residential Property

FHWA received one comment stating the commenter's preference of using the whole displacement property value for computing the replacement housing payment.

FHWA Response: FHWA believes calculation of a replacement housing eligibility based on only the portion of the property that the agency is acquiring, could cause a substantial increase in a displaced person's

replacement housing eligibility, which may not be necessary to ensure the availability of comparable housing. The NPRM proposal, and its incorporation into this final rule, allows Federal funding agencies to determine when it would be appropriate to make an offer on the entire parcel or just the portion needed for the project. FHWA believes that agencies should be given the option to offer to purchase the remainder, and then calculate the replacement housing eligibility based on the purchase offer for the entire parcel.

FHWA also understands that in some instances, owners may not wish to sell the remainder. FHWA believes the changes to § 24.403(a)(3) proposed in the NPRM and incorporated in this final rule will allow property owners to either retain the remainder or to sell it, depending on which option best suits their needs. However, should they elect to retain the remainder, they should understand that such an election would not require an agency to recalculate the relocation assistance eligibility. FHWA believes that when using this option, the agency will need to ensure the displaced person is provided advisory services explaining that should the displaced person elect to retain the remainder, they will be responsible for providing the contributory value of the remainder, as determined in the agency's valuation, in order to purchase the comparable dwelling or a similar replacement dwelling. FHWA included a sample calculation and added language to appendix A of § 24.403(a)(3) of this final rule, to clarify when and how to apply this calculation method. FHWA believes the two options discussed in the regulation and appendix A sections of this part, to either include or exclude the contributory of the remainder, provides flexibility for the agencies when making a replacement housing eligibility calculation. FHWA notes that recipients will need to work with the funding agency to document and implement applicable policies and procedures.

As a result of the above analysis, no change was made to this section of the final rule.

Sections 24.401(b), 24.402(b) and 24.404; Replacement Housing of Last Resort

FHWA received one comment regarding the monetary limits for Replacement Housing Payments. The NPRM states that a replacement housing payment ''may not exceed $31,000'' for a 90-day homeowner-occupant replacement housing payment determination in § 24.401(b), or ''shall not exceed $7,200'' for 90-day tenants or certain others rental replacement housing payment determination in § 24.402(b). The commenter recommends alternatives under § 24.404, Replacement Housing of Last Resort, be referenced in §§ 24.401(b) and 24.402(b) to ensure agencies are aware that replacement housing payments may exceed these thresholds when circumstances for making the replacement housing payment determination meet the requirements of Replacement Housing Last Resort.

FHWA Response: FHWA agrees with the commenter that for clarification, additional language should be added to the regulation to reference replacement housing of last resort. FHWA modified §§ 24.401(b) and 24.402(b) to include a reference to § 24.404, Replacement Housing of Last Resort, to ensure the applicable provisions are applied when costs related to a replacement housing payment determination will exceed the otherwise prescribed thresholds.

Subpart F—Mobile Homes

FHWA received various comments, suggestions, and statements from two commenters on methods to streamline this section of the regulation. One commenter is supportive of continuing the two-part benefit determination process for persons displaced from their mobile home. This same commenter stated that the proposed dwelling test would reduce benefits for low-income displaced persons and would also create significant challenges in locations with limited mobile home options. One commenter believes the existing provisions of the rule pertaining to mobile homes should not be reorganized or streamlined, as doing so is likely to risk undermining the attributes of the present rule. This same commenter described the current rule's method of calculating the replacement housing payments for mobile home occupants as rational, as they provide much-needed, appropriate protections for displaced mobile home occupants and are not difficult to implement. This same commenter believes appendix A only clarifies the definition of mobile home with regard to allowable types of replacement housing, and all other requirements contained in the definition should be removed from appendix A because they impose barriers on displaced recreational vehicle residents' Uniform Act eligibilities. This same commenter suggests changing the definition of mobile home in § 24.2(a) to include manufactured homes and recreational vehicles used as primary residences.

FHWA Response: FHWA appreciates the support expressed for the current Subpart F mobile home regulations, the reasoning regarding streamlining, the definition of mobile home, and the dwelling test. FHWA believes the requirements for comparable replacement housing apply to all types of replacement dwellings. The NPRM explains that identification of comparable dwellings for a person displaced from a mobile home need not be restricted to another mobile home as a matter of policy or practice. Dwellings, other than those defined as mobile homes, may be used when selecting comparable replacement housing for calculating a replacement housing payment. FHWA notes the one change discussed in the NPRM and incorporated in this final rule is to § 24.502(c) for determining base monthly rent. It clarifies that the actual cost paid to the landlord for the site will be used, except market rent is to be used when little or no rent is paid for renting the site. FHWA also believes appendix A discusses the DSS requirements for comparable and replacement mobile homes. Removal of this discussion would be detrimental to the protections being provided to displaced persons because they explain, in part, minimum requirements for non-standard replacement dwellings selected by the displaced persons.

FHWA revised the definitions sections in this final rule to include the term ''manufactured home'' and a reference to the regulations at 24 CFR 3280.2. This revised definition includes the term ''mobile home''.[3] The appendix A discussion for this definition has similarly been reorganized for clarity. This regulation will continue to use the term ''mobile home'' for purposes of clarity and consistency.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The Office of Management and Budget (OMB) has determined that this rulemaking would be a significant regulatory action within the meaning of Executive Order (E.O.) 12866 (as amended by E.O. 14094 ''Modernizing Regulatory Review''). However, the rulemaking is not economically significant for purposes of E.O. 12866. The rule will not have an annual effect

[3] HUD regulates safety and design features for manufactured homes, including but not limited to mobile homes. Under Federal law governing safety and design of manufactured homes and for HUD programs and projects, the term ''manufactured home'' is used as found in regulation at 24 CFR 3280.3. (See 42 U.S.C. 5401 *et seq.*)

on the economy of $200 million or more. The rule will not adversely affect in a material way the economy, any sector of the economy, productivity, competition, or jobs. In addition, the changes would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

A more detailed discussion of the economic analysis associated with this rulemaking can be found in the RIA, which is available in the docket. The RIA is largely similar to the regulatory evaluation of the NPRM. However, it has been revised to reflect changes in the final rule and to update the analysis given the time passed since the analysis conducted for the NPRM. The FHWA did not receive any public comments directly related to the RIA during the NPRM comment period.

The costs of the final rule over 10 years for all Uniform Act agencies are estimated to be $2.2 million when discounted at 7 percent and $2.4 million when discounted at 3 percent. The annualized costs are estimated to be $311,000 per year when discounted at 7 percent and $283,000 per year when discounted at 3 percent. The larger impact of this final rule is in the form of transfers from the Government to property owners whose real estate is acquired for Federal projects. The estimated amount of transfers for the Government-wide program over the 10-year analysis period resulting from this rule are estimated to be $169.5 million when discounted at 7 percent and $214.6 million when discounted at 3 percent, or roughly $24.1 million per year when annualized at 7 percent or $25.2 million per year when annualized at 3 percent. This rule can therefore be thought of as predominantly a transfer rule, as the estimated costs are significantly smaller than the estimated transfers. FHWA was the only agency that provided data upon which to base estimates of the transfers. Therefore, the magnitude of the change in transfers for all Federal agencies may be somewhat larger than is estimated here.

The bulk of the estimated costs are related to updating program materials to reflect the changes in the final rule. In addition, some smaller recipient and Federal agency administrative cost savings have been estimated.[4] Again, FHWA was the only agency that had a detailed data set available for its Uniform Act program, and therefore only the administrative cost savings to FHWA have been estimated here. Based on communications with other Uniform Act agencies, FHWA analysts believe that FHWA has the largest Uniform Act program; however, other agencies have sizable programs as well. Therefore, the total cost savings across all agencies will likely be larger.

The benefits of the final rule primarily relate to improved equity and fairness to entities that are displaced from their properties or that move as a result of projects receiving Federal funds. For example, the final rule raises the statutory maximums for payments to displaced entities to assist with the reestablishment of the business, farm, or nonprofit organization. There is strong evidence that entities experience reestablishment costs well above the current maximum amount. Raising the maximum payment levels would compensate those entities more fairly and equitably for the negative impacts they experience as a result of a Federal or federally assisted project. However, the fairness and equity benefits of the final rule cannot be quantified or monetized. The higher level of payments may also contribute to more entities being able to successfully reestablish after displacement.

The final rule contains changes, such as a requirement for annual reporting, that can be expected to improve transparency, and, therefore, oversight of the program. Again, that benefit is not quantified or monetized in the analysis.

The table below offers a summary of the costs and benefits of the final rule over the 10-year analysis period. Given that the benefits of the rule related to equity and fairness have not been quantified, it would be misleading to report a calculation of net benefits for this final rule. Nonetheless, the benefits related to equity and fairness are believed to be sufficient to justify the cost of the final rule.[5] [6]

TABLE 1—SUMMARY OF COSTS AND BENEFITS FOR ANALYSIS PERIOD 2023–2032

Item	Discounted 7%	Discounted 3%	Annualized 7%	Annualized 3%
Costs:				
Reverse Mortgages	$29,046	$36,647	$4,136	$4,296
Revising Program Materials	2,216,271	2,451,123	315,547	287,346
Federal agency Reporting Requirement	184,582	232,883	26,280	27,301
Cost Savings:				
Revising Max. RHP/RAP (FHWA Only)	(235,772)	(300,627)	(33,569)	(35,243)
Homeowner 90 Day Eligibility (FHWA Only)	(7,286)	(9,193)	(1,037)	(1,078)
Appraisal Waivers	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Third Tier of Waiver Valuations	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Use of Single Agents	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Inspection of Comparable Housing	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Other Clarity & Streamlining Changes	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Total Costs *	2,186,841	2,410,833	311,357	282,623
Benefits:				
Equity & Fairness	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Program Oversight	Not Quantified	Not Quantified	Not Quantified	Not Quantified

[4] A *recipient* is the direct recipient of Federal program funds, is not a Federal agency and is accountable to the Federal funding agency for the use of the funds and for compliance with applicable Federal requirements.

[5] These estimates are an upper bound estimate, based on the maximum amount that program expenditures could increase based on the final rule's changes in maximum reimbursement amounts.

[6] There may be additional increases in search expense due to the final rule's inclusion of attorney's fees as a category of reimbursement.

TABLE 2—TRANSFERS TO DISPLACED PERSONS FOR ANALYSIS PERIOD 2023–2032 (FHWA)

Item	Discounted 7%	Discounted 3%	Annualized 7%	Annualized 3%
Residential displaced persons:				
Revising Max. RHP/RAP	$0	$0	$0	$0
Homeowner 90-day Eligibility [5]	1,770,513	2,231,474	252,081	261,597
Reverse Mortgages	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Rental Application and Credit Check Fees	2,239,669	2,825,733	318,879	331,262
Nonresidential Displaced Persons:				
Reimbursement for Updating Other Media	Not Quantified	Not Quantified	Not Quantified	Not Quantified
Search Expenses [6]	8,072,686	10,257,668	1,149,369	1,202,512
Re-Establishment Expenses	125,461,485	158,817,606	17,862,893	18,618,268
Fixed Payments In-Lieu-Of Moving Expenses	31,997,535	40,514,920	4,555,729	4,749,585
Total	169,541,889	214,647,402	24,138,951	25,163,224

* Totals may not match sums due to rounding.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this rule on small entities and has determined that it is not anticipated to have a significant economic impact on a substantial number of small entities, which includes State DOTs, Local Public agencies, other State governmental agencies or recipients and subrecipients of Federal agencies subject to this regulation. This action updates the Government-wide regulation that provides assistance for persons, including small businesses, displaced by Government acquisition of real property. One of the reasons for this rulemaking is to increase assistance for the small number of displaced small businesses impacted by the Uniform Act. The FHWA has determined this rulemaking would have a positive impact on those relatively few small businesses that are affected by Government acquisition of real property. Financial impacts on local governments are mitigated by the fact that any increased costs would accrue only on federally assisted programs, which would include participation of Federal funds. For these reasons, FHWA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $168 million or more in any one year (2 U.S.C. 1532). In addition, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government.

Executive Order 13132 (Federalism Assessment)

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132, ''Federalism'' 64 FR 43255 (Aug. 10, 1999), and FHWA has determined that this rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect any State's ability to discharge traditional State government functions.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for collections of information they conduct, sponsor, or require through regulations. The PRA applies to Federal agencies' collections of information imposed on 10 or more persons. ''Persons'' include a State, territorial, tribal, or local government, or branch thereof, or their political subdivisions.

This final rule would call for a collection of information under the PRA. As defined in 5 CFR 1320.3(c), ''collection of information'' comprised of reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2125–0586. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow and are outlined in full in the RIA contained in the docket for this rulemaking.

The Uniform Act provides important protections and assistance for people affected by federally funded projects. Congress passed the law to safeguard people whose real property is acquired or who move from their homes, businesses, nonprofit organizations, or farms as a result of projects receiving Federal financial assistance. MAP–21 modified the statutory payment levels for which displaced persons may be eligible under the Uniform Act's implementing regulations, necessitating the current proposed rulemaking. In addition, FHWA is making changes to wording and section organization in this final rule to better reflect the Federal experience implementing Uniform Act programs.

This requirement amends an existing collection of information by increasing the number of instances requiring information to be collected under OMB control number 2125–0586. The burden hours reserved under these requirements are not sufficient to cover the additional in-depth updates resulting from regulatory revisions in this final rule.

Agencies conducting a program or project under the Uniform Act must carry out their legal responsibilities to affected property owners and displaced persons. Recipients and subrecipients must collect information in order to determine, document, and provide Uniform Act benefits and assistance. Federal agencies are also required to develop and provide to the Lead Agency, FHWA, an annual summary report that describes the Uniform Act activities conducted by the Federal agency and their funding recipients.

FHWA does not have available to it information that would allow for the calculation of burden hours for each Federal agency's administration and oversight of the Government-wide program. Each Federal agency will

separately develop information collection requests for their program's administration and oversight. FHWA has developed a separate regulatory impact analysis which documents the costs for its program administration and oversight. That analysis is available in the docket for this rulemaking.

FHWA can estimate the one-time Government-wide cost of implementing the new provisions of this rule to be 37,800 hours. This estimate includes costs and benefits for the necessary updates and revisions to program materials including operations manuals. FHWA bases this estimate on approximately 168 respondents' efforts to perform the necessary updates and revisions. The estimated burden hours are for a one-time update and result from the publication of a final rule.

A notice seeking public comments on the collection of information was included in the NPRM published in the **Federal Register** on Wednesday December 18, 2019, at 84 FR 69466. No comments on the information collection were received.

The FHWA is required to submit this collection of information request to OMB for review and approval.

National Environmental Policy Act

FHWA has analyzed this rule pursuant to NEPA (42 U.S.C. 4321 *et seq*.) and has determined that it is categorically excluded under 23 CFR 771.117(c)(20), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This regulation provides the policies, procedures, and requirements for acquisition of real property interests for Federal and federally assisted projects. This action has no potential for environmental impacts until the regulations are applied at the project level. The FHWA would have an obligation to evaluate the potential environmental impacts of such a future project-level action if the action constitutes a major Federal action under NEPA.

This action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction). FHWA has evaluated whether the action would involve unusual circumstances or extraordinary circumstances and has determined that this proposed action would not involve such circumstances. As a result, FHWA finds that this rulemaking would not result in significant impacts on the human environment.

Executive Order 13175 (Tribal Consultation)

FHWA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments'' 65 FR 67249 (Nov. 9, 2000). This measure applies to States that receive Title 23, U.S.C. Federal-aid highway funds, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

Executive Order 12898 (Environmental Justice)

The E.O. 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' 59 FR 7629 (Feb. 16, 1994), requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that this rule does not raise any environmental justice issues. The regulations would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations. The regulations establish procedures and requirements for agencies and others when acquiring, managing, and disposing of real property interests. The environmental justice principles, in the context of acquisition, management, and disposition of real property, should be considered during the planning and environmental review process for the particular proposal. FHWA will consider environmental justice when it makes a future funding or other approval decision on a project-level basis.

Regulation Identifier Number (RIN)

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 24

Appraisal, Appraisal review, Just compensation, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation, Waiver valuations.

Issued under authority delegated in 49 CFR 1.81 and 1.85:

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

■ In consideration of the foregoing, FHWA revises 49 CFR part 24, to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

Subpart B—Real Property Acquisition

Sec.

Subpart C—General Relocation Requirements

Sec.

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.85.

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (Uniform Act), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that agencies implement the regulations in this part in a manner that is efficient and cost effective.

§ 24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

Agency means any entity utilizing Federal funds or Federal financial assistance for a project or program that acquires real property or displaces a person.

(i) *Federal agency* means any department, agency, or instrumentality in the executive branch of the United States Government, any wholly owned U.S. Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(ii) *State agency* means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

Alien not lawfully present in the United States means an alien who is not ''lawfully present'' in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the U.S. Secretary of Homeland Security; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Secretary of Homeland Security or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Business means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

Comparable replacement dwelling means a dwelling which is:

(i) Decent, safe, and sanitary as described in the definition of *decent, safe, and sanitary* in this paragraph (a);

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (*see* appendix A of this part, *Section 24.2(a) Comparable replacement dwelling*);

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include

special improvements such as outbuildings, swimming pools, or greenhouses. (*See also* § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (ix) of this definition (*see* appendix A to this part, Section 24.2(a), definition of *comparable replacement dwelling*); and

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(f), plus any additional amount required to be paid under § 24.404.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in § 24.402(b)(2). Such rental assistance must be paid under § 24.404.

(ix) For a person receiving Government housing assistance before displacement, a dwelling that may reflect similar Government housing assistance. In such cases any requirements of the Government housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling, shall apply. However, nothing in this part prohibits an agency from offering, or precludes a person from accepting, assistance under a Government housing program, even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the Government housing assistance program. An agency is obligated to inform the person of his or her options under this part and the implications of accepting a different form of assistance than the assistance that the person may currently be receiving. If a person accepts assistance under a Government housing assistance program, the rules of that program apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government housing assistance has been applied. In determining comparability of housing under this part:

(A) A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.

(B) A privately owned unit with a housing project—based rental program subsidy (*e.g.,* tied to the unit or building) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.

(C) An offer for tenant-based rental assistance, such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or occupying a privately owned subsidized unit or public housing unit before displacement. The displacing agency must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing. *(see* appendix A to this part, section 24.2(a), definition of *comparable replacement dwelling*)

Contribute materially means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or

(ii) Had average annual net earnings of at least $1,000; or

(iii) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate. *(See* appendix A of this part, section 24.305(e))

Decent, safe, and sanitary (DSS) dwelling means a dwelling which meets the requirements of paragraphs (i) through (vii) of this definition or the most stringent of the local housing code, Federal agency regulations, or the agency's regulations or written policy. The DSS dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(A) Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored;

(B) [Reserved]

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by the most stringent of the local housing code, Federal agency regulations or requirements, or the agency's regulations or written policy. In addition, the Federal funding agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such agencies;

(v) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub, or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. When required by local code standards for residential occupancy, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator (*see* appendix A to this part, section 24.2(a), definition of *DSS*);

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (*See* appendix A of this part, *Section 24.2(a),* definition of *DSS*)

Displaced person means:

(i) *Generally.* Except as provided in paragraph (ii) of this definition, any person who permanently moves from the real property or moves his or her

personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §§ 24.401(a) and 24.402(a).)

(A) As a direct result of a written notice of intent to acquire, rehabilitate, and/or demolish (*see* § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph (i)(C) applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302, or § 24.303.

(ii) *Persons required to move temporarily.* A person who is required to move or moves his or her personal property from the real property as a direct result of the project but is not required to relocate permanently. Such determination shall be made by the agency in accordance with any requirement, policy, or guidance established by the Federal agency funding the project (*see* appendix A to this part, section 24.2(a)). All benefits for persons required to move on a temporary basis are described in § 24.202(a).

(iii) *Voluntary acquisitions.* A tenant who moves as a direct result of a voluntary acquisition as described in § 24.101(b)(1) through (3) is eligible for relocation assistance when there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. Federal Funding agencies should develop policies identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this paragraph (iii) until all conditions to the agency's obligation to purchase the real property have been satisfied. Provided that, the agency may determine that a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists allowing establishment of eligibility (*see* appendix A to this part, section 24.2(a)).

(iv) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (*see* § 24.403(d)), unless the agency determines that the person was displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) An owner-occupant who moves as a result of an acquisition of real property as described in § 24.101(a)(2) or (b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation, or demolition for a Federal or federally assisted project is subject to this part.);

(E) A person whom the agency determines is not displaced as a direct result of a partial acquisition;

(F) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(G) An owner-occupant who conveys his or her property, as described in § 24.101(a)(2) or (b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(H) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency;

(I) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93–477, Appropriations for National Park System, or Public Law 93–303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(J) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in § 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the agency in order to facilitate the project;

(K) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208; or

(L) Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, agencies shall provide advisory assistance to all occupants at initiation of negotiations. (*See* appendix A to this part, section 24.2(a), definition of *displaced persons.*)

Dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a mobile home, or any other residential unit.

Dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (*See* appendix A to this part, section 24.2(a).)

Farm operation means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Household income means total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children under 18, or full-time students who are students for at least 5 months of the year and are under

the age of 24. (*See* appendix A to this part, section 24.2(a), for examples of exclusions to income.)

Initiation of negotiations, unless a different action is specified in applicable Federal program regulations, means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the term means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire, rehabilitate, or demolish the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the term means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition, or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the term means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510, or Superfund), the term means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of a voluntary-acquisition of real property described in § 24.101(b)(1) the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. (*See* appendix A to this part, section 24.2(a).) Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this part unless such agreements satisfy the requirements of the Federal agency providing the Federal financial assistance or until all conditions to the agency's obligation to purchase the real property have been satisfied.

Lead Agency means the Department of Transportation acting through the Federal Highway Administration.

Mobile home (manufactured home), when used in this part, includes manufactured homes and recreational vehicles used as residences. The term *manufactured home* is defined at 24 CFR part 3280 (*see* appendix A to this part, section 24.2(a)).

Mortgage means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Nonprofit organization means an organization that is incorporated under the applicable laws of a State as a nonprofit organization and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in this section; or

(iv) Any other interest, including a partial interest, which in the judgment of the agency warrants consideration as ownership.

Owner's or tenant's designated representative means a representative designated by a property owner or tenant to receive all required notifications and documents from the agency. The owner or tenant must provide the agency a written notification which states that they are designating a representative, provide that person's name and contact information and what if any notices or information, the representative is not authorized to receive.

Person means any individual, family, partnership, corporation, or association.

Program or project means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The recipient is accountable to the Federal funding agency for the use of the funds and for compliance with applicable Federal requirements. The term recipient does not include subrecipients.

Reverse mortgage (also known as a Home Equity Conversion Mortgage (HECM)) means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any Federal law or State constitution, law, or regulation. See 12 U.S.C. 1715z–20 for additional information. It is a class of lien generally available to persons 62 years of age or older. Reverse mortgages do not require a monthly mortgage payment and can also be used to access a home's equity. The reverse mortgage becomes due when none of the original borrowers lives in the home, if taxes or insurance become delinquent, or if the property falls into disrepair.

Salvage value means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (*i.e.,* not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

Small business means a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.303 or § 24.304.

State means any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

Subrecipient means a government agency or legal entity that enters into an agreement with a recipient to carry out part or all of the activity funded by Federal program grant funds. A subrecipient is accountable to the recipient for the use of the funds and for compliance with applicable Federal requirements.

Temporary, daily, or emergency shelter (shelter) means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not

meet the definition of dwelling as used in this part.

Tenant means a person who has the temporary use and occupancy of real property owned by another.

Uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owners' property, and which the agency has determined has little or no value or utility to the owner.

Uniform Act or *Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

Unlawful occupant means a person who occupies without property right, title, or payment of rent, or a person legally evicted, with no legal rights to occupy a property under State law. An agency, at its discretion, may consider such person to be in lawful occupancy for the purpose of determining eligibility for assistance under the Uniform Act.

Utility costs means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.

Utility facility means:

(i) Any line, facility, or system for producing, transporting, transmitting, or distributing communications, cable, television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(ii) The term shall also mean the utility company including any substantially owned or controlled subsidiary. For the purposes of this part the term includes those utility-type facilities which are owned or leased by a Government agency for its own use, or otherwise dedicated solely to Governmental use. The term utility includes those facilities used solely by the utility which are part of its operating plant.

Utility relocation means the adjustment of a utility facility required by the program or project undertaken by the agency. It includes removing and reinstalling the facility, including necessary temporary facilities; necessary right-of-way on a new location; moving, rearranging, or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

Waiver valuation means the valuation process used and the product produced when the agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions. Waiver valuations are not appraisals as defined by the Uniform Act and this part.

(b) *Acronyms.* The following acronyms are commonly used in the implementation of programs subject to this part:

(1) DOT (U.S. Department of Transportation).

(2) FEMA (Federal Emergency Management Agency).

(3) FHA (Federal Housing Administration).

(4) FHWA (Federal Highway Administration).

(5) FIRREA (Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(6) HLR (housing of last resort).

(7) HUD (U.S. Department of Housing and Urban Development).

(8) MIDP (mortgage interest differential payment).

(9) RHP (replacement housing payment).

(10) STURAA (Surface Transportation and Uniform Relocation Assistance Act of 1987).

(11) UA or URA (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970).

(12) USCIS (U.S. Citizenship and Immigration Services).

(13) USPAP (Uniform Standards of Professional Appraisal Practice).

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the agency to have the same purpose and effect as such payment under this part. (*See* appendix A to this part, section 24.3.)

§ 24.4 Assurances, monitoring, and corrective action.

(a) *Assurances.* (1) Before a Federal agency may approve any grant to, or contract, or agreement with, an agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the agency must provide appropriate assurances that it will comply with the Uniform Act and this part. An agency's assurances shall be in accordance with sections 4630 and 4655 of the Uniform Act. The agency's Uniform Act section 4655 assurances must contain specific reference to any State law which the agency believes provides an exception to sections 4651 or 4652 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, an agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects. An agency, which both acquires real property and displaces persons, may combine its sections 4630 and 4655 of the Uniform Act assurances in one document.

(2) If a Federal agency or recipient provides Federal financial assistance to a person causing displacement, such Federal agency or recipient is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the recipient to comply with the requirements of this part.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a recipient after it has accepted a certification by such recipient in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (*Also see* § 24.603)

(c) *Prevention of fraud, waste, and mismanagement.* The agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices and electronic signatures.

(a) Each notice that the agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested (or by companies other than the United States Postal Service that provide the same function as certified mail with return receipts) and documented in agency files. A Federal funding agency may approve a process to permit the displaced person to elect to receive required notices by electronic delivery in lieu of the use of certified or

registered first-class mail, return receipt requested, or personally served notices, when an agency demonstrates a means to document receipt of such notices by the property owner or occupant. A Federal funding agency may approve a process to permit the use of electronic signature which meet the requirements of paragraph (e) of this section.

(b) An agency requesting use of electronic delivery of notices must include the following safeguards:

(1) A process to inform property owners and occupants they will continue to receive Notices as described in paragraph (a) of this section unless they voluntarily elect to receive electronic notices.

(2) A process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention.

(3) A process to link the electronic signature with an electronic document in a way that can be used to determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

(4) A certification that use of electronic notices is consistent with existing State and Federal laws.

(c) Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. (*See* appendix A to this part, section 24.5.)

(d) A property owner or tenant may designate a representative to receive offers, correspondence, and information and to provide any information on their behalf required by the displacing agency by providing a written request to the agency (see § 24.2(a), definition of *owner's or tenant's designated representative*).

(e) An agency requesting use of electronic signature of documents must include the following safeguards:

(1) A process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention.

(2) A process to link the electronic signature with an electronic document in a way that can be used to determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

(3) A certification that use of electronic signatures is consistent with existing State and Federal laws.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an agency or agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the Lead Agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall ensure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations in this part.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) The Fair Housing Act (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4002 *et seq.*).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

(o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing.

§ 24.9 Recordkeeping and reports.

(a) *Records.* The agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* Each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of the Uniform Act shall provide to the Lead Agency an annual summary report by November 15 that describes the real property acquisitions, displacements, and related activities conducted by the Federal agency for the prior calendar year. (*See* appendix A to this part, section 24.9(c).)

§ 24.10 Appeals.

(a) *General.* The agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this part. Such assistance may

include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the agency. The agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall inform the person that the determination is the agency's final decision and that the person may seek judicial review of the agency's determination.

(h) *Agency official to review appeal.* The agency official conducting the review of the appeal shall be either the head of the agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

§ 24.11 Adjustments of limits and payments.

(a) The Lead Agency may adjust the following valuation limits and maximum relocation benefits payments:

(1) The waiver valuation limits at § 24.102(c)(2)(ii) introductory text and (c)(2)(ii)(C);

(2) The conflict of interest valuation limits at § 24.102(n)(3); and

(3) The maximum amounts of relocation payments provided at §§ 24.301, 24.304, 24.305, 24.401, 24.402, 24.502, and 24.503.

(b) The head of the Lead Agency will evaluate whether the cost of living, inflation, or other factors indicate that limits, and payments provided in paragraph (a) of this section, should be adjusted to meet the policy objectives of the Uniform Act. The Lead Agency will divide the Consumer Price Index for All Urban Consumers (CPI–U) index for the year of the assessment (current year), by the CPI–U index for the year of the previous assessment (base year index/year of last adjustment) to determine the effect of inflation over the assessment period. If adjustments are determined to be necessary, the head of the Lead Agency will publish the new maximum benefit limits eligible for Federal participation in the **Federal Register**. (*See* appendix A to this part, section 24.11.)

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *Direct Federal program or project.* (1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. *(See* appendix A to this part, section 24.101(a).)

(2) If a Federal agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property or the owner's designated representative shall be so informed in writing. Owners of such properties are not displaced persons, and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (*See* § 24.2(a).)

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (3) of this section. The relocation assistance provisions in this part are not applicable to owner-occupants who move as a result of a voluntary acquisition. (*See* § 24.2(a), definition of *displaced person*.) The relocation assistance provisions in this part are applicable to tenants who must permanently relocate as a result of an acquisition described in paragraphs (b)(1) through (3) of this section. Such tenants are considered displaced persons. (*See* § 24.2(a), definition of *displaced person*.)

(1) The agency will not use the power of eminent domain to acquire the property, and the following conditions are met:

(i) No later than the time of the offer the agency informs the owner of the property or the owner's designated representative in writing of the following:

(A) The agency will not acquire the property if negotiations fail to result in an amicable agreement; and

(B) The agency's estimate of fair market value for the property to be acquired. (*See* appendix A to this part, sections 24.101(b)(1)(i) and 24.101(b)(1)(i)(B).)

(ii) Where an agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. *(See* appendix A to this part, section 24.101(b)(1)(ii).)

(iii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits. (*See* appendix A to this part, section 24.101(b)(1)(iii).)

(2) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(3) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.* (1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and, to the acquisition of permanent and/or temporary easements necessary for the project. However, the agency may apply the regulations in this subpart to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (*See* § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the agency shall notify the owner in writing of the agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (*See* §§ 24.203 and 24.5(d) and appendix A to this part, section 24.102(b).)

(c) *Appraisal, waiver thereof, and invitation to owner.* (1) Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in paragraph (c)(2) of this section, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the agency from its obligation to appraise the property; or

(ii) The agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and has a low fair market value, and the anticipated value of the proposed acquisition is estimated at $15,000 or less, based on a review of available data. The agency representative making the determination to use the waiver valuation option must understand valuation principles, techniques, and use of appraisals in order to be able to determine whether the valuation of the proposed acquisition is uncomplicated and has a low fair market value. (*See* appendix A to this part, section 24.102(c)(2).)

(A) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation.

(*1*) Waiver valuations are not appraisals by definition in this part (*See* § 24.2). Persons preparing or reviewing a waiver valuation are precluded from complying with Standards Rules 1, 2, 3, and 4 of the ''Uniform Standards of Professional Appraisal Practice,'' as promulgated by the Appraisal Standards Board of The Appraisal Foundation [1] (*see* appendix A to this part, sections 24.102(c) and 24.103(a).)

(*2*) Because a waiver valuation is not an appraisal, a review of a waiver valuation is not required. However, some recipients may also be subject to State laws or agency requirements to review a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market in order to be qualified to perform the waiver valuation.

(C) The Federal agency funding the project may approve exceeding the $15,000 threshold, up to an amount of $35,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property.

(D) If the agency determines that the proposed acquisition is uncomplicated and has a low fair market value, and if the agency acquiring the real property offers the property owner the option of having the agency appraise the property, the agency may request approval from the Federal funding agency to use a waiver valuation for properties with estimated values of more than $35,000 and up to $50,000. Approval for using a waiver valuation of more than $35,000, but up to $50,000 may only be requested on a project-by-project basis and the request for doing so shall be made in writing to the Federal funding agency setting forth the anticipated benefits of, and reasons for, raising the waiver valuation ceiling above $35,000. Within 6 months of completion of acquisition activities a close-out report measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metric which the funding agency requires to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations of more than $35,000, but up to $50,000 shall be submitted to the funding agency.

(E) Under paragraphs (c)(2)(ii)(C) and (D) of this section, if the property owner elects to have the agency appraise the property, the agency must obtain an appraisal and shall not use the waiver valuation procedures described in paragraphs (c)(2)(ii)(A) through (D) of this section. (*See* appendix A to this part, section 24.102(c)(2).)

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal or waiver valuation of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An agency official must establish the amount believed to be just compensation. (*See* § 24.104.) Promptly thereafter, the agency shall make a written offer to the owner or the designated owner's representative to acquire the property for the full amount believed to be just compensation. (*See* appendix A to this part, section 24.102(d).)

(e) *Summary statement.* Along with the initial written purchase offer, the owner or the designated owner's representative shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, *e.g.,* a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) *Basic negotiation procedures.* The agency shall make all reasonable efforts to contact the owner or the owner's designated representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The agency shall consider the owner's or the designated owner's representative's presentation. (*See* appendix A to this part, section 24.102(f).)

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new waiver valuation or appraisal information, or if a significant delay has occurred since the time of the appraisal(s) or waiver valuation of the property, the agency shall have the appraisal(s) or waiver valuation updated or obtain a new appraisal(s) or waiver valuation. If the latest appraisal or waiver valuation information indicates that a change in the purchase offer is warranted, the agency shall promptly

[1] Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation.

reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The agency shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (*See* appendix A to this part, section 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner or the owner's designated representative, the agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (*See* appendix A to this part, section 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (*See* § 24.2(a).)

(l) *Inverse condemnation.* If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the agency on short notice, the rent shall not exceed the fair market rent for such occupancy. *(See* appendix A to this part, section 24.102(m).)

(n) *Conflict of interest.* (1) The appraiser, review appraiser, or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the agency. Compensation for developing an appraisal or waiver valuation shall not be based on the reported opinion of value.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it determines it would create a hardship for the agency.

(3) An appraiser, review appraiser, or waiver valuation preparer may be authorized by the agency to act as a negotiator for the acquisition of real property for which that person has performed an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $15,000, or less. Agencies that wish to use this same authority to act as the negotiator on a valuation greater than $15,000, and up to $35,000, may not use a waiver valuation, and these acquisitions are subject to the following conditions:

(i) For those acquisitions where the appraiser or review appraiser will also act as the negotiator, an appraisal must be performed in compliance with § 24.103 and reviewed in compliance with § 24.104;

(ii) Agencies and recipients desiring to exercise this option must request approval in writing from the Federal funding agency;

(iii) The requesting agency shall have a separate and distinct quality control process in place and set forth in the written procedures approved by the Federal funding agency; and

(4) Agencies wishing to allow subrecipients to use conflict of interest waivers of more than $15,000 must determine and document that the subrecipient has a separate and distinct quality control process in place which is set forth in written procedures approved by the agency or in an agency approved subrecipient's written procedures. (*See* appendix A to this part, section 24.102(n).) Agencies and recipients desiring to exercise this option must request approval in writing from the Federal funding agency.

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally assisted programs. Appraisals are to be performed according to this section, which is intended to be consistent with the USPAP. (*See* appendix A to this part, section 24.103(a).) The agency may have appraisal requirements that supplement this section, including, and to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), also commonly referred to as the ''Yellow Book''. The USPAP is published by The Appraisal Foundation. The UASFLA is published by the Appraisal Foundation in partnership with the Department of Justice on behalf of the Interagency Land Acquisition Conference. The UASFLA is a compendium of Federal eminent domain appraisal law, both case and statute, regulations, and practices.[1] Copies of the USPAP and the UASFLA may be ordered from The Appraisal Foundation in print and electronic forms.[2]

(1) The agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and performance of an appraisal under this section depends on the complexity of the appraisal problem.

(2) The agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally assisted program appraisal practice, and at a minimum, comply with the definition of appraisal in § 24.2(a) and the requirements in paragraphs (a)(2)(i) through (v) of this section. (*See* appendix A to this part, sections 24.103 and Section 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (*See* appendix A to this part, section 24.103(a)(1).)

[1] *www.justice.gov/file/408306/download.*

[2] *http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/TAF/Standards.aspx.*

(ii) All relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value use that is sufficient to support the appraiser's opinion of value. (*See* appendix A to this part, section 24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (*See* appendix A to this part, section 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall not be less than the difference between the amount determined to be just compensation for the owner's interest in the real property and the salvage value (defined at § 24.2(a)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.* (1) The agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the agency to be qualified. (*See* appendix A to this part, section 24.103(d)(1).)

(2) If the agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

§ 24.104 Review of appraisals.

The agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (*see* § 24.103(d)(1) and appendix A to this part, section 24.104) shall examine the presentation and analysis of market information in all appraisals to ensure that they meet the definition of appraisal found in § 24.2(a), appraisal requirements found in § 24.103, and other applicable requirements (including, to the extent appropriate, the UASFLA), and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem (*see* § 24.103(a)(1) and appendix A, section 24.104(a)). As needed, the review appraiser shall, prior to acceptance of an appraisal report, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (*See* appendix A to this part, section 24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 24.103 to support a recommended (or approved) value. (*See* appendix A to this part, section 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (*See* appendix A to this part, section 24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement owned by a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for a tenant-owned improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the agency all of the tenant-owner's right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title,

boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency. However, the agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the agency as such owner shall determine. The agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

The requirements in this subpart apply to the relocation of any permanently or temporarily displaced person, as defined at § 24.2(a). Any person who qualifies as a permanently or temporarily displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this part. (*See* appendix A to this part, section 24.202.)

(a) *Persons required to move temporarily.* (1) Appropriate notices must be provided in accordance with § 24.203 and appropriate advisory services must be provided in accordance with § 24.205;

(2) For persons occupying a dwelling, at least one comparable dwelling, is made available prior to requiring a person to move, except in the case of an emergency move as described in § 24.204(b)(1), (2), or (3) (see appendix A, to this part, section 24.202);

(3) Similarly, if a person's business will be shut down due to a project which either requires the occupant to vacate the property or which denies physical access to the property, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be permanently displaced at the agency's option;

(4) Payment is provided for all out-of-pocket expenses incurred in connection with the temporary relocation as the agency determines to be reasonable and necessary, associated with comparable replacement dwelling, and incidental to selecting a temporary comparable replacement dwelling. Such payments may include the reasonable and necessary costs of temporarily moving personal property from the real property and returning to the real property. Storage of the personal property may be allowed when approved by the displacing agency;

(5) A person's temporary move from their dwelling or business for the project may not exceed 12 months. The agency must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. The agency shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. An agency may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and

(6) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208 is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with § 24.208(h).

(b) [Reserved]

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person who may be displaced or who may be required to move temporarily shall be furnished with a general written description of the agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced (or, if appropriate, required to move temporarily from his or her unit) for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

(2) Informs the displaced person (or person required to move temporarily from his or her unit, if appropriate) that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person (or person required to move temporarily from his or her dwelling when required by the Federal funding agency) that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling, either permanently or temporarily (when required by the Federal funding agency), that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person or person required to move temporarily that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments under this part, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, pursuant to § 24.208(h); and

(5) Describes to the displaced person (or persons required to move temporarily) their right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the earliest of: the date of a notice of intent to acquire, rehabilitate, and/or demolish (described in paragraph (d) of this section); the initiation of negotiations (defined in § 24.2(a)); the date that an agreement for

voluntary acquisition becomes binding (defined in § 24.2(a)); or actual acquisition. When this occurs, the agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (*See* § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire, rehabilitate, and/or demolish.* A notice of intent to acquire, rehabilitate, and/or demolish is an agency's written communication that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth that the agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance to the activity. (*See* § 24.2 (a).)

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be permanently displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(a)) has been made available to the person. Information on comparable replacement dwellings that were used in the determination process must be provided to permanently displaced persons. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed in writing of its location;

(2) The person has sufficient time to negotiate and enter into a purchase or lease agreement for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the requirement in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to move from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the agency shall:

(1) Take whatever steps are necessary to assure that the person who is required to move from their dwelling is relocated to a DSS dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the emergency move; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment; the date of displacement is the date the person moves from their dwelling due to the emergency.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, an agency shall plan Federal and federally assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households permanently or temporarily displaced. When an adequate supply of comparable housing is not expected to be available, the agency should consider housing of last resort actions.

(3) An estimate of the number, type, and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing or temporarily moving the businesses should be considered and addressed. Planning for permanently and temporarily displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the agency displacing a person and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an agency elects to consider using the duplicative provision in section 4635 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency

will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services*—(1) *General.* The agency shall carry out a relocation assistance advisory program which satisfies the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq., as amended.*), and Executive Order 11063 (3 CFR, 1959–1963 Comp., p. 652), and offer the services described in paragraph (c)(2) of this section. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for nonresidential (businesses, farm, and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced or, when determined to be necessary by the funding agency, temporarily displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(13) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced, or temporarily displaced when the funding agency determines it to be necessary, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person and, when the funding agency determines it to be necessary, each temporarily displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(B) As soon as feasible, the agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (s*ee* § 24.403(a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, comparable housing shall be inspected prior to being made available to assure that it meets applicable standards (*see* § 24.2(a).) If such an inspection is not made, the agency shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and, that if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. (*See* appendix A to this part, section 24.205(c)(2)(ii)(C).)

(D) Whenever possible, minority persons, including those temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (*See* appendix A to this part, section 24.205(c)(2)(ii)(D).)

(E) The agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for Government housing assistance at the replacement dwelling shall be advised of any requirements of such Government housing assistance program that would limit the size of the replacement dwelling (*see* § 24.2(a)), as well as of the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (*See* § 24.6.)

(e) *Subsequent occupants.* Any person who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

§ 24.206 Eviction for cause.

(a) Eviction for cause must conform to applicable Federal, State, and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (*See* appendix A to this part, section 24.206.)

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person or person required to move temporarily must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advanced payments.* If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the agency no later than 18 months after:

(i) For tenants, the date of displacement or temporary move.

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *No waiver of relocation assistance.* An agency shall not propose or request that a person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this part. (*See* appendix A to this part, section 24.207(f).)

(g) *Expenditure of payments.* Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

(h) *Deductions from relocation payments.* An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a person to satisfy any other obligation.

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that they are a citizen, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is a citizen or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is a citizen or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1) through (3) of this section shall specify the person's status as a citizen or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this section shall be within the discretion of the Federal funding agency and, within those parameters, that of the agency carrying out such displacements.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be lawfully present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners. (*See* appendix A to this part, section 24.208(c).)

(d) The agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of a person's documentation or other credible evidence, an agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) For a person who has certified that they are an alien lawfully present in the United States, the agency shall obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by USCIS to verify immigration status.

(2) For a person who has certified that they are a citizen or national, if the agency has reason to believe that the certification is invalid, the agency shall request evidence of United States citizenship or nationality and, if considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not

provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, ''exceptional and extremely unusual hardship'' to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in (*see* appendix A to this part, section 24.208(h)):

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207.

(Approved by the Office of Management and Budget under control number 2105–0508.)

§ 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person or person required to move temporarily under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (title 26, U.S.C.), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S.C. 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.* (1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm, or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under this section to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.502(a)(3), the homeowner-occupant is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the methods in paragraphs (b)(1) and (2) of this section (eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (7) of this section):

(1) *Commercial move.* Moves performed by a professional mover.

(2) *Self-move.* Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* The Fixed Residential Moving Cost Schedule described in § 24.302.

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(c) *Moves from a mobile home.* Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (10) of this section. A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods:

(1) *Commercial move.* Moves performed by a professional mover.

(2) *Self-move.* Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* The Fixed Residential Moving Cost Schedule described in § 24.302.

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved, and documented estimated costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost

of materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(d) *Moves from a business, farm, or nonprofit organization.* Eligible expenses for moves from a business, farm, or nonprofit organization include those expenses described in paragraphs (g)(1) through (7) and (11) through (18) of this section and § 24.303. Personal property as determined by an inventory from a business, farm, or nonprofit organization may be moved by one or a combination of the following methods:

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move.* A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(iii) A qualified agency staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated nonresidential personal property move of $5,000 or less, with the written consent of the person. This estimate may include only the cost of moving personal property which does not require disconnect and reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the item in place.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm, or nonprofit organization include those expenses described in paragraphs (g)(1) through (7) and (18) of this section. (*See* appendix A to this part, section 24.301(e).)

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.* (1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms, or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State, or local law, code, or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person or person required to move temporarily under this part. Agencies may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Agencies may approve storage for more than 12 months in unusual instances as justified, documented, and approved by the agency.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) A displaced tenant is entitled to reasonable reimbursement, as determined by the agency, for actual expenses not to exceed $1,000, incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

(8) Other moving-related expenses that are not listed as ineligible under paragraph (h) of this section, as the agency determines to be reasonable and necessary.

(9) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility ''hookup'' charges.

(10) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(11) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced or temporarily moved from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

(12) Any actual, reasonable, or necessary costs of a license, permit, fee, or certification required of the displaced person to operate a business, farm, or nonprofit at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees, or certification.

(13) Professional services as the agency determines to be actual, reasonable, and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(14) Relettering signs, replacing stationery on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete as a result of the move. (*See* appendix A to this part, section 24.301(g)(14).)

(15) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of:

(i) If the item is currently in use, the lesser of:

(A) The estimated cost to move the item up to 50 miles and reinstall; or

(B) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal

property, unless the agency determines that such effort is not necessary.

(ii) If the item is not currently in use: The estimated cost of moving the item 50 miles, as is.

(iii) When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices. (*See* appendix A of this part, section 24.301(g)(15).)

(16) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(17) If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(18) Searching for a replacement location.

(i) A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $5,000, as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(A) Transportation;

(B) Meals and lodging away from home;

(C) Time spent searching, based on reasonable salary or earnings;

(D) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(E) Time spent in obtaining permits and attending zoning hearings; and

(F) Expenses negotiating the purchase of a replacement site based on a reasonable salary or fee, including actual, reasonable, and necessary attorney's fees.

(ii) The Federal funding agency may, on a program wide or project basis, allow a one-time payment of $1,000 for search expenses with minimal or no documentation as an alternative payment method to paragraph (g)(18)(i) of this section. (*See* appendix A to this part, section 24.301(g)(18).)

(19) When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the agency, the allowable moving cost payment shall not exceed the lesser of: the amount which would be received if the property were sold at the site; or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this paragraph (g)(19) include, but are not limited to, stockpiled sand, gravel, minerals, metals, and other similar items of personal property as determined by the agency.

(h) *Ineligible moving and related expenses.* The following is a nonexclusive listing of payments a displaced person is not entitled to:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;

(9) Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney's fees;

(10) Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in paragraph (g)(3) of this section and § 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily;

(12) Refundable security and utility deposits; and

(13) Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

(i) *Notification and inspection (nonresidential).* The agency shall inform the displaced person and persons required to move temporarily, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the person as set forth in § 24.203. To be eligible for payments under this section the person must:

(1) Provide the agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential).* Upon request and in accordance with applicable law, the claimant shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded in.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by FHWA and published in the **Federal Register** on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule. In addition, an agency may approve storage for a displaced person's personal property for a period of up 12 months as a reasonable, actual and necessary moving expense under § 24.301(g)(4).

(a) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person under this part. The determination shall be based on the needs of the displaced person; the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and, whether storage will facilitate relocation. If the agency determines that storage is reasonable and necessary in conjunction with a fixed cost moving payment made under this section, the agency shall pay the actual, reasonable, and necessary storage expenses in accordance with § 24.301(g)(4). However, regardless of whether storage is approved, the Fixed Residential Move Cost Schedule

provides a one-time payment for one move from the displacement dwelling to the replacement dwelling, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage, if applicable, represent a full reimbursement of their eligibility for moving costs under this part. (*See* appendix A to this part, section 24.302.)

(b) [Reserved]

(c) The Fixed Residential Moving Cost Schedule is available at the following URL: *www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.*

§ 24.303 Related nonresidential eligible expenses.

The following expenses, in addition to those provided by § 24.301 for moving personal property, shall be provided if the agency determines that they are actual, reasonable, and necessary:

(a) Connection to available utilities from the replacement site's property line to improvements at the replacement site. (*See* appendix A to this part, *Section 24.303(a).*)

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing or feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the agency a reasonable pre-approved hourly rate may be established. (*See* appendix A to this part, section 24.303(b).)

(c) Impact fees and one-time assessments for anticipated heavy utility usage, as determined necessary by the agency. (*See* appendix A to this part, section 24.303(c).)

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under §§ 24.301 and 24.303, a small business, farm, or nonprofit organization is entitled to receive a payment, not to exceed $33,200, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(i) Lease or rental charges;

(ii) Personal or real property taxes;

(iii) Insurance premiums; and

(iv) Utility charges, excluding impact fees.

(7) Other items that the agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially, defined at § 24.2(a), to the household income.

(5) Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building. (*See* appendix A to this part, section 24.304(b)(5).)

§ 24.305 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for both actual moving and related expenses, as well as actual reasonable reestablishment expenses provided by §§ 24.301, 24.303, and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. The displaced business is eligible for the payment if the agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (*See* § 24.2(a).)

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(a)) may choose a fixed payment, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $1,000 to $53,200, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test unless the agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (*See* appendix A to this part, section 24.305(d).)

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate (*see* appendix A to this part, section 24.305(e), for sample calculations). Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the agency determines is satisfactory. (*See* appendix A to this part, section 24.305(e).)

§ 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by an agency causes the relocation of a utility facility (defined at § 24.2(a)) and the relocation of the facility creates extraordinary expenses for its owner, the agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a requirement for the payment of utility moving costs that is applicable to the agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses mean those expenses which, in the opinion of the agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (*See* appendix A to this part, section 24.306.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 90-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates (except that the agency may extend such 1 year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed $41,200 (*see also* § 24.404). The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within 1 year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) or (e) of this section, as applicable; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (f) of this section.

(c) *Price differential*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (*see* § 24.2(a)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the DSS replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of

the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a DSS replacement dwelling (*see* § 24.2(a));

(iii) The current fair market value for residential use of the replacement dwelling site (*see* appendix A to this part, section 24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling if such retention value is reflected in the ''acquisition cost'' used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. Except as otherwise provided in paragraph (e) of this section, the payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A to this part, section 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Reverse mortgages.* The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (e)(1) through (4) of this section shall apply to the computation of the mortgage interest differential payment required under paragraph (d) of this section, which payment shall be contingent upon a new reverse mortgage being purchased for the replacement dwelling.

(1) The payment shall be based on the difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling; however, in the event the displaced person obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (*See* appendix A to this part, section 24.401(e).) The reverse mortgage balance shall be that balance which existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.

(2) The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.

(3) Purchaser's points and loan origination, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

(4) The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current reverse mortgage are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

(f) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, *e.g.,* title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales, or transfer taxes (not to

exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the agency determines to be incidental to the purchase.

(g) *Rental assistance payment for 90-day homeowner.* A 90-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with § 24.402(b)(1), except that the limit of $9,570 does not apply, and is disbursed in accordance with § 24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under paragraph (b)(1) of this section had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling. Payments allowed under § 24.402(c) are not applicable.

§ 24.402 Replacement housing payment for 90-day tenants and certain others.

(a) *Eligibility.* A tenant or homeowner displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, as computed in accordance with paragraph (b) of this section, or down payment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented or purchased and occupied a DSS replacement dwelling within 1 year (unless the agency extends this period for good cause) after the date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person under paragraph (a) of this section who rents a replacement dwelling is entitled to a payment not to exceed $9,570 for rental assistance. (*See* § 24.404) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency (for an owner-occupant, use the fair market rent for the displacement dwelling; for a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as ''low income'' by the U.S. Department of Housing and Urban Development (HUD) in its most recently published Uniform Relocation Act Income Limits (''Survey''). The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the Survey's ''low income'' limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Note 1 to paragraph (b)(2): The Survey's income limits are updated annually and are available on FHWA's website at *https://www.fhwa.dot.gov/real_estate/low_income_calculations/index.cfm.*

(3) *Manner of disbursement.* A rental assistance payment may, at the agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's replacement housing.

(c) *Down payment assistance payment*—(1) *Amount of payment.* An eligible displaced person under paragraph (a) of this section who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the agency's discretion, a down payment assistance payment that is less than $9,570 may be increased to any amount not to exceed $9,570. However, the payment to a displaced person shall not exceed the amount the homeowner would receive under § 24.401(b) if he or she met the 90-day occupancy requirement. If the agency elects to provide the maximum payment of $9,570 as a down payment, the agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner-occupant under § 24.401(a) is not eligible for this payment. (*See* appendix A to this part, section 24.402(c) for payments to less than 90-day occupants and for a discussion of those who fail to meet the 90-day occupancy requirements.)

(2) *Application of payment.* The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling. (*See* § 24.2(a).)

(1) If available, at least three comparable replacement dwellings shall be considered and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. (*See* appendix A to this part, section 24.403(a)(1).)

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (*e.g.,* the site is significantly smaller or does not contain a swimming pool), the contributory value of such attribute as determined by the agency shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. (*See* appendix A to this part, section 24.403(a)(2).)

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the agency determines that the remainder has economic value to the owner, the agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing

payment. (*See* appendix A to this part, section 24.403(a)(3).)

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) When there are multiple occupants of one displacement dwelling and if two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) For mixed-use and multifamily properties, if the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a DSS dwelling as defined at § 24.2(a).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (*See* § 24.3.)

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The agency shall not require any displaced person to accept a dwelling provided by the agency under the procedures in this part (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing comparable replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling in § 24.2(a), modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (*see* appendix A to this part, section 24.404(c)), including upgraded, but smaller replacement housing that is DSS and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a), comparable replacement housing.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (*See* § 24.2(a).) Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to:

(1) A moving expense payment in accordance with subpart D of this part; and

(2) A replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in § 24.301(g)(1) through (11).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

§ 24.502 Replacement housing payment for a 90-day mobile homeowner displaced from a mobile home and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed $41,200, under § 24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 90 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section;

(2) The person meets the other basic eligibility requirements at § 24.401(a)(2); and

(3) The agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property, but the owner is displaced from the mobile home because the agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 90-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 90-day owner is computed as described at § 24.401(b) incorporating the following, as applicable:

(1) If the agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner occupant's net cost to purchase a replacement mobile home (*i.e.,* purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the agency's selected comparable mobile home less the agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) *Replacement housing payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile homeowner-occupant's site is leased or rented, a 90-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance replacement housing payment may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied, with any replacement housing payment attributable to the mobile home, toward the purchase of a replacement mobile home and the

purchase or lease of a site or the purchase of a conventional decent, safe, and sanitary dwelling.

(d) *Owner-occupant not displaced from the mobile home.* If the agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section as applicable.

§ 24.503 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed $9,570, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the agency, but the agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4.

§ 24.602 Certification application.

An agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR–1, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.

§ 24.603 Monitoring and corrective action.

(a) The Federal Lead Agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State agencies.

(c) A Federal agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal agencies, which have accepted a certification under this subpart from the same State agency and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions and acronyms.

Section 24.2(a) Comparable replacement dwelling, (ii). The requirement that a comparable replacement dwelling be ''functionally equivalent'' to the displacement dwelling, means that it must perform the same function and provide the same utility. The section states that it need not possess every feature of the displacement dwelling. However, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is ''adequate to accommodate'' the displaced person) may be found to be ''functionally equivalent'' to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of Government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

Section 24.2(a) Comparable replacement dwelling, (vii). The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person, who is not receiving assistance under any Government housing program before displacement, must be currently available on the private market without any subsidy under a Government housing program.

Section 24.2(a) Comparable replacement dwelling, (ix). If a person accepts assistance under a Government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government assistance has been applied.

Section 24.2(a) Decent, safe, and sanitary, (i)(A). Even where Federal or local law does not mandate adherence to standards requiring the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, it is strongly recommended that they be considered as a matter of public policy.

Section 24.2(a) Decent, safe, and sanitary, (v). Some local code standards for occupancy do not require kitchens. However, selection of comparable dwellings that provide a kitchen is recommended. The FHWA believes this is good practice and in most cases should be easily achievable. If the displacement dwelling had a kitchen, the comparable dwelling must have a kitchen. If the displacement dwelling did not have a kitchen but local code standards for occupancy require one, the comparable dwelling must contain a kitchen. If the displacement dwelling did not have a kitchen and local code standards for occupancy do not require one, an agency does not have to provide a kitchen in the comparable dwelling. If a kitchen is provided in the comparable dwelling, at a minimum it must contain a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

Section 24.2(a) DSS—Persons with a disability, (vii). Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the agency is required to address comparability for persons with a physical impairment that substantially

limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs. Requirements include but are not limited to Fair Housing Act (FHA), 42 U.S.C. 3604 (f)(3)(A)–(C), and/or HUD's regulations for newly constructed assisted housing under section 504, 24 CFR 8.22.

Section 24.2(a) Displaced person—Occupants of a temporary, daily, or emergency shelter, (iii)(L). Shelters can serve many purposes, and each will have specific rules and requirements as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed. Persons who are occupying a shelter that only allows overnight stays and requires the occupants to remove their personal property and themselves from the premises on a daily basis and that offers no guarantee of reentry in the evening typically would not meet the definition of displaced persons as used in this part, nor would the shelter meet the definition of dwelling as used in this part. Persons who live at the shelter on a continuous, prolonged, or permanent basis may be considered displaced. These determinations are fact-based determinations. Facts that might assist in the determination include whether the person is employed because they work to pay their rent or there may be a residential landlord-tenant relationship. The FHWA expects it would be unusual to displace a shelter occupant who meets the criteria for making a determination that he or she is a displaced person. Agencies should make reasonable effort to provide information about proposed vacation date or other plans for the shelter to relocate. Providing advisory assistance to shelter occupants may be a challenge due to the transient nature of shelter occupancy, but such assistance must be provided to the maximum extent practicable.

Section 24.2(a) Dwelling site. This definition ensures that the computations of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed-use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site.

Section 24.2(a) Household income (exclusions). Household income for purposes of this part does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children program. For a more detailed list of income exclusions see FHWA, Office of Real Estate Services website.[1] Contact the Federal agency administering the program if there is a question on whether to include income from a specific program.

Section 24.2(a) Initiation of negotiations. This section provides a special definition for acquisition and displacements under Public Law 96–510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, FHWA has provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

Section 24.2(a) Initiation of negotiations, Tenants, (iv). Tenants who occupy property that may be voluntarily acquired, without recourse to the use of the power of eminent domain, must be fully informed as to their potential eligibility for relocation assistance when negotiations are initiated. If negotiations fail to result in a binding agreement the agency should notify tenants that negotiations have failed to result in a binding agreement and that the agency has concluded its efforts to acquire the property. If a tenant is not readily accessible, as the result of a disaster or emergency, the agency must provide these notifications and document its efforts in writing. As used in this definition, agreements such as options to purchase and conditional purchase and sale agreements are not considered binding agreements until all conditions to the agency's obligation to purchase the real property have been satisfied. A right to purchase property is not binding agreement because it does not require the State to purchase the property necessary for the project unless they elect to do so. A binding agreement as used in this definition is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees, without further election, to make that purchase. If negotiations fail to result in a binding agreement the agency should notify tenants that negotiations have failed to result in a binding agreement and that the agency has concluded its efforts to acquire the property. If a tenant is not readily accessible, as the result of a disaster or emergency, the agency must make a good faith effort to provide these notifications and document its efforts in writing.

Applications for many Federal programs permit site control to be demonstrated by option contracts. Once the application for Federal financial assistance is approved, the acquiring agency must execute the purchase contract to receive the Federal financial assistance for the program or project. Therefore, if the purchase agreement satisfies the site control requirements of the Federal agency providing the Federal financial assistance, then the application date is the date of the initiation of negotiations for that program or project. Setting the initiation of negotiations at the earlier of the date of application or when all conditions to the obligation to purchase the real property have been satisfied, ensures that residents of a project are treated fairly, given that application approval and the ultimate sale of the property could be as long as six months to a year after the application date taking into account the application review and processing periods.

A binding agreement as used in this section is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees to that purchase for a specified consideration.

Section 24.2(a) Mobile home. In this part, the term ''mobile home'' will continue to be used to include those homes that are defined at 24 CFR part 3280 as a ''manufactured home.''

Regulations at 24 CFR 3280.2 defines ''manufactured home.'' The term ''mobile home'' was changed to ''manufactured home'' in 24 CFR part 3280 in 1979.

The following examples provide additional guidance on the types of mobile homes that can be found acceptable as replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met: the recreational vehicle is purchased and occupied as the ''primary'' place of residence; it is located on a purchased or leased site and connected to or has available all necessary utilities for functioning as a housing unit on the date of the agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe, and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

Section 24.3 No duplication of payments. This section prohibits an agency from making a payment to a person under this part that would duplicate another payment the person receives under Federal, State, or local law. The agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the agency's knowledge at the time a payment is computed.

Section 24.5 Manner of Notices and Electronic Signatures. Property owners or occupants must voluntarily elect to receive notices, offers, correspondence and information via electronic methods. Alternatively, property owners or occupants may request delivery of notices, offers, correspondence and information via certified or registered first class mail, return receipt requested, instead of electronic means. Agencies must accommodate the property owner's or occupant's preference. The FHWA continues to believe that providing notices,

[1] *http://www.fhwa.dot.gov/realestate/.*

offers, correspondence and information by either first-class mail or electronic means should not be used as a substitute for face-to-face meetings, but rather as a supplemental means of communication that accommodates an owner's or occupant's preference.

An agency must be able to demonstrate to the Federal funding agency the ability to securely document the notice delivery and receipt confirmation in order to receive approval from the Federal funding agency for use of electronic delivery of notices, offers, correspondence, information, and electronic signature. Additional minimum safeguards that the agency must put in place prior to delivering notices, offers, correspondence, and information by electronic means and for the use of electronic signatures are included in the regulation at § 24.5. Prior to the use of electronic delivery or electronic signature, there must be an agency process or procedure outlined in writing and approved by the Federal funding agency that details the requirements and rules the agency will follow when using electronic means for delivery of notices, offers, correspondence, and information. Should an agency decide to allow electronic signature the agency must develop procedures to ensure that signatures can be verified and documented appropriately. The FHWA understands that certain documents that are essential to the conveyance of the real property interests may not allow for electronic signature(s).

Agencies must determine and document instances when electronic deliveries of notices or use of electronic signature are appropriate. An example of an appropriate use of electronic delivery of notices, offers, correspondence, and information might be to notify a property owner of his or her right to accompany an appraiser as required at § 24.102(c)(1). Other appropriate uses may be to secure a release of mortgage or to confirm a property owners' receipt of the acquisition and relocation brochures.

An example of when the use of electronic delivery or electronic signatures may not be appropriate is when the document being signed requires notarization or other similar verification. Electronic delivery of notices, offers, correspondence, and information may not always be a good option for relocation assistance where many actions are conducted in person at the displacement or replacement dwelling or business and require advisory services to be provided as part of the process. The FHWA notes that relocation assistance in part requires ongoing and continuous advisory services be provided (§ 24.205(c)). This may be best accomplished by face to face meetings during which the displaced person may more easily raise questions, request assistance, or indicate a need for additional advisory assistance.

These examples are not intended to be all-inclusive, nor are they exclusive of other opportunities to use this tool. For additional information, the specific Federal regulations that set out the format and examples for an electronic signature can be found at 37 CFR 1.4(d)(2). The regulations in 37 CFR 1.4(d)(2) fall under the purview of the United States Patent and Trademark Office, which provides examples of what is considered to be proper format in a variety of electronically signed documents.

Section 24.9(c) Reports. Moving Ahead for Progress in the 21st Century Act (MAP–21) amended 42 U.S.C. 4633(b)(4) to require that each Federal agency subject to the Uniform Act submit an annual report describing activities conducted by the Federal agency. The FHWA believes that such a report that details activity provides a good indication of program health and scope.

FHWA realizes that not all agencies subject to this reporting requirement currently have the ability to collect all information requested on the reporting form. However, Federal agencies may elect to provide a narrative report that focuses on their respective efforts to improve and enhance delivery of Uniform Act benefits and services. Narrative report information would include information on training offered, reviews conducted, or technical assistance provided to recipients.

Agencies are not required by the Uniform Act to keep records of their efforts to improve the housing conditions of economically disadvantaged persons. However, agencies must ensure that their relocations are carried out in a manner which is consistent with the requirements of section 4621 of the Uniform Act.

Section 24.11 Adjustment of Limits and Payments. FHWA will use the Consumer Price Index for All Urban Consumers (CPI–U) Seasonally Adjusted to determine if inflation, cost of living or other factors indicate that an adjustment to relocation benefits is warranted.

Sample calculation:

Assume CPI–U was 110.0 when the final rule was published. The fixed payment for nonresidential moving expenses has a ceiling of $53,200. During a subsequent evaluation after publication of the final rule, the CPI–U is calculated to be 115.5.

Divide the new index by the base year index = 115.5/110.0 = 1.050 or 5 percent. This means there has been a 5 percent increase in prices and the fixed payment for nonresidential moving expenses ceiling should be increased 5 percent.

Calculate fixed payment benefit ceiling = $53,200 × 1.05 = $55,860.

Subpart B—Real Property Acquisition

For Federal eminent domain purposes, the terms ''fair market value'' (as used throughout this subpart) and ''market value,'' which may be the more typical term in private transactions, are synonymous.

Section 24.101(a) Direct Federal program or project. All the requirements in subpart B of this part (real property acquisition) apply to all direct acquisitions for Federal programs and projects by Federal agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service.

Section 24.101(b)(1)(i)(B). This section provides that, for programs and projects receiving Federal financial assistance described in § 24.101(b)(1), agencies are to inform the owner(s) or their designated representative(s) in writing of the agency's estimate of the fair market value for the property to be acquired.

Section 24.101(b)(1)(i)(B). While this part does not require an appraisal or waiver valuation for these transactions, agencies may still decide that an appraisal or waiver valuation is necessary to support their determination of the fair market value of these properties, and, in any event, persons developing a waiver valuation must have sufficient knowledge of the local market (§ 24.102(c)(2)(ii)(B)) in order to establish some reasonable basis for their determination of fair market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these determinations. It would be appropriate for agencies to adhere to project influence restrictions, as well as guard against discredited ''public interest value'' valuation concepts.

After an agency has established an amount it believes to be the fair market value of the property and has notified the owner of this amount in writing, an agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by this part, it would be entirely appropriate for agencies to ensure that estimates of fair market value are documented and shared with the property owner during negotiations, and to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of fair market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

There may be an extraordinary circumstance in which use of eminent domain may be necessary. In those instances, the Federal funding agency may consider granting a waiver of regulations in this part under authority of § 24.7. The Federal funding agency will make a fact based, case by case determination as to whether a waiver of this part's requirements may be allowed.

Section 24.101(b)(1)(ii). The term ''general geographic area'' is used to clarify that an agency carrying out a project or program can achieve the purpose of the project or program by purchasing any of several properties that are not necessarily contiguous or are not limited to a specific group of properties.

Section 24.101(b)(1)(ii) and (iii)—nexus. The funding agency should review the acquisition records and consider the relevant facts for the properties acquired to determine if the intent of the acquisition was to incorporate the real property into, or in some other way support or otherwise advance, a Federal or federally assisted program or project. If the property was acquired by other means (*e.g.,* local government acquisition via tax delinquency or exaction), documentation may be provided to show that the property was not acquired with the intent of including it in a Federal or federally assisted program or project. However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a

Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility. If the agency is certain that eminent domain authority will not be used for the intended project or program, then the limited requirements of voluntary acquisition would apply. The agency must also consider that acquiring the property and applying only the voluntary acquisition requirements would in most cases preclude the agency from later using eminent domain authority to acquire the property should voluntary acquisitions not result in an agreement to sell the property to the agency. *(See also* discussion in 24.101(b)(1)(i)(B) of this appendix.)

Section 24.101(b)(1)(iii) Private entities who acquire property to create wetlands. Private entities who acquire property to create wetlands for wetland banking purposes cannot be required to comply with the Uniform Act if there is no planned or anticipated use by a Federal or federally assisted program or project. Establishment of such wetland banks, which may include a Federal or federally funded project or program among its future users, do not necessarily trigger application of the Uniform Act requirements.

There is not one answer that fits all third-party (private entities) environment mitigation scenarios. These determinations are fact-based by nature. However, the key issue is whether the acquisition of property for wetlands is specifically for mitigation of impacts on Federal or federally assisted programs or projects. When making a fact-based determination, the purpose of the wetland bank, the existence of any agency funding for the bank or commitment to use the bank, and whether the wetland bank restricts who may purchase mitigation credits from it, are among the factors to consider in determining applicability of Uniform Act requirements.

If an agency provides Federal financial assistance for creating a wetland bank or has a prior agreement that the banked wetlands will be used to mitigate impacts on a specific Federal or federally assisted programs or projects, then the property acquisitions for the wetland bank must conform to Uniform Act requirements. If an agency contracts with a private third-party provider which does not use the power of eminent domain, the acquisition may qualify for treatment as a voluntary acquisition and only the limited requirements as set forth in § 24.101(b)(1) would apply.

If the wetland bank proposal has received necessary permits and was established without any Federal funding participation prior to use of Federal funds for acquisition of wetland mitigation credits and was not planned to be used only for mitigation of impacts due to Federal and federally assisted projects and programs, the Uniform Act requirements do not apply. The actions which the wetland bank developer took in carrying out their private activity can be viewed with regard to the Uniform Act in the same manner as other actions taken by private parties without the anticipated or actual benefit of Federal financial assistance.

Section 24.101(c) Less-than-full-fee interest in real property. Section 24.101(c) provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

Section 24.102(b) Notice to owner. In the case of condominiums and other types of housing with common or community areas, notification should be given to the appropriate parties. The appropriate parties could be a condominium or homeowner's board, a designated representative, or all individual owners when common or community property is being acquired for the project.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The purpose of the appraisal waiver provision is to provide agencies a technique to avoid the costs and time delay associated with appraisal requirements for uncomplicated valuation problems within the low fair market value limits established in this part. In most cases, uncomplicated valuation problems are considered to be those involving unimproved strips of land. Acquisitions involving improvements, damages, changes of highest and best use, or significant costs to cure are considered to be complicated and, as such, are beyond the application of waiver valuations as contemplated in this part. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more complex work.

The agency representative making the determination to use the waiver valuation option must have enough understanding of appraisal principles, techniques, and use of appraisals to be able to determine whether the proposed acquisition is uncomplicated and within the low fair market value limits in this part.

Waiver valuations are not appraisals as defined by the Uniform Act and this part; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this part. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. Agencies should put procedures in place to ensure that waiver valuations are accurate and that they are consistent with the unit values on the project as determined by appraisals and appraisal reviews. The agency must have a reasonable basis for the waiver valuation and an agency official must still establish an amount believed to be just compensation to offer the property owner(s) (*see* § 24.102(d)).

The definition of ''appraisal'' in the Uniform Act and waiver valuation provisions of the Uniform Act and this part are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the agency's approved appraisal or waiver valuation of the fair market value of the property but may exceed that amount if the agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also requires that the property owner be given a reasonable opportunity to consider the agency's offer and to present relevant material to the agency. In order to satisfy the requirement in § 24.102(f), agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but 30 days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. The provisions of § 24.102(f) are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described in § 24.102(f), and the agencies adhere to the Uniform Act ban on coercive action Section 4651(7) of the Uniform Act and § 24.102(h)).

If the owner expresses intent to provide an appraisal report, agencies are encouraged to provide the owner and/or their appraiser a copy of agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an agency official delegated this authority. Appraisers, including review appraisers, shall not be unduly influenced or coerced to adjust an estimate of value for the purpose of justifying such settlements (see § 24.102(n)(2)). Such actions are contrary to the requirements of this part and to the overarching goal of providing just compensation.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 4651(6) of the Uniform Act limits what an agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the agency on short notice. Such rent may not exceed ''the fair rental value of the property to a short-term occupier.'' Generally, the agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.102(n) Conflict of interest. The overall objective is to minimize the risk of

fraud, waste, and abuse while allowing agencies to operate as efficiently as possible. There are three parts to the provision in § 24.102(n).

The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver valuation), or the review appraiser (for an appraisal review).

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal, waiver valuation, or appraisal review work for that project or program. The intent of this provision is to ensure appraisal and/or waiver valuation independence and to prevent inappropriate influence. It is not intended to prevent agencies or recipients from providing appraiser and/or waiver valuers with appropriate project information or participating in determining the scope of work for the appraisal or waiver valuation. For a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it would create a hardship for the agency or recipient. The intent is to accommodate Federal financial aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) provides that the same person may perform a waiver valuation or appraisal and negotiate that acquisition, if the waiver valuation or appraisal estimate amount is $15,000 or less. Agencies or recipients are not required to use those who perform a waiver valuation or appraisal of $15,000 or less to negotiate the acquisition. All appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $15,000, or less.

The third provision has been expanded to allow Federal funding agencies to permit use of a single agent for values of more than $15,000, but less than $35,000, but, as a safeguard, requires that an appraisal and appraisal review be done if the waiver valuation preparer or the appraiser will also act as the negotiator. Agencies or recipients desiring to exercise this option must request approval in writing from the Federal funding agency. The requesting agency shall have a separate and distinct quality control process for implementing this authority in place and set forth in the written procedures approved by the Federal funding agency. Agencies and recipients may delegate this authority to a subrecipient to use their approved authority if the subrecipient has an agency or recipient approved oversight mechanism to assure proper use and review of the authority.

Section 24.103 Criteria for Appraisals. The term ''requirements'' is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) ''standards.'' Although this section discusses appraisal requirements, the definition of ''appraisal'' itself at § 24.2(a) includes appraisal performance requirements that are an inherent part of this section.

The term ''Federal and federally assisted program or project'' is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally assisted programs or projects are located in this part. These are the basic appraisal requirements for Federal and federally assisted programs or projects. However, agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

The appraisal requirements in § 24.103(a) are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, 3, and 4 of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This ''consistent'' relationship was more formally recognized in Office of Management and Budget (OMB) Bulletin 92–06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally assisted real property acquisition must follow the requirements in this part. Compliance with any other appraisal requirements is not within the purview of this part. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and the requirements in this part may be achieved by using the Scope of Work Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term ''scope of work'' defines the general parameters of the appraisal. It reflects the needs of the agency and the requirements of Federal and federally assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an agency official who is competent to both represent the agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, whether it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in § 24.103(a)(2)(i) through (v) and address them as appropriate.

Section 24.103(a)(1). The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

Section 24.103(a)(2). All relevant and reliable approaches to value are to be used. However, where an agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term ''project'' means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Section 24.104 Review of appraisals. The term ''review appraiser'' is used rather than ''reviewing appraiser,'' to emphasize that ''review appraiser'' is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires additional skills. The review appraiser should possess both appraisal technical abilities and the ability to comprehend and communicate to the appraiser the agency's real property valuation needs, while recognizing and respecting the professional standards to which an appraiser is required to adhere.

Agency review appraisers typically perform a role in land acquisition project management in addition to technical appraisal review. They are often involved in early project development by assisting the agency with project cost estimates for alternative project scenarios, identifying particularly complicated valuation problems that may need additional valuation specialties. In addition, they often provide the acquiring agency preliminary determinations about valuation problems, scope of work considerations, and types of appraisal reports necessary to complete a project. Later they may be involved in devising the scope of work statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on agency policy and requirements, to appraisers, both staff and fee. In addition, review appraisers are frequently technical advisors to other agency officials.

Section 24.104(a). Section 24.104(a) states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review

by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's performance of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation) or establish the amount the agency believes is just compensation, she/he must be specifically authorized by the agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another agency official.

Section 24.104(b). In performing and reporting an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser performs their review assignment and reports an independent value different from the conclusions in the appraisal being reviewed, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act section 4651(3) purposes. It is within agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

Section 24.104(c). Before acceptance of an appraisal, the review appraiser must create a review report that documents the reviewer's determination that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal. See § 24.102(d).

At the agency's discretion, for a low value property requiring only a simple appraisal solution, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(a). Expenses incidental to transfer of title to the agency. Generally, the agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.202 Applicability and Section 24.205(c) Relocation Advisory Services to be provided. In extraordinary circumstances, when a displaced person is not readily accessible, the agency must make a good faith effort to comply with §§ 24.202 and 24.205(c) and the Uniform Act and document its efforts in writing.

Section 24.204 Availability of comparable replacement dwelling before displacement.

Section 24.204(a) General. Section 24.204(a) requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, where possible, three or more comparable replacement dwellings shall be made available. Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (*e.g.,* when the local housing market does not contain three comparable dwellings) may the agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(a). As part of the relocation planning process agencies should, to the extent practical, identify relocations that may require additional time for advisory services and coordination for their relocations. Such relocations may include the elderly, those with medical needs, and those in public housing or other federally subsidized housing. In each of these examples, the nature of the relocation means that the unique needs of the relocated person should be determined early and that the relocation agent should make full use of available social services and other program support (examples include local transportation services that may be available in certain areas, financial support available from local, Federal, and State agencies, and community support services that may be available) in considering and developing a relocation plan.

Section 24.205(c)(2)(ii)(C). Where feasible, comparable replacement housing must be inspected. The comparable replacement dwellings should be inspected by a walk through and physical interior and exterior inspection before being offered to a displaced person. Reliance on an exterior visual inspection or examination of a multiple listing service (MLS) listing, in most cases, does not constitute a complete DSS inspection. If an inspection is not possible, the displaced person must be informed in writing that an inspection was not possible and be provided an explanation of why the inspection was not possible. They also must be informed in writing that if the uninspected comparable is selected as a replacement dwelling a replacement housing payment may not be made until the replacement dwelling is inspected and determined to be decent, safe, and sanitary. Should the selected comparable later be found to not be DSS then the agency's policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling,* are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Each agency should clearly inform displaced persons that a DSS inspection as required by this part is only a brief inspection to ensure that certain requirements as they relate to the definition of DSS in this part are being met. These DSS inspections are not the same as a full home inspection similar to that which a home inspector would be hired to do.

Agencies may develop more restrictive DSS inspection requirements which may include required DSS inspections for selected comparable dwellings, all comparable dwellings used to establish a displaced persons replacement housing payment eligibility, or other more stringent DSS inspection requirements for comparable dwellings.

Section 24.205(c)(2)(ii)(D) This section emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas to improve their housing condition when they relocate.

The focus on those displaced from areas of minority concentration in this section has been consistently applied for almost 40 years. The FHWA believes that where practical and feasible, agencies carrying out relocations should provide those who live in areas of minority concentration opportunities to improve their living situations.

To the extent practical, agencies should maintain adequate written documentation of efforts made to locate such comparable replacement housing.

Section 24.206 Eviction for cause. An eviction necessitated by project related non-compliance (*e.g.,* failure to move or relocate when instructed, or to cooperate in the relocation process) does not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 24.207 General Requirements—Claims for relocation payments. Section 24.207(a) allows an agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While § 24.207(f) prohibits an agency from proposing or requesting that a person waive his or her rights or entitlements to relocation assistance and payments, an agency may accept a written statement from the person

that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the agency.

Section 24.208(c) Aliens not lawfully present in the United States—computing relocation payments if some members of a displaced family are present lawfully but others are present unlawfully.

If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is not lawfully in the United States, that person's income shall not be excluded from the computation of family income. The person's income is counted unless the agency is certain that the ineligible person will not continue to reside with the family. To exclude the ineligible person's income would result in a windfall by providing a higher relocation payment.

There are two different methods for computing relocation payments in situations where some members of a displaced family are present lawfully, but others are present unlawfully. For moving expenses, the payment is to be based on the proportion of lawfully present occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received. Similarly, unlawful occupants are not counted as a part of the family for RHP calculations. Thus, a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable replacement dwelling for the family would reflect the makeup of the remaining four persons, and the RHP would be computed accordingly.

A ''pro rata'' approach to an RHP calculation is not permitted unless use of the two permitted methods discussed in this section would create an exceptional and extremely unusual hardship (consistent with Pub. L. 105–117; codified at 42 U.S.C. 4605). Following such a calculation would require that the agency disregard alien status for comparability determination, select a comparable and then apply a percentage to the RHP amount. A ''pro rata'' calculation approach for RHP may result in a higher RHP eligibility than the displaced persons would otherwise be eligible to receive. The ''pro rata'' approach of providing a percentage of the calculated RHP eligibility is contrary to the requirements of the Uniform Act and this part. A correct example of a calculation would be:

Household of seven (including one alien not lawfully present individually occupying one bedroom.)
Displacement dwelling—4 BR unit, with rent/utilities of $1,200/month
Housing requirements for all lawful occupants (six) is a 3 BR unit
Comparable dwelling
3 BR unit with rent/utilities of $1,300/month
Calculation of RHP under § 24.208(c) (alien not lawfully present excluded)
$1,300 (comparable) − $1,200 (displacement unit) = $100 RHP × 42 months = $4,200 RHP

Section 24.208(h) The meaning of the term ''exceptional and extremely unusual hardship'' focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the agency and does not lend itself to an absolute standard applicable in all situations.

When considering whether a hardship exemption is appropriate, an agency may examine only the impact on an alien's spouse, parent, or child who is a citizen, or an alien lawfully admitted for permanent residence in the United States. In determining who is a spouse, agencies should use the definition of that term under State or other applicable law.

A standard of hardship involves more than the loss of relocation payments and/or assistance alone. Also, income alone (for example, measured as a percentage of income spent on housing) would not make the denial of benefits an ''exceptional and extremely unusual hardship'' and qualify for a hardship exemption. In keeping with the principle of allowing agencies maximum reasonable discretion, FHWA believes the decision regarding what documentation is required to support a claim of hardship is one best left to the Federal funding agency, as long as the decision is handled in a nondiscriminatory manner.

Subpart D—Payments for Moving and Related Expenses

Section 24.301 Payment for Actual Reasonable Moving and Related Expenses.

Section 24.301(e) Personal property only. Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business, farm, nonprofit or residence will not be acquired and the business can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; or, personal property that is stored on vacant land that is to be acquired. For such a residential personal property move, there may be situations in which the costs of obtaining moving bids may exceed the cost to move. In those situations, the agency may allow an eligibility determination and payment based upon the use of the ''additional room'' category of the Fixed Residential Move Cost Schedule at *www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.*

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the agency may obtain estimates from qualified movers to use as the standard in determining the payment.

Section 24.301(g)(3) Modifications to personal property or to utilities. Construction costs for a new building at the business replacement site, costs to substantially reconstruct a building, or rehabilitate a building are generally ineligible for reimbursement as are expenses for disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.

Section 24.301(g)(14) Relettering signs and replacing stationery. This may include changes to the content of other media that need correcting due to the displacement, such as DVDs and CDs. This may also include modifications to websites that would modify and edit contact and new location information made necessary because of the move. Agencies will need to determine when these costs are actual, reasonable, and necessary.

Section 24.301(g)(15)(i) This section only applies when equipment is not being moved to replacement site and therefore it becomes an actual loss of tangible personal property. Under § 24.301(g)(15)(i), if the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site.

As prescribed in the part, the allowable in-place value estimate (§ 24.301(g)(15)(i)(B)) and moving cost estimate must reflect only the ''as is'' condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site.

The in-place value estimate may also not include installation costs for machinery or equipment that is not operable or not installed at the displacement site (§ 24.301(g)(15) (ii)). Value in place can be obtained by hiring a machinery and equipment (M&E) appraiser or value can be estimated via websites available for M&E valuations. An example of one resource is The Association of Machinery and Equipment Appraisers (AMEA) website.[2] The AMEA is a nonprofit professional association whose mission is to accredit certified equipment appraisers. Another example of available resources can be found on the website of The American Society of Appraisers, a multi-discipline, nonprofit, international organization of professional appraisers. They maintain a separate web page for machinery and equipment appraisers.[3] Should an agency find itself in need of a machinery and equipment appraisal, a web search for either ''machinery and equipment appraisers'' or ''machinery and equipment appraiser's organizations'' will provide a number of resources which can be used to find the necessary services and resources. It is important to note that FHWA does not endorse or recommend any organization, society, or professional group.

[2] *http://www.amea.org/.*

[3] *http://www.appraisers.org/Disciplines/Machinery-Technical-Specialties.*

The information provided in this appendix is strictly informational.

Section 24.301(g)(18) Searching expenses. In special cases where the agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney's fees required to obtain such licenses or permits are also reimbursable. Expenses negotiating the purchase of a replacement business site are also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to investigate and acquire the site exceed $5,000, the agency may consider requesting a waiver of the cost limitation under the § 24.7 waiver provision. Such a waiver should be subject to the approval of the Federal funding agency in accordance with existing delegation of authority. As an alternative to the preceding sentences in this section, Federal funding agencies may determine that it is appropriate to allow for payment of searching expenses of $1,000 with minimal or no documentation under this part. It is expected that each Federal funding agency will consider and address the potential for waste, fraud, or abuse and may develop additional requirements to implement this provision. Such requirements may include development of procedures or by requiring specific changes or inclusions in the written procedures approved by the Federal funding agency.

Search expenses may be incurred anytime the business anticipates it may be displaced, including prior to project authorization or the initiation of negotiations. However, such expenses cannot be reimbursed until the business has received the notice in § 24.203(b) and only after the agency has determined such costs to be actual, reasonable, and necessary as a result of the displacement.

Section 24.302—The occupant of a seasonal residence could receive a payment based upon the Fixed Residential Move Cost Schedule or actual moving expenses in accordance with § 24.301. Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than personal property moving expenses.

Section 24.303(a). Actual, reasonable, and necessary reimbursement for connection to available utilities are for the necessary improvements to utility services currently available at the replacement property. Examples include (a) a Laundromat business that requires a larger service tap than the typical business service tap already on the property, and (b) a business that requires an upgrade or enhancement of the existing single phase electrical service to provide 3-phase electrical service.

Section 24.303(b) Professional services. If a question should arise as to what is a ''reasonable hourly rate,'' the agency should compare the rates of other similar professional providers in that area.

Section 24.303(c) Impact fees and one-time assessments for anticipated heavy utility usage.

Section 24.303(c) limits impact fees or one-time assessments to those levied for anticipated heavy utility usage to utilities, *e.g.,* water, sewer, gas, and electric. Impact fees and one time assessments that may be levied on a nonresidential relocated person in their replacement location for other major infrastructure construction or use such as roads, fire stations, regional drainage improvements, and parks are not eligible. Providing information on the potential eligibility of impact fees for anticipated heavy utility usage is an important advisory service.

Section 24.304(b)(5) Ineligible expenses. The cost of constructing, reconstructing, or rehabilitating a replacement structure, is a capital expenditure, normally beyond the scope of § 24.304(a)(2) and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure, an agency or recipient may request a waiver of § 24.304(b)(5) under the provisions of § 24.7. An example of such an instance would be in a rural area where there are no suitable buildings available and the new construction, reconstruction, or rehabilitation of a replacement structure is the only option that will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of new construction, reconstruction, or rehabilitation of a replacement structure will be considered an eligible reestablishment expense subject to the regulatory limit on such payment.

In markets where existing and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities such as heat, light, and water, and sewer available. These buildings or units are referred to as shells. The cost of constructing, reconstructing, or rehabilitating a shell is not an eligible reestablishment expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an agency of certain modifications to an existing replacement business building as reestablishment costs if the agency applies a waiver under § 24.7.

A certain degree of construction costs are generally expected by the market because shells are designed to be customized by the tenant. An agency using a waiver may determine costs for these types of improvements or modifications are eligible for reimbursement, up to the amount of $33,200. Such costs may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items, if required by Federal, State, or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business. By contrast, a structure or shell which is dilapidated or is in disrepair and which requires construction, reconstruction, or rehabilitation would not be eligible for reimbursement under this part.

Section 24.305 Fixed payment for moving expenses—nonresidential moves.

Section 24.305(a) Business. If a business elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the business elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

Section 24.305(c) Farm operation. If a farm operation elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the farm elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, and reestablishment expenses.

Section 24.305(d) Nonprofit organization. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales, or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items, as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

If a nonprofit organization elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the nonprofit organization elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

Section 24.305(e) Average annual net earnings of a business or farm operation. Section 24.305(a)(6) requires that the business contribute materially to the income of the displaced person during the 2 taxable years prior to displacement. This does not mean that the business needed to be in existence for a minimum of 2 years prior to displacement to be eligible for this payment.

If a business has been in operation for only a short period of time (*i.e.,* 6 months) prior to displacement, the fixed payment would be based on the net earnings of the business at the displacement site for the actual period of operation projected to an annual rate. If a business was not in operation for a full 2 years, the existing net earnings income data should be used to project what the net earnings could be if the business were in operation for a full 2 years. If the business is seasonal, the business' operating season net income represents the full annual income for the purposes of calculating this benefit.

For Example:

(1) Business in operation for only 6 months earned $ 10,000.

Computation: ($10,000/6) × 12 = $20,000 annual net earnings × 2 years = $40,000 divided by 2 = $20,000; Eligibility = $20,000. (Average annual net earnings.)

(2) Business in operation 18 months earned $20,000.

Computation: $20,000 divided by 18 months = $1,111 per month × 24 months = $26,664 divided by 2 years = $13,332; Eligibility = $13,332 (Average annual net earnings)

(3) Business is seasonal—open summer only for 4 months and earns $5,000.

Computation: $5,000 was the seasonal net earnings 1 year and $6,000 was the seasonal net earnings a second year. $11,000 divided by 2 = $5,500; Eligibility = $5,500. (Average annual net earnings)

If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than $1,000, even $0 or a negative amount, the minimum payment of $1,000 shall be provided (49 CFR 24.305(a)).

Section 24.306 Discretionary utility relocation payments. Section 24.306(c) describes the issues that the agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in 23 CFR part 645, subpart A, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 90-day homeowner-occupants.

Section 24.401(a)(2). An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c)(2)(iii) Price differential. The provision in § 24.401(c)(2)(iii) to use the current fair market value for residential use does not mean the agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the down payment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the ''buydown.''

The agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points, and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	$458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10% = $42,010.18.

Calculation:	
Remaining Principal Balance	$50,000.00
Minus Annual Monthly Payment (principal and interest)	−42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 divided by $42,010.18 = .8331; $9,250.13 multiplied by .83 = $7,706.57).

The agency is obligated to inform the displaced person of the approximate amount of this payment and to advise the displaced person of the interest rate and points used to calculate the payment.

The FHWA has an online tool to calculate increased mortgage interest costs for fixed, and interest only loans at *https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/.*

Section 24.401(e) Reverse Mortgage. The provision in § 24.401(e) sets forth the factors to be considered to estimating an amount, after paying off the existing balance, sufficient to purchase a replacement reverse mortgage that provides a tenure or term payment, line of credit, or lump-sum disbursement. The agency must know the value of the acquired dwelling, existing balance of displacement reverse mortgage, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated reverse mortgage supplement payment for a replacement reverse mortgage. In cases where there is a tenure or term payment additional information such as the age of the youngest borrower, amounts of the tenure payment, amount and remaining term of term payment and the current interest rate, is needed to calculate the payment and will require the assistance of a reverse mortgage broker.

Below are four scenarios for relocation payment eligibilities. As you will note, the eligibility is the same in each case; however, benefit amounts will vary depending on the individual's circumstance and existing reverse mortgage terms. This appendix also contains a list of other possible agency options, should a displaced person elect to use them; however, they are not recommended by FHWA because they do not place the person into a replacement reverse mortgage.

Situation 1—Owner has sufficient remaining equity to obtain a replacement reverse mortgage for purchase.

Situation 2—Owner's existing reverse mortgage has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 3—Owner's existing reverse mortgage has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 4—Owner's existing reverse mortgage is a line of credit and there is not

sufficient remaining equity to obtain a replacement reverse mortgage.

The displaced homeowner may be eligible for the following relocation payments:

• *A price differential payment in accordance with § 24.401(c).*

The owner would be eligible for a price differential payment (the difference between the comparable replacement dwelling and the acquisition cost of the displacement dwelling).

• *The administrative costs and incidental expenses necessary to establish the new reverse mortgage.*

Incidental costs incurred with a replacement reverse mortgage are reimbursable and fall into three categories—Mortgage insurance premium (MIP), loan origination fee, and closing costs.

• *A mortgage interest differential payment if the homeowner incurs a higher interest rate on the new reverse mortgage.*

The payment would be based on the difference between the displacement adjustable-rate mortgage (ARM) cap rate at the initiation of negotiations and the available ARM cap rate and those rates would be used as the components to calculate the MIDP in accordance with the sample calculation provided at section 24.401(d) of this appendix. The agency must advise the displaced person of the interest rate used to calculate the payment. Note that most reverse mortgages are monthly adjustable rate mortgages, so any interest differential payment would be minimal.

• *If the displaced homeowner elects to relocate into rental housing rather than remain a homeowner, then the agency will calculate relocation assistance payments in accordance with § 24.401(g).*

For example, the agency computes a rental assistance payment of $10,000 for the owners based on a comparable replacement rental dwelling. When the owners settle with the agency, the owner will pay off the balance of the reverse mortgage and retain any remaining equity in the property. They are eligible for the rental assistance payment when they rent and occupy the DSS replacement dwelling.

Note: In all situations, if the displaced homeowner elects to relocate into rental housing rather than remain homeowner, then the agency will calculate relocation assistance payments in accordance with § 24.401(g).

Note: If the existing reverse mortgage was a lump-sum or line-of-credit which has been exhausted, then the agency is not under obligation to replace those amounts, but only to replace the reverse mortgage with a reverse mortgage with terms and equity similar to the displacement reverse mortgage.

Other agency options (not recommended unless elected by the displaced person, since they do not place the person into the same situation as the displacement reverse mortgage provided):

• A direct loan as set forth in § 24.404 under housing of last resort.

• A life estate interest in a comparable replacement dwelling under replacement housing of last resort.

• Agency purchases a comparable replacement dwelling and retains ownership and conveys a leasehold interest to the owner for his/her lifetime.

• Agency offers a comparable replacement rental dwelling to convert the homeowner-occupant to tenant status.

Section 24.402 Replacement Housing Payment for 90-day tenants and certain others.

Section 24.402(b)(2) Low income calculation example. The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with § 24.402(b). One factor in this calculation is to determine if a displaced person is classified as having ''low income,'' as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the agency must: (1) Determine the total number of members in the household (including all adults and children); (2) locate the appropriate table for income limits applicable to the Uniform Act for the State in which the displaced residence is located (found at: *https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm*); (3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA),* or Primary Metropolitan Statistical Area (PMSA)* in which the displacement property is located; and (4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (defined at § 24.2(a)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered ''low income.'' For example:

Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the agency is as follows:

Tom Smith, employed, earns $21,000/yr.
Mary Smith, receives disability payments of $6,000/yr.
Tom Smith, Jr., 21, employed, earns $10,000/yr.
Mary Jane Smith, 17, student, has a paper route, earns $3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)
Sammie Smith, 10, full-time student, no income.
Total family income for five persons is: $35,000 + 12,000 + $18,000 = $65,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a five person household is: $77,950. (2022 Income Limits)

This household is considered ''low income.''

* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item ''Income Limit Area Definition'' posted on the FHWA's website at: *https://www.fhwa.dot.gov/real_estate/.*

Section 24.402(c) Down payment assistance. The down payment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant. It does, however, provide the latitude for agency discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the $9,570 statutory maximum. This does not mean, however, that such agency discretion may be exercised in a selective or discriminatory fashion. The agency should develop a policy or requirement that affords equal treatment for displaced persons in like circumstances and this or requirement should be applied uniformly throughout the agency's programs or projects.

For the purpose of this section, a displaced homeowner who elects to rent a replacement dwelling may not receive more than the eligibility the homeowner would have received as an eligible displaced homeowner purchasing a home.

Section 24.404(c)(3) requires the agency to provide assistance to a displaced owner or tenant occupant who fails to meet the 90-day requirement for length of occupancy of the displacement dwelling, prior to the initiation of negotiations, which is required for eligibility to receive a replacement housing payment under §§ 24.401 and 24.402.

Section 24.403(a)(1) Determining cost of comparable replacement dwelling. The requirement that if available at least 3 comparable dwellings should be considered when selecting a comparable dwelling when determining and calculating a replacement housing payment eligibility. Consideration, examination, or the viewing of an MLS listing does not equate to the inspection of the comparable dwelling required by § 24.205(c)(2)(ii)(C), which requires that at a minimum, the comparable dwelling should be physically inspected. When an inspection is not feasible, the displaced person must be informed in writing that a physical inspection of the interior or exterior was not performed, the reason that the inspection was not performed, and that if the comparable is selected as a replacement dwelling a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. Should the selected comparable dwelling later be found to not be DSS then the agency's policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling,* are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Some Federal funding agency requirements, such as those of the Department of Housing and Urban Development, prohibit reliance on an exterior visual inspection when selecting a comparable replacement dwelling or as part of determining the cost of comparable replacement dwellings. This is because the physical condition standards for such governmental housing assistance programs could not be met without an in-person physical inspection.

Section 24.403(a)(2) Carve Out of a Major Exterior Attribute. When determining the cost of a replacement dwelling, this section requires that the contributory value of a major exterior attribute, as determined in the real property valuation, be subtracted from the acquisition price of the displacement dwelling for purposes of computing the replacement housing payment if the comparable replacement dwelling lacks the major exterior attribute. The adjustment to the value of the displacement dwelling for the purpose of computing a replacement housing payment eligibility when a major exterior attribute is not available in the comparable replacement housing on the open market is often referred to as a ''carve out.'' Examples of such major exterior attributes may include land in excess of that typical in size for the neighborhood, a swimming pool, shed, or garage. Use of a carve out allows agencies to ensure comparable dwellings are available to the displaced person. The displaced person has received just compensation for the carved out attribute and may decide to use that compensation to replace the attribute. However, it should be noted that some carved out attributes, acreage as one example, cannot always be replaced in the immediate market and a displaced person may then have to decide whether they want to expand their search area and reconsider their desired replacement home location. The following are examples of the calculation process.

(Example A)

RHP Computation for Carve Out of a Major Exterior Attribute of a Displacement Property's Land in Excess of a Typical Lot:

Value of residential displacement real property on a larger lot than typical site for the neighborhood	*$200,000*
Minus the value of displacement property's land in excess of a typical site & not in comparable housing	*15,000*
Adjusted value of the displacement real property less carve out of the excess land	*185,000*
List Price of the Selected Comparable Housing	*210,000*
Minus the adjusted value of the displacement real property resulting from carve out of the excess land	*185,000*
Replacement Housing Payment Price Differential Payment Eligibility	*25,000*

(Example B)

RHP Computation for Carve Out of a Major Exterior Attribute of Displacement Property's Inground Swimming Pool:

Value of residential displacement real property with an inground swimming pool	*$250,000*
Minus the contributory value of displacement property's inground swimming pool not in the comparable	*14,000*
Adjusted value of the displacement real property less carve out of the inground swimming pool	*236,000*
List Price of the Selected Comparable Housing	*245,000*
Minus the adjusted value of the displacement real property less the inground swimming pool carve out	*236,000*
Replacement Housing Payment Price Differential Payment Eligibility	*11,000*

Section 24.403(a)(3) Additional rules governing replacement housing payments. The economic value to the owner of a remainder may be as an actual buildable lot for sale to an adjoining property owner, or for some other purpose for which the agency attributes an economic value to the owner. When allowed for under applicable law, a single offer that includes the value of the remainder property should be made. The purpose of making an offer to purchase the remainder is to allow for an RHP calculation and benefit determination that includes the value of the remainder as part of the compensation offered to the owner for acquisition, whether the property owner sells the remainder or choses to retain it. Should a property owner decide to retain a remainder then he would be responsible for the value of the remainder when he purchases his replacement property. Example B of this section shows the effect that a property owner's decision to retain a remainder or a State's inability to, or election not to, make an offer to purchase the remainder would have on the calculation of benefits.

The price differential portion of the replacement housing payment would be the difference between the comparable replacement dwelling and the agency's highest written acquisition offer. In the following examples, the before value of the typical residential dwelling and lot is $180,000; the remnant is valued at $15,000, and the part needed for the project (including the dwelling) is valued at $165,000, the comparable replacement dwelling is valued at $200,000. The price differential would be calculated as follows in the two scenarios:

(EXAMPLE A) AGENCY OFFERS TO ACQUIRE REMAINDER

Comparable Replacement Dwelling	.....	$200,000
Before value of parcel	180,000	.....
Minus: Remainder Value	15,000	.....
Acquisition of Part Needed	165,000	.....
Agency's highest written offer	.....	180,000
Price Differential Payment Eligibility	.....	20,000

(EXAMPLE B) AGENCY DOES NOT OFFER TO ACQUIRE REMAINDER

Comparable Replacement Dwelling	.....	$200,000
Before value of parcel	180,000	.....
Minus: Remainder Value (owner retains)	15,000	.....
Acquisition of Part Needed	165,000	.....
Agency's highest written offer for part needed	.....	165,000
Price Differential Payment Eligibility	.....	35,000

Section 24.404 Replacement housing of last resort.

Section 24.404(b) Basic rights of persons to be displaced. Section 24.404(b) affirms the right of a 90-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of ''owner of a dwelling'' at § 24.2(a). The agency is not required to provide persons owning only a

fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. Section 24.404(c) emphasizes the use of cost effective means of providing comparable replacement housing. The term ''reasonable cost'' is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards, nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe, and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Federal agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an agency may provide what it believes to be a reasonable estimate.

2. *Report period.* Activities shall be reported on a Federal fiscal year basis, *i.e.,* October 1 through September 30.

3. *Where and when to submit report.* Submit a copy of this report to the Lead Agency as soon as possible after September 30, but not later than November 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), 1200 New Jersey Avenue SE, Washington, DC 20590.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in parts of this section A, B, and C to the nearest dollar.

6. *Regulatory references.* The references in parts A, B, C, and D of this section indicate the subpart of this part pertaining to the requested information.

Part A. Real Property Acquisition Under the Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line 2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term ''households'' includes all families and individuals. A family is reported as ''one'' household, *not* by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a down payment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

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FEDERAL FISCAL YEAR ENDING SEPT. 30, 20____

REPORTING AGENCY: _____

STATE: _____

CITY/COUNTY (For Local Government Agencies): _____

FEDERAL FUNDING AGENCY: _____

PART A. REAL PROPERTY ACQUISITION UNDER THE UNIFORM ACT	
1) Total Number of Parcels Acquired (Ownerships)	
2) Number of Parcels in Line 1 Acquired by Condemnation	
3) Number of Parcels in Line 1 Acquired by Administrative Settlement (Above initial offer –see 24.102(i))	
4) Compensation – Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	
PART B. RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
5) Total Number of Residential Displacements (Households)	
6) Residential Moving Payments – Total Costs	
7) Replacement Housing Payments – Total Costs	
8) Number of Last Resort Housing Displacements in Line 5 (Households)	
9) Number of Tenants converted to Homeowners in Line 5 (Households using 24.402(c))	
10) Total Costs for Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	
PART C. NONRESIDENTIAL RELOCATION UNDER THE UNIFORM ACT	
11) Total Number of NonResidential Displacements	
12) NonResidential Moving Payments – Total Costs (Including 24.305)	
13) NonResidential Reestablishment Payments – Total Costs	
14) Total Costs for Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	
PART D. RELOCATION APPEALS UNDER THE UNIFORM ACT	
15) Total Number of Relocation Appeals (Residential & NonResidential)	

[FR Doc. 2024–08736 Filed 5–2–24; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2023–0074; FXES11130100000–245–FF01E00000]

RIN 1018–BG89

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bear in the North Cascades Ecosystem, Washington State

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), establish a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) within the U.S. portion of the North Cascades Ecosystem (NCE) in the State of Washington under section 10(j) of the Endangered Species Act of 1973, as amended (Act or ESA). Establishment of this NEP is intended to support reintroduction and recovery of grizzly bears within the NCE and provide the prohibitions and exceptions under the Act necessary and appropriate to conserve the species within a defined NEP area. The geographic boundary of the NEP includes most of the State of Washington except for an area in northeastern Washington that encompasses the Selkirk Ecosystem Grizzly Bear Recovery Zone. The best available data indicate that reintroduction of the grizzly bear to the NCE, within the NEP area, is biologically feasible and will promote the conservation of the species.

DATES: This rule is effective June 3, 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 June 3, 2024.

ADDRESSES: This final rule, public comments on our September 29, 2023, proposed rule, a final environmental impact statement, and the record of decision, are available on the internet at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2023–0074.

Information Collection Requirements: Written comments and suggestions on the information collection requirements may be submitted at any time 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 1018–0199'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 1009 College Street SE, Lacey, WA 98503; telephone 360 753 9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

SUPPLEMENTARY INFORMATION: The Service is establishing a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) within the U.S. portion of the North Cascades Ecosystem (NCE) in the State of Washington under section 10(j) of the Act.

Previous Federal Actions

In November 2022, the National Park Service (NPS) and Service jointly initiated the process for developing an Environmental Impact Statement (EIS)/Grizzly Bear Restoration Plan for the North Cascades Ecosystem. On September 28, 2023, the draft Environmental Impact Statement (EIS) was published (88 FR 67277). One of three alternatives assessed in the draft EIS proposed to restore grizzly bears to the NCE through reintroduction of grizzly bears and designation of an NEP under the Act. On September 30, 2023, the Service published a proposed rule pursuant to section 10(j) of the Act (hereafter, a ''10(j) rule'') to reintroduce grizzly bears to a portion of the NCE in Washington State as an NEP and manage them in accordance with a proposed zoned management approach (88 FR 67193). For a description of previous Federal actions concerning this species, please refer to the proposed rule or to our Environmental Conservation Online System (ECOS) species profile for the grizzly bear at *https://ecos.fws.gov/ecp/species/7642.*

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review, we solicited independent scientific review of the proposed rule (USFWS in litt. 2016, entire). We invited six independent peer reviewers and received three responses. The peer reviews can be found at *https://www.regulations.gov* and *https://fws.gov/library/categories/peer-review-plans.* In preparing this final rule, we incorporated the results of these reviews, as appropriate, into this final rule. A summary of the peer review comments, and our responses can be found in the Summary of Comments and Recommendations below.

Summary of Changes From the Proposed Rule

As a result of comments, additional data received during the comment period, and additional analysis, we made several changes to the rule we proposed on September 29, 2023 (88 FR 67193). In addition to updating information, correcting errors, clarifying descriptions, and providing additional details and context in this final rule, we:

- Changed the names of Management Zones 1, 2, and 3 to Management Areas A, B, and C to avoid potential confusion with numbered management zones in other parts of the species' range.
- Specified that, within the NEP boundary, Management Area C would comprise all non-Federal lands within the NCE Recovery Zone and all other lands outside of or not otherwise included in proposed Management Areas A and B.
- Specified that should a grizzly bear be found in the NEP area before our initial translocation of a grizzly bear into the NEP (*e.g.,* a grizzly bear moving from Canada to the United States), it would be managed under the grizzly bear section 4(d) rule (50 CFR 17.40(b)).
- Added allowance in all Management Areas of the NEP for preemptive relocation of grizzly bears by authorized agencies to prevent imminent conflict or habituation.
- Added a provision for individuals to lethally take grizzly bears in Management Area C if the bear is in the act of attacking livestock (including working dogs) on private lands and added definitions of ''in the act of attacking'' and ''working dogs.''
- Reduced the timeframe for authorization to individuals for lethal take of a grizzly bear in Management Areas B and C from 2 weeks to 5 days.
- Added definitions for ''demonstrable and ongoing threat,'' ''human-occupied areas,'' and ''threat to human safety'' in relation to provisions for conflict management; added a

definition of ''lasting bodily injury'' relative to the limits of actions to deter grizzly bears; and clarified the meaning of ''humane'' when lethally removing a grizzly bear.

- Clarified several aspects of the rule, including the following:
  - The 'no net loss' of core area requirement for the incidental take exception applies to U.S. Forest Service (USFS) actions on National Forest System lands in Management Area A only.
  - We will attempt to capture 3 to 7 bears per year (rather than 5 to 7 bears) to establish the initial target population of 25 bears.
  - Authorized agencies may relocate bears to a remote area that is not specific to a certain management area.
  - Individuals are authorized to deter grizzly bears to promote human safety, prevent conflict, or protect property, including individuals such as forest managers, loggers, and others conducting otherwise lawful forest management activities.
  - Reporting requirements for take do not apply to incidental take resulting from habitat modification; such reporting may otherwise be addressed as a result of section 7(a)(2) consultation when applicable.
  - USFS-issued road use permits that include hauling on non-Federal lands are included in Federal actions that are exempt from section 7(a)(2) consultation requirements.
- Provided clearer definitions or enhanced discussion of the following terms: ''deterrence,'' ''conflict bears,'' ''humane lethal take,'' and ''authorized agency.''

Summary of Comments and Recommendations

In the proposed rule published on September 29, 2023 (88 FR 67193), we requested that all interested parties submit written comments on the proposal by November 13, 2023. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We invited all federally recognized Tribes in the State of Washington to consult on the development of the 10(j) rule, and this invitation was also sent to Tribal governments near potential source populations of grizzly bears in the Northern Continental Divide Ecosystem (NCDE) and Greater Yellowstone Ecosystem (GYE). An informational virtual presentation was held online on October 17, 2023, with agency staff describing the proposed rule and answering questions submitted by the public. An informational presentation was also posted online for the public to view. Four in-person public meetings to present information and obtain feedback were held around the ecosystem between October 30 and November 3, 2023. News releases were published online announcing the proposal and the public meetings. During the 45-day comment period, we received over 12,200 comments on the proposed 10(j) rule and over 12,700 comments on the draft EIS.

Below, we summarize the substantive comments pertinent to the rulemaking and our responses to those comments. We considered substantive comments to be those that provided information relevant to our requested action, such as data, pertinent anecdotal information, or opinions backed by relevant experience or information, and literature citations. Due to the similarity of many comments, we combined multiple comments into a single, synthesized comment for many issues. We considered nonsubstantive those comments that expressed a statement or opinion without providing supporting information or relevance, or restated data or information that we already have but without an alternate perspective to consider. We also considered comments that sought actions beyond the scope of our proposal or authority to be nonsubstantive but have provided a response as needed in some instances to explain our rationale. Substantive comments from peer reviewers, Federal agencies, congressional representatives, State agencies, and Tribes are grouped separately. Comments common to multiple groups are presented first. All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below.

Comments Common to Multiple Groups

Comment: One peer reviewer questioned whether the NEP designation was necessary, and asked whether the Service had a summary of other species designated as NEPs and whether they were successful. Another commenter stated that the current 4(d) rule is sufficient as it already allows for management of bears involved in conflict, noting that the Service is under no obligation to issue a new rule to expand allowable take.

Response: Based on our extensive outreach efforts with Federal and State agencies, Tribes, local governments, and interested parties, as well as public comments received in the EIS process, we have concluded that an NEP designation is an important tool in this instance to build social tolerance and support for grizzly bear conservation in the NCE. In our experience managing grizzly bears under the 4(d) rule, by limiting impacts to property and safety and providing more tools to address threats, the public's receptivity and tolerance to having grizzly bears on the landscape is likely to improve.

The Service has discretion on whether to designate experimental populations of listed species, and how to tailor protections and management of grizzly bears designated as an experimental population. The Service and NPS considered an alternative in the EIS that would reintroduce grizzly bears with existing ESA protections under the current 4(d) rule, but for the reasons discussed further in the final EIS (NPS and USFWS 2024, entire) and our Record of Decision (*e.g.,* likelihood of successful grizzly bear restoration, public safety, long-term management, and impacts on natural and socioeconomic resources), we selected Alternative C: Restoration with ESA section 10(j) designation as preferred over reintroduction under the 4(d) rule.

Comment: Commenters expressed concern about the size and placement of the NEP boundary and its relation to the NCE Recovery Zone. A commenter stated that the NEP boundary should be smaller (extending no more than 25 mi (40 km) beyond the eastern side of the NCE Recovery Zone) to provide full ESA protections to grizzly bears in the Selkirk Recovery Zone. Another commenter stated that the NEP boundary should be larger to include the States of Idaho and Oregon.

Response: Grizzly bear recovery zones were established by the Service to delineate areas in the lower 48 States that have sufficient habitat to support recovery for grizzly bear populations. The NCE Recovery Zone is not a regulatory boundary for the purposes of the 10(j) rule, but is used as a reference for delineating Management Area A. The NEP boundary encompasses not only the NCE Recovery Zone, but also areas outside of the NCE Recovery Zone through which reintroduced grizzly bears may potentially pass or periodically use at some point in the future, and where their presence may necessitate increased management flexibility. The NEP boundary and the Management Area boundaries are clearly identified in figure 2 and in the text of the final rule. The NCE Recovery Zone is also shown in figure 2 for context. Based on verified grizzly bear occurrence data and information on grizzly bear dispersal distances, we anticipate the separation of the Selkirk Recovery Zone from the NEP boundary (see *Where is the grizzly bear North*

Cascades NEP?, in § 17.84 Species-specific rules—vertebrates in the rule portion of this document), will be sufficient to protect grizzly bears from the Selkirk ecosystem. We did not include adjacent States in the NEP boundary, as reintroduced grizzly bears are unlikely to disperse as far as Idaho or Oregon in the near future due to limited habitat connectivity (*e.g.,* human population centers, highways, Columbia River).

Comment: Commenters recommended various areas be changed to a different Management Area designation based on perceived importance or lack of importance to grizzly bears, and based on the perceived default bear management that would likely follow under a specific Management Area designation. Commenters, including a peer reviewer, suggested that State lands (specifically Loomis State Forest, Colockum Wildlife Area, and Loup Loup State Forest), should be included in Management Areas A or B, as they contain suitable grizzly bear habitat. One commenter suggested including a size comparison between the NCE Recovery Zone and Management Area A to emphasize the limited difference between the two (*i.e.,* removal of State and private lands had limited impact to the overall size of the NCE Recovery Zone). One commenter requested all Management Areas allow for management practices allowed in Management Area C.

Commenters expressed concern that the characterization of Management Area B as having limited human influence did not reflect recreational or other multiple uses on these lands. They also expressed concern that Management Area B did not appear to be grounded in the biological needs of grizzly bears. Taken in combination, they expressed concern that the NEP delineation could be interpreted by the public as seeking to determine land uses on National Forest System lands, which could impact social acceptance of expansion of grizzly bear populations in similar areas outside of the NEP boundary. One commenter stated that the Management Area descriptions imply recovery and occupancy is expected only on Federal lands within the NCE Recovery Zone boundary, and that the Service should be more explicit about how it will manage for grizzly bears.

A commenter requested clarification for why the Olympic Peninsula and Columbia Plateau are included in Management Area C.

One commenter requested further information about how the Bear Management Units informed the designation of Management Area boundaries, expressed concern about proximity of urban growth areas to Management Area A, and expressed concern that private lands would become ecological sinks.

Response: The primary grizzly bear recovery effort within the NCE Recovery Zone should be focused on Federal lands because these lands provide adequate secure habitat (large tracts of relatively undisturbed land), which is the most crucial element in grizzly bear recovery. Management Area A, which includes NPS and National Forest System lands, encompasses approximately 85 percent of the NCE Recovery Zone. These Federal lands support grizzly bear diet, habitat, and reproduction needs (see *Behavior and Life History,* below). Federal land protections, such as motorized restrictions, the Wilderness Act, and Inventoried Roadless Areas (IRAs) help ensure secure habitat on Federal lands for grizzly bears into the future (USFWS 2022, p. 8). To successfully recover and manage reintroduced grizzly bears and their progeny over time, the rule provides a graduated approach to management flexibility while focusing recovery efforts for grizzly bears on Federal lands within the NCE Recovery Zone (see *Management Areas,* below). Management Areas are based on suitability for occupancy by grizzly bears and the likelihood of human-bear conflicts.

Although we acknowledge other landownerships within the NCE Recovery Zone contain suitable grizzly bear habitat, at least allowing for greater management flexibility is appropriate on those non-Federal lands within the NCE Recovery Zone by including those under Management Area C. However, our State partners or other authorized agencies will not necessarily act on that greater management flexibility, especially in areas where suitable habitat could complement recovery efforts for grizzly bears in the NCE and in areas less likely to result in human-grizzly bear conflicts. Not all management areas allow for the management practices that are allowed in Management Area C, as requested by the commenter, because Management Area A serves as core habitat for the survival, reproduction, and dispersal of the NEP, and Management Area B is meant to accommodate natural movement or dispersal by grizzly bears.

The Service included Federal lands in Management Area B to acknowledge their greater potential for use by grizzly bears than most areas in Management Area C and because the Federal lands can complement the recovery within the NCE Recovery Zone. The primary difference in management between Management Areas B and C and Management Area A is the additional allowance of authorized conditioned lethal take by an individual within Areas B and C.

The delineation of Management Areas does not alter or affect any National Forest System land management decision or activity. Rather, the delineation provides different tools in managing grizzly bears in accordance with the specific Management Area. The 10(j) rule provides for greater flexibility in management of grizzly bears on these lands than without the 10(j) rule. The framework of the 10(j) rule is designed for restoration of grizzly bears in the NCE Recovery Zone and solely applies to the area within the NEP boundary within Washington State.

The need for the tools and flexibilities that a 10(j) experimental population designation provides has been a recurring theme in public comment and community conversations starting with the previous North Cascades Grizzly Restoration Plan/EIS process that was terminated in 2020 (85 FR 41624, July 10, 2020). The intent of the 10(j) rule is to limit the potential impacts of reintroduction of this listed species to improve tolerance.

Grizzly bears reintroduced into the NCE Recovery Zone are highly unlikely to disperse to the Olympic Peninsula due to the distance, geographic barriers, and human population centers. Grizzly bears similarly would also need to cross significant barriers to reach the Columbia Plateau. Including these areas in the Management Area C does not mean that we intend on reintroducing or recovering populations there. However, including these areas within the NEP boundary and under Management Area C serves to ensure we account for any unexpected dispersal of bears to those areas and to allow for the greatest level of management flexibility should that occur. If those regions of Washington were not included as part of the NEP area, any grizzly bears that dispersed to these areas would be managed as threatened under the 4(d) rule.

Bear management units are delineated within recovery zones as part of recovery planning and used in aid of habitat and population monitoring; they were not used to designate management areas. All the bear management units for the NCE Recovery Zone are included in Management Area A. While management flexibilities available on private lands may provide for additional lethal take, the Service will monitor all lethal take and will not consider lethal take a first resort for conflict

management particularly on public lands, which comprise the bulk of the NCE Recovery Zone.

Comment: Commenters, including Representative Dan Newhouse, expressed concern that the proposed restoration plan does not comply with Washington State Law (RCW 77.12.035).

Response: Washington State law does not preclude the NPS and the Service from reintroducing grizzly bear as proposed. The Washington State Office of the Attorney General has interpreted the provision to prohibit only the Washington Department of Fish and Wildlife (WDFW) from transplanting or introducing bears into the State (see *Federalism (E.O. 13132),* below, for further discussion of co-management with Washington).

Comment: Commenters expressed concern about adequate funding for agency staffing, outreach and education, nonlethal control measures (*e.g.,* electric fences, bear-resistant garbage containers), conflict management, livestock depredation compensation, improvements to sanitation, and food storage infrastructure. One commenter suggested conservation organizations should be encouraged to provide those funds.

Response: The final EIS (NPS and USFWS 2024) includes further analysis of costs associated with the restoration of grizzly bear in the NCE in Appendix C. The Service will develop memorandums of understanding with Federal, State, and Tribal agency partners to document roles and responsibilities and identify sources for support in implementing the rule (see *Management Restrictions, Protective Measures, and Other Special Management,* below). Funding for programs, including outreach and education, nonlethal control measures, conflict management, livestock depredation compensation, and improvements to sanitation and food storage infrastructure is often in partnership with other agencies, States, Tribes, and nongovernmental organizations. The Service will work with partners to model programs in the NCE after similar successful programs in other grizzly bear ecosystems. In the NCE, efforts are ongoing by WDFW, USFS, the North Cascades NPS complex, and several nongovernmental organizations to provide communities with resources, technical support, and education. We will work with partner agencies and nongovernmental organizations to identify funding needs and priorities, as well as potential sources.

Comment: A commenter expressed concern that the NCE grizzly bear restoration plan is being proposed despite the need for the Service to prioritize numerous other species with their limited resources, and suggested a focus on land protection, habitat restoration, and grants to enhance species recovery. Commenters also stated that NCE recovery efforts should not reduce resources supporting current and ongoing grizzly bear recovery efforts in other ecosystems.

Response: The Service has established recovery plans for multiple species including grizzly bear and works with partners to implement recovery actions identified in the recovery plans. Funding of recovery actions is provided by a combination of Federal appropriations to the Service and other Federal agencies and from partner contributions. The Service annually prioritizes and adjusts investment level in recovery actions across multiple species based on multiple factors including available Federal and partner funding. The Service seeks to recover grizzly bears in all six recovery zones consistent with its Grizzly Bear Recovery Plan (revised, USFWS 1993, entire) (hereafter Recovery Plan). The NCE Recovery Zone has been managed to protect and secure habitat for grizzly bears since 1997 (USFWS 1997, entire). Restoration efforts will be carried out jointly between NPS and the Service and interested partners. The Service will continue to work with our Federal, State, Tribal, and other partners to prioritize Service staff time to conduct grizzly bear outreach and education, provide technical assistance, and assist with conflict management.

Comment: Multiple commenters expressed concerns about impacts to the recovery of source populations. The State of Idaho Governor's Office of Species Conservation (Idaho OSC), the Idaho Department of Fish and Game (Idaho DFG), and Montana Fish, Wildlife, and Parks (Montana FWP) stated concerns about impacts to U.S.-based source populations of NCE and restoration efforts in GYE and NCDE and concerns about coordination with responsible authorities in areas of potential source populations. Another commenter suggested that source populations of bears should not be in the lower 48 States and that bears should not come from coastal food economies, while another opposed the transfer of fully protected grizzlies from other States to the NCE, emphasizing the importance of keeping grizzlies in their native habitats where they are not yet fully recovered.

Response: As described in the rule, the Service expects to obtain grizzly bears for reintroduction based on source populations that have a positive growth rate, could withstand the loss of bears to support the NCE, and have similar food economies to the NCE. The Service will consider bears from a number of source populations, including British Columbia, NCDE, and GYE. Implementation of the rule is not expected to result in meaningful impacts to source populations (see *Effects on Wild Populations,* below). Any bears sourced from the NCDE or GYE Demographic Monitoring Areas will count against the mortality thresholds addressing those populations. The Service will contact the relevant authorities to develop specific plans for bear captures for translocation to the NCE Recovery Zone before captures are implemented.

Comment: Commenters, including Montana FWP, commented on issues related to the number of bears in a restoration population. Montana FWP stated that recovery criteria are not established for the NCE Recovery Zone and that the 200–400 grizzly bear carrying capacity number cited in our proposed rule may not be adequate for recovery and delisting in the NCE Recovery Zone, and questioned whether genetic connectivity or genetic augmentation will be required. Another commenter stated that the restoration population of 200 bears in the NCE is too low and instead should be 1,000 bears to ensure long-term genetic viability.

Response: The section 10(j) rule does not set recovery criteria or goals for the grizzly bear listed entity, nor is it required to do so. Rather, the section 10(j) rule helps to implement recovery guidance contained in the NCE supplement to the Grizzly Bear Recovery Plan (USFWS 1997, entire), which recommended consideration of translocations in aid of recovery (see ''Recovery Efforts to Date'' below). The Service will take into account the need for genetic diversity as part of the restoration effort starting with selection of source populations that have high heterozygosity. The restoration plan and 10(j) rule include monitoring of genetic diversity and adaptive management through additional translocations if necessary to enhance heterozygosity and long-term genetic viability of the NEP (see *Capture and Release Procedures,* below).

Comment: Many commenters, including Tribes, raised concern over human safety and the risk grizzly bears may pose for people living, working, and recreating in the North Cascades. Other commenters identified the need for additional education and outreach related to bear safety and conflict

prevention, with some commenters highlighting the importance of signage, grant opportunities, and direct engagement with communities.

Response: While grizzly bear attacks on humans are rare, they can occur and can have serious consequences. While precautions must be taken, our experience with grizzly bears in other ecosystems demonstrates that human-bear conflict can be minimized with a variety of tools, including the securing of attractants and maintaining awareness of surroundings. Many of the precautions needed for living and recreating among grizzly bears are also the same as for black bears, which are already present in the ecosystem. The 10(j) rule includes provisions affirming the ability of individuals to take bears in self-defense and to allow individuals to deter bears out of close proximity to people or property.

The Service will continue to provide information and education for the public and affected communities about best practices for grizzly bear safety. Education and outreach about how to minimize conflict is an important part of project implementation, and we will work with partners to increase outreach to people who live, work, and recreate in the NCE and surrounding areas. Outreach and education efforts will be modeled after similar efforts and practices developed in other grizzly bear recovery ecosystems over multiple decades.

Comment: Commenters suggested that using grizzly bear forage estimates from the Cabinet-Yaak Ecosystem (CYE) may be problematic, and could lead to increased movements, human conflicts, and mortality resulting from diet limitations. One commenter suggested that British Columbia would be a better analog for climate and food selection than the CYE or the diet of males in the NCDE and GYE that were referenced in the proposed rule.

Response: The EIS includes an analysis of habitat suitability and grizzly bear foods and vegetation types in the North Cascades. Many of the vegetation types and available foods in the North Cascades are similar to the CYE where grizzly bear food habits have been studied. This makes the CYE a good analog to the NCE for evaluating potential grizzly bear food use. We have also added a reference to grizzly bear diets and dominant food sources in British Columbia (see *Behavior and Life History,* below).

Comment: Commenters expressed concern over the possible impact that grizzly bear restoration could have on salmon, game, and listed species.

Response: Because grizzly bears historically occupied the ecosystem, other species of fish and wildlife historically coinhabited the NCE with grizzly bears. Restoring grizzly bears in the NCE will contribute to restoring missing ecological interactions that help to shape fish and wildlife habitat through seed dispersal, increasing nutrient availability, and predator-prey dynamics (see van Manen et al. 2017, pp. 75–90). The final EIS provides a detailed assessment of habitat suitability, predator-prey interactions, and food and vegetation types, including elk and other ungulates, salmon, and federally listed species (NPS and USFWS 2024, chapter 3: ''Grizzly Bears'' and ''Other Wildlife and Fish'' sections).

In addition, the Service undertook an intra-service consultation and a consultation with the National Marine Fisheries Service under section 7(a)(2) and determined that the reintroduction of grizzly bears under the rule is not likely to jeopardize grizzly bear or any other ESA-listed species, including whitebark pine and ESA-listed salmon, nor result in the destruction or modification of any designated critical habitat for ESA-listed species.

Comment: One commenter stated the Service should consider how the regulation should adapt as the grizzly bear population grows and expands. One commenter asked that we consider including specific triggers, derived from proposed monitoring information, that would prompt specific changes in program implementation. One peer reviewer suggested that we more clearly define adaptive management and provide additional details on how adaptive management will be applied. One commenter asked for more details on interagency coordination in implementing monitoring and adaptive management.

Response: We updated the adaptive management section to clarify that we are using the term adaptive management in the broad sense of applying management interventions, monitoring outcomes, and modifying future management actions to achieve grizzly bear restoration objectives and maximize social tolerance. Based on our experience in other ecosystems, this flexible approach to adaptive management (for both management interventions and interagency coordination) is necessary given that we are working in complex ecological and social systems where management interventions are often context dependent.

Comment: Commenters stated that the 10(j) rule does not detail monitoring methods and resources and stated that data sharing in other recovery zones is helpful for outreach and management.

Response: Below, we describe how we intend to monitor reintroduced grizzly bears (see *Monitoring and Evaluation,* below). Prior to implementation of reintroduction, a strategy for monitoring will be developed with further details of responsibilities between the Service and other participating agencies, including how we will manage and share data.

Comment: We received several comments relating to the 1997 agreement on 'No net loss of existing core area within any bear management unit' (hereafter 'no net loss' agreement) with the NPS and USFS. One commenter stated that the existing habitat protections for core grizzly bear habitat reflected in the 'no net loss' agreement may not be sufficient. Other commenters noted that the 'no net loss' agreement will require monitoring, that data sets analyzing core habitat and trail use need to be updated, and that the agencies should work toward improving habitat connectivity. Several commenters stated that the 'no net loss' agreement should be extended to lands in Management Area B or beyond to facilitate connectivity or prevent habitat degradation.

Response: The Service is currently coordinating with the NPS and USFS through the Interagency Grizzly Bear Committee (IGBC) North Cascades Subcommittee Technical Team to update the baseline and memorialize the 'no net loss' agreement for the U.S. portion of the NCE Recovery Zone. We expect the baseline update will include metrics such as core habitat and trail data. We clarify in the final rule that the intent is for the 'no net loss' agreement as to NPS and National Forest System lands to apply only within Management Area A, the focal area for recovery of an NCE grizzly bear population.

Peer Reviewer Comments

As discussed in ''Peer Review'' above, we received comments on our proposed rule from three peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the proposed rule. We summarize substantive peer reviewer comments below that are not included in ''Comments Common to Multiple Groups.'' The peer reviewers generally concurred with our methods and conclusions and provided additional literature, information, clarifications, and suggestions to improve the final rule. For example, all three peer reviewers agreed that our description and analysis of the biology, habitat,

population trends, conservation status, and distribution of the species were accurate and that our conclusions were accurate and supported by the provided evidence, although one peer reviewer questioned the exclusion of specific State lands from Management Area B. All three peer reviewers shared that our proposed rule did not have any significant oversights, omissions, or inconsistencies. Finally, the peer reviewers provided additional literature for our consideration, such as additional citations, and we incorporated the recommended clarifications and literature, as needed.

Federal Agency Comments

One Federal agency, the Pacific Northwest Region of the USFS, provided comments on the proposed rule. We summarize substantive comments below that are not included in ''Comments Common to Multiple Groups.''

Comment: USFS stated the Service's summary of access management in the rule is too simplistic and should be deleted or changed.

Response: The access management definitions from the IGBC Task Force Report on Grizzly Bear/Motorized Access Management (USFS 1997, entire; IGBC 1998, entire) describe motorized access management across all grizzly bear recovery zones; revising those definitions is outside the scope of this rulemaking process. However, the Service has updated its summary description of 'no net loss', which requires maintenance of the core grizzly bear habitat area and limits net gain of the road network within the NCE, as recommended.

Comment: The USFS stated that some areas in Management Area B have not yet adopted measures intended to reduce human-bear conflicts as in other recovery zones where bears are present. The USFS provided as one example, the Gifford Pinchot National Forest (NF), which may not have food storage orders in place. The USFS stated that even on forests where food storage orders exist, different measures need to be implemented based on risk.

Response: We clarify that food storage orders are a requirement for national forests and NPS lands only within Management Area A for the purpose of incidental take allowance (see *Incidental Take,* below). Food storage orders and other methods of securing attractants are important tools for preventing human-wildlife conflict with many species (*e.g.,* black bears), not just grizzly bears. We recognize that improved sanitation and updated food storage infrastructure will be important for reducing potential human-bear conflicts in Management Areas B and C into the future.

Comments From States

We received comments from three State wildlife agencies, one jointly with the Idaho State Governor's Office of Species Conservation, which we summarize here and provide detailed responses to below. As previously noted, the WDFW is a cooperating agency in the planning process and the Service consulted with WDFW in the development of the proposed rule. The WDFW expressed that, if an action alternative of the FEIS is chosen, they support finalizing the rule to designate an NEP and encouraged NPS and the Service to implement releases only on NPS lands. Montana FWP expressed concern regarding potential negative impacts on grizzly bear recovery efforts in other States from grizzly bear restoration efforts in the NCE and establishing an NEP. Idaho OSC and Idaho DFG opposed NCE restoration efforts and the establishment of an NEP. We summarize substantive comments below that are not included in ''Comments Common to Multiple Groups.''

Comment: Montana FWP commented that the proposed rule was contradictory in stating that recovery of grizzly bears in each of the six recovery zones is necessary while also stating that the NCE population is not essential to the survival of the species in the wild.

Response: Reintroductions are, by their nature, experiments, the fate of which is uncertain. However, it is always our goal for reintroductions to be successful and contribute to recovery. The importance of reintroductions to recovery does not necessarily mean these populations are ''essential'' under section 10(j) of the Act. In fact, Congress' expectation was that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 97–835 at 34). The preamble to our 1984 publication of ESA 10(j) implementing regulations reflects this understanding, stating that an essential population will be a special case, and not the general rule (49 FR 33885 at 33888, August 27, 1984). The Service's objective to recover grizzly bears in each of the six recovery zones is not in conflict with the Service's determination that the North Cascades NEP will contribute to that recovery but is not essential for the survival of grizzly bears in the wild (see *Is the Experimental Population Essential to the Continued Existence of the Species in the Wild?,* below).

Comment: Montana FWP disagreed with the use of the phrase ''excessive human-caused mortality'' in the proposed rule and stated that extensive efforts in Montana and other States have minimized human-caused mortality to ensure it is not ''excessive.'' Montana FWP noted that current levels of human-caused mortality of grizzly bears in the NCDE and GYE are not considered excessive because these mortalities are below mortality thresholds at sustainable levels.

Response: We revised our discussion of threats to reflect that while human-caused mortality is a primary threat, mortality thresholds currently in place have mitigated this threat in those ecosystems such that grizzly bear populations have increased in number and range (see *Threats,* below). Mortality thresholds for the NCDE are documented in the Recovery Plan (USFWS 1993, pp. 33–34) and in the NCDE Conservation Strategy (NCDE Subcommittee 2019, entire). Thresholds for the GYE are documented in the GYE Recovery Plan Supplement: Revised Demographic Criteria (USFWS 2017, p. 6) and in the 2016 GYE Conservation Strategy (YES 2016, p. 48).

Comment: Idaho OSC and Idaho DFG stated there was a lack of coordination with ESA delisting petitions and efforts to develop conservation strategies in other grizzly bear recovery zones, including efforts by the Selkirk Cabinet-Yaak Subcommittee of the IGBC, or the current EIS process considering grizzly bear restoration in the Bitterroot Ecosystem (BE). Commentors stated the eastern boundary of the NCE NEP makes unsupported assumptions about these recovery efforts.

Response: We developed the final rule based on the current listed entity of the grizzly bear under the Act (*i.e.,* as a threatened species in the lower 48 States). The rule does not preclude the Service from making future revisions to the listed entity. If the Service revises the grizzly bear listed entity, the effect on this NEP, if any, would be addressed at that time. The Service developed the eastern boundary of the NEP based on grizzly bear data, human populations, and readily discernable features (*e.g.,* roads, Federal land boundaries). The 10(j) rule does not interfere with or preclude developing a conservation strategy by the IGBC Selkirk Cabinet-Yaak Subcommittee or considering alternatives for addressing grizzly bear restoration to the BE.

Comment: Idaho OSC and Idaho DFG questioned to which listed DPS of grizzly bear the experimental population belongs and what criteria would be used to determine whether

that DPS is recovered. They expressed concerns that the NEP would not itself qualify as a DPS and that establishing an NEP in the NCE could preclude determinations regarding delisting of the grizzly bear.

Response: An experimental population is not a separate listed entity (*i.e.,* a DPS, subspecies, or species), but instead is considered part of the listed entity (in this case, the grizzly bear lower-48 DPS). The reintroduction of an experimental population is intended to further the recovery of the listed entity to which it belongs. We anticipate that a restored grizzly bear population in the NCE will contribute to the recovery of the listed entity, which includes grizzly bears throughout the conterminous United States, by providing additional population redundancy and representation. The NEP is part of the current listed entity of the grizzly bear and does not preclude the Service from revising the listed entity in the future, at which time the effect, if any, on the NCE NEP will be considered. See *Recovery Efforts to Date* and *Effects of the Experimental Population on Grizzly Bear Recovery* for additional details on the recovery plan and efforts. If grizzly bears are recovered and delisted under the Act, the experimental population designation and associated regulation will also be removed as part of the delisting rulemaking (see *Exit Strategy,* below).

Comment: Montana FWP states they are hesitant to support removing grizzly bears from the NCDE or GYE to support the reintroduction of bears into the NCE because of the likelihood the bears could come into conflict due to the NCE's proximity to the large human population of the Puget Sound and because of the concern that the rule does not provide adequate support for conflict prevention measures.

Response: We acknowledge that NCE is adjacent to the Puget Sound region, which is densely populated by humans. However, several factors support our determination that the NCE can support a viable grizzly bear population that is no more susceptible to conflict than other grizzly bear populations. First, the gradual reintroduction of grizzly bears will provide agencies additional time to further develop conflict prevention efforts and practices employed in other recovery areas. Second, even at the eventual restoration population, the NCE will have substantially lower grizzly bear population densities than either the GYE or NCDE. Third, the NCE contains sufficient habitat and resources to support the restoration population and is composed predominantly of wilderness and IRAs that helps reduce the potential for conflict as compared with, for example, grizzly bears in areas of subpar habitat (often on private land, with high road densities). As noted above, we expect to support the efforts necessary for the successful reintroduction and management of this grizzly bear NEP through a combination of resources from the Service and other partner Federal agencies, WDFW, interested Tribes, and nongovernmental organizations.

Comment: Montana FWP suggested the Service consider more flexible criteria for determining grizzly bears for translocation to the NCE Recovery Zone (*e.g.,* bears with some conflict history, bears from dissimilar food economies).

Response: Translocating grizzly bears with no conflict history and grizzly bears from similar food economies produces a greater chance of success in the placement of these animals in the NCE Recovery Zone. This approach has been successful with augmentation efforts in the Cabinet Mountains in the CYE and is identical to the Montana FWP proposal for moving bears with no history of conflicts to the GYE.

Comment: WDFW stated that releasing bears on non-NPS lands (*e.g.,* USFS) could be more administratively complex for WDFW than releasing bears on NPS lands because in WDFW's view the NPS Organic Act provides clearer Federal support for releasing bears on NPS lands. In the scenario of releases off NPS lands, WDFW stated it would need to consider their position regarding RCW 77.12.035 and their role and responsibility to permit the importation and release of wildlife in the State of Washington. They encourage NPS and the Service to implement releases only on NPS lands.

Response: The Service and NPS will prioritize release sites on NPS lands but retain the option to conduct initial releases of grizzly bears on National Forest System lands if unforeseen circumstances prevent access to release sites on NPS lands (*e.g.,* due to aircraft issues). We will work with WDFW and the associated land management partner, whether it is NPS or USFS, to avoid administrative complications as appropriate.

Comments From Tribes

We received comment letters from two Tribes, the Sauk-Suiattle Indian Tribe and the Upper Skagit Indian Tribe. The Sauk-Suiattle Indian Tribe expressed general opposition to grizzly bear restoration efforts as described in the draft EIS. The Upper Skagit Indian Tribe expressed support for grizzly bear restoration with the designation of a nonessential experimental population (Alternative C in the draft EIS (NPS and USFWS 2023)). We summarize substantive comments below that are not included in ''Comments Common to Multiple Groups.''

Comment: The Sauk-Suiattle Tribe highlighted concerns over the threats that grizzly bears may pose to treaty rights, especially regarding resource competition for salmon and berries.

Response: We discuss the potential effects of grizzly bear restoration specific to Tribal lands and treaty right activities in chapter 3 of the EIS, in the ''Ethnographic Resources'' section. The effects on salmon and game are further addressed in chapter 3 of the final EIS (NPS and USFWS 2024), in the ''Other Wildlife and Fish'' section.

Although grizzly bears forage on foods that the Sauk-Suiattle Tribe gathers, the low number of grizzly bears spread across the NCE will have a minimal effect on those food resources, including fish, wildlife, and roots or berries. Preliminary results from northwest Montana and north Idaho suggest grizzly bear diets, on average, are composed of at least 20 percent berries during the summer months (USFWS 2019, p. 15). At that rate, we estimate an adult female grizzly bear typically consumes an average of 2.5 gallons of huckleberries per day. The bears, and this level of consumption, are expected to be distributed across the NCE Recovery Zone rather than concentrated in one area. Only minimal impacts on berry availability to humans are anticipated from the consumption of berries by the initial population levels of 25 bears and the eventual restoration population of 200 bears.

Comment: The Upper Skagit Indian Tribe requested that Tribal consultation be conducted throughout the reintroduction implementation process.

Response: The Service and the NPS will engage with and involve affected Tribes throughout the implementation of grizzly bear restoration to the NCE. Given the unique responsibility and government-to-government relationship that the Federal Government has with individual Tribal nations, Tribal consultation is always an ongoing process and will continue for the duration of grizzly bear recovery efforts in the NCE.

Comment: The Upper Skagit Indian Tribe highlighted the traditional cultural connections between grizzly bears and the Upper Skagit Indian Tribe and requested consideration of this traditional ecological knowledge and history in support of draft EIS alternative C, including designation of an NEP.

Response: The Service agrees that cultural connections and traditional ecological knowledge are important considerations and have factored these into the development of the rule. The traditional ecological knowledge of Tribes and First Nations has provided some of the evidence of historical grizzly bear presence in the NCE, and the important cultural connections underscore the importance of restoring and conserving a grizzly bear population in the ecosystem.

Congressional Comments

One Federal congressional representative, Congressman Dan Newhouse, representing the 4th District of Washington, provided comments on the proposed rule. We summarize substantive comments below that are not included in ''Comments Common to Multiple Groups.''

Comment: Congressman Newhouse stated that the NPS and the Service are not taking into the account the concerns of local communities. The commenter expressed concerns about the format of the October 17, 2023, virtual public meeting and the information presented in it, particularly that the Service's and NPS's definition of ''substantive comments'' limits public comment.

Response: During the public scoping period and comment period on the proposed rule, nine public meetings took place, both virtually and in-person, and the public was able to provide comment through a variety of methods. (See ''Consultation with State, Local, Tribal, Federal, and Affected Private Landowners,'' below, for more information).

As noted in the proposed rule and in the virtual public meeting, comments merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination or changes to the rule. Similar guidance on what constitutes substantive comment is included in NEPA handbooks for both the Service (USFWS 2014, p. 29) and the NPS (NPS 2015, p. 65). While agencies consider only substantive comments regarding the NEPA document for formal response, we do not discourage anyone from submitting their thoughts on the proposed rule. Through the public comment process, the agencies are made aware of stakeholder sentiment and factor that perspective into the decision-making process.

Comment: Congressman Newhouse stated the concurrent release of the draft EIS and proposed 10(j) rule indicates the agencies had already made a decision.

Response: A decision had not been made with the concurrent release of the draft EIS and proposed 10(j) rule. The proposed 10(j) rule is a part of the Federal proposed action to restore grizzly bear to the North Cascades. As such, the proposed 10(j) rule, and the environmental effects of that proposed rule, are appropriately considered concurrently. In the previous North Cascades Grizzly Restoration Plan/EIS process, stakeholders repeatedly asked for more detailed information about what possible management under a 10(j) experimental population designation would entail. The proposed 10(j) rule was responsive to those concerns and provided a specific framework for what management of an experimental population could look like. Without both documents being released simultaneously, the public would not be able to fully evaluate the alternative in the draft EIS that includes designation of an experimental population.

Public Comments

We received over 12,200 comments from the public, including nongovernmental organizations, trade associations on behalf of their memberships, local governments, and individual members of the public. Comments included both opposition to and support for grizzly bear restoration efforts in the NCE Recovery Zone and the designation of an NEP, as well as specific provisions of the rule. We summarize substantive comments below that are not included in ''Comments Common to Multiple Groups.''

Comment: Some commenters were concerned that prevention of human-bear conflict will result in travel restrictions, bear-proofing requirements, and permitting requirements. One commenter noted the possibility of restrictions on National Forest System lands outside of the NCE Recovery Zone. Another commenter recommended prioritizing efforts to provide bear-resistant food storage and bear-resistant garbage containers at NPS and USFS campgrounds.

Response: While short-term closures of areas may occur to prevent conflict (*e.g.,* trail closure for several days because of a grizzly bear known to be feeding on a carcass in the area), no long-term closures or travel restrictions are planned (see *Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094,* below). The NPS and USFS are currently working to improve sanitation and update food storage infrastructure and implement food storage orders where they are not already in place (see *Management Efforts in the NCE and NCE Recovery Zone,* below). We clarify that food storage is a requirement for National Forest System lands only within Management Area A for the purpose of the incidental take exception to the general prohibition against take (see *Incidental Take,* below).

Comment: A commenter stated that no bear should be preemptively relocated if the bear is not a threat to human safety, particularly if the bear has not become habituated or food-conditioned, or when nonnatural foods/attractants have not been properly secured. Commenters suggested that the Service should require the use of nonlethal conflict-reduction measures, including securing attractants, bear-resistant garbage containers, bear-resistant food cannisters, electric fences, use of guard animals or other nonlethal methods for managing conflict with livestock and domestic animals before bears are relocated or lethally removed. One commenter suggested livestock owners must be able to document and demonstrate the use of nonlethal deterrents. Commenters suggested that relocation or lethal removal of bears should only be considered after nonlethal management methods have been exhausted. Commenters stated that lethal removal should not be allowed for livestock depredations occurring on public lands.

Response: Relocation of bears should and will be a tool only used when warranted, but bears may be relocated preemptively when appropriate for recovery purposes. Relocating a bear before they become habituated, food-conditioned, or a threat to human safety is sometimes the best course of action to avoid human-bear conflict and improve the likelihood of grizzly bear survival (see *Management Restrictions, Protective Measures, and Other Special Management,* below). Throughout the NEP area, we will consider lethal removal as a management tool only when it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capture and release of the grizzly bear unharmed. Lethal take in self-defense or defense of others remains an exception throughout the NEP area. We will employ methods and tools developed in other ecosystems to reduce human-grizzly bear conflict (including depredations) and/or increase the likelihood of finding and documenting depredation events. Livestock conflicts are not always preventable. Grizzly bears can cause significant losses in some instances, but a quick management response can increase social (or public) tolerance for

grizzly bears. We will not prohibit lethal removal for livestock depredation on public lands, but it should not be the first choice.

Comment: One commenter requested a definition for the phrase ''lasting bodily injury'' in reference to injuries a bear might sustain during deterrence and hazing activities. One commenter requested the 5-day window for reporting injuries be changed to 24 hours.

Response: We added a definition for ''lasting bodily injury'' to the final rule. The 5-day reporting window is consistent with our practices under the existing 4(d) rule for the grizzly bear outside the NEP, and we retain that reporting window for this NEP. In other grizzly bear ecosystems with this same 5-day reporting requirement, partners report this type of injury immediately. We would anticipate the same response in the NCE but include a 5-day reporting window in recognition that reporting an injury within 24 hours is not always feasible.

Comment: A commenter expressed concern that unintentional lethal take may occur when hazing grizzly bears and requested specific guidance on acceptable and unacceptable hazing methods.

Response: We have added some specific examples of what deterrence methods are considered acceptable, and which ones are not (see *Deterrence,* below).

Comment: One commenter stated that the 10(j) rule does not provide enough flexibility for agricultural producers. The commenter stated that requiring confirmation of depredation in Management Area B and determination of a demonstrable and ongoing threat in Management Area C will result in harm to producers. Two commenters requested detail on what an ''ongoing threat'' means in regard to grizzly bear conflict with livestock.

Response: In the final rule we clarified and defined what we mean by ''demonstrable and ongoing threat'' and ''in the act of attacking'' (see § 17.84 Species-specific rules—vertebrates, in the rule portion of this document). The Service or authorized agencies will respond to conflicts in all Management Areas and will determine the best management action moving forward, including lethal control. Lethal take authorization with conditions will be evaluated on a case-by-case basis. Individuals can also conduct intentional nonlethal deterrence and employ preventative tools (*e.g.,* electric fences) to prevent conflicts prior to a confirmed depredation or a human safety threat. In addition, we added a provision allowing lethal take of bears in the act of attacking livestock, including working dogs, if it occurs on private lands in Management Area C (see *Management Area Management Actions,* below).

Comment: A commenter requested that forest managers, loggers, and others conducting otherwise lawful forest management activities be included in the list of those authorized to conduct nonlethal deterrence activities.

Response: We updated the rule to confirm that individuals, which includes forest managers, loggers, and others conducting otherwise lawful forest management activities, may take nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property (see *Management Restrictions, Protective Measures, and Other Special Management,* below).

Comment: One commenter expressed concern that lethal take would occur near logging operations. Other commenters disagreed with exemption of incidental take in the 10(j) rule, particularly lethal incidental take allowed as part of forestry actions, because it could seemingly affect an unlimited number of bears in a variety of unspecified scenarios.

Response: Based on our experience in other recovery zones, we expect lethal take as part of forestry actions to be very rare. The highest quality grizzly bear habitat and the location of most release sites are expected to be in wilderness where logging activities do not occur. If grizzly bears do overlap with logging operations, we expect most take to be in the form of harassment rather than lethal take. The Service and NPS considered an alternative in the EIS that would reintroduce grizzly bears with existing ESA protections, including the general prohibition against incidental take. As discussed further in the final EIS and our Record of Decision, we selected Alternative C: Restoration with ESA section 10(j) designation as the preferred approach as it allows for take in various circumstances to reduce the regulatory burden associated with reintroduction. The Grizzly Bear Recovery Plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, pp. 20–21). Because we anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero. However, zero mortalities may not be practical given the need to protect human safety and property, and due to accidental mortalities (*e.g.,* vehicle collisions).

Comment: One commenter requested more detail on what ''humane manner'' means, in terms of lethal removal of grizzly bears. Another commenter requested we remove the term humane and asserted that it is not possible to humanely remove, *i.e.,* kill, an animal.

Response: We revised the rule to clarify that ''humane'' means with compassion and consideration for the bear and minimizing pain and distress. We consider it possible to humanely treat an animal when lethally removing it and therefore decline to remove the term or the requirement.

Comment: A commenter stated that baited foot snares should not be used to capture bears intended for reintroduction to the NCE. Another commenter requested that we develop a humane capture and handling protocol due to the potential for injury and stress, particularly with foot snare traps.

Response: While trapping is expected to occur largely with culvert traps, foot snares have been used safely for research captures of grizzly bears in other areas and may be the source of trapping for some bears for this restoration effort. Culvert traps are not as portable as foot snares, which offer more opportunities to trap in remote locations where we would expect to locate bears without a history of conflicts. Agencies currently capture and handle grizzly bears humanely using the techniques such as culvert traps or foot snares followed by anesthetization and radio collaring (Jonkel 1993, entire).

Comment: Two commenters stated that a quick response is essential when responding to livestock depredations and expressed concern that government delays will hamper response. One commenter requested that authorizing conditioned lethal take should be allowed in all three management areas. One commenter requested that conditioned lethal take authorization last 4 weeks rather than 2 weeks. One commenter expressed concern about the length of time allowed for time-limited authorization.

Response: A quick response is important when responding to livestock depredations. We currently work closely and effectively with authorized agencies in four ecosystems in Idaho, Montana, and Wyoming to ensure minimal delay. We expect to establish the same relationships and protocols with authorized agencies in the NCE. Authorized agencies may remove grizzly bears in conflict in all Management Areas of this NEP if the bear meets the criteria for removal. However, as Management Area A is entirely public land and core recovery habitat, we will

not support authorizing bear removals in Management Area A by individuals other than the Service or a Federal, State, or Tribal authority of an authorized agency and expect to work with the affected Federal land managers to address any conflict concerns.

In response to the comments, we reevaluated the timeframes for lethal take authorization. In the proposed rule, we proposed a 2-week timeframe; however, we reconsidered because of the potential for killing the wrong bear with an extended timeline. With a longer timeline, the greater the possibility bears may move, and different bears may enter the area. As a result, we are not extending the timeline but instead are reducing it to 5 days. The Service may extend authorization of lethal take to individuals for an additional 5 days if there are additional grizzly bear depredations or injuries to livestock and circumstances indicate the offending bear can be identified.

Comment: Several commenters stated the provisions or sideboards describing when lethal removal of bears involved in conflict is allowed are unclear, and it is unclear as to when and why it might not be ''reasonably possible to otherwise eliminate the threat by non-lethal deterrence or live capturing and releasing the grizzly bear unharmed in a remote area.'' One commenter requested uniformity across all three Management Areas for decisions about lethal removal.

Response: Determining whether to lethally remove a grizzly bear is a complex decision process, involving highly variable and fact-specific situations. As such, it is impossible to identify parameters to account for and describe all possible scenarios in the rule. Decisions on lethal removal will be based on many factors, including the ability to identify a particular bear (*e.g.,* markings, collars, track size, canine spacing), the individual bear involved (*e.g.,* sex, age, presence of dependent young, conflict history), relevant conflict history in the immediate area, and number of bears in the area. The Service has a history of making well-informed and timely decisions about lethal removal across four ecosystems with multiple authorized agencies in Idaho, Montana, and Wyoming. We expect to establish similar practices and protocols in the NCE. The Service also revised the final rule to improve clarity regarding the circumstances in which we will authorize lethal removal but retained the ''not reasonably possible'' language allowing for appropriate judgment and discretion based on the circumstances.

Comment: Many commenters opposed lethal control authorizations for livestock owners or private individuals, citing public safety risks, likelihood of accidental wounding of bears, and potential for taking the wrong bear. Commenters stated that lethal control should be performed only by the Service or authorized agency personnel. One commenter suggested instead supplying ranchers with tranquilizer darts, whereby bears would await relocation by Federal officials, if a threat to livestock were posed.

Response: Nonlethal actions (*e.g.,* relocation, securing attractants, or deterrence) are always the first options to address conflicts, and authorization of lethal take for individuals will be considered only after these options had failed or were deemed nonviable by the Service or an authorized agency. The two exceptions are when individuals kill a bear in defense of self or others, or the limited conditioned exception for take of a bear in the act of attacking livestock or working dogs on private lands in Management Area C. The final rule affirms that authorization of lethal take will be issued only after depredations are confirmed by the Service or an authorized agency and if the Service or authorized agency concludes an ongoing threat to human safety, livestock, or other pertinent property exists. As discussed in the previous response, the Service will authorize lethal take based on many factors. The Service expects to outline these factors and communication and coordination support with authorized agencies in the agency-specific Memoranda of Understanding (MOUs). If the Service decides to authorize lethal removal, that authorization will carry clear conditions and be time-limited. Lethal removal for conflicts (other than in cases of self-defense, or for the limited exception in Management Area C described) must be performed by the Service, a Federal, State, or Tribal authority of an authorized agency in accordance with the Service–agency MOU, or via prior written authorization to the individual in accordance with the rule.

Comment: Several commenters indicated that the nonlethal incidental take reporting requirements due to 'habitat modification resulting from otherwise lawful activities' are impractical and should be exempted from reporting.

Response: We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we require reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (*e.g.,* through self-defense, deterrence, conflict management, or vehicle collision, etc.) and clarified the reporting requirements accordingly. Incidental take of a grizzly bear in the form of harm via habitat modification is not prohibited within the NEP area. Habitat modification impacts will still be identified as a result of Federal actions on NPS or NWRS lands for which section 7(a)(2) consultation requirements remain. Any recommended reporting of habitat modification impacts will be part of the associated section 7(a)(2) biological opinion if applicable. Relatedly, as incidental take is not prohibited as a result of USFS actions within Management Area A provided the USFS maintains its 'no net loss' agreement as it pertains to securing grizzly bear habitat, and the USFS is not required to consult under section 7(a)(2) on its proposed actions in the NEP area, we expect the USFS will maintain appropriate records on its 'no net loss' agreement to confirm its actions are within the 10(j) rule incidental take exception.

Comment: A commenter stated that the Service failed to provide any analysis to explain how lethal take of grizzly bears on Federal public lands to protect livestock grazing on public lands serves a conservation purpose. In addition, they stated that the proposed rule and draft EIS lacked adequate consideration of alternative mechanisms for Federal lands that would better take into account the authority that Federal land managers have to protect the reintroduced population, better fulfill the conservation purpose of section 10(j), and better align with the duty imposed on such agencies under section 7(a)(1) of the Act to further conservation of the species.

Response: When we assess the conservation value of designating an experimental population and reintroducing a listed species, we evaluate the totality of the conservation and management actions associated with that designation, recognizing that some flexibility in managing the reintroduced population may be necessary to build support for the reintroduction. Lethal take on Federal lands in Management Area A is limited to the Service and authorized agencies only if it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed and the taking is done in a humane manner. This is similar to the management of grizzly bears listed as threatened under the Act in other

ecosystems under the 4(d) rule. Therefore, the NEP designation does not represent a substantial change to the way grizzly bears are managed in relation to grazing allotments on Federal lands under the 4(d) rule.

Comment: One commenter requested that the 10(j) rule authorize a grizzly bear hunting season.

Response: The rule does not address or authorize grizzly bear hunting. Hunting regulations in Washington are established by State and Tribal authorities. Grizzly bears are currently listed as a State endangered species in Washington, and we do not expect that, even with this reintroduction, grizzly bear populations will become large enough to sustain recreational harvest anytime in the near future.

Comment: A commenter noted that in the preamble of the proposed rule and draft EIS that we specified unintentional incidental take would be exempted provided such take is nonnegligent but noted that we did not specify it in the text of the rule itself; they considered this to misleadingly describe a more protective rule.

Response: We updated the exceptions to the general take prohibition in the rule to clarify that take must be unintentional and nonnegligent for the incidental take exception to apply.

Comment: One commenter expressed concern that reintroducing grizzly bears would require additional regulations that would hamper forestry activities and wildfire response on Federal and non-Federal lands. Another commenter recommended clarifying that permissible incidental take should include any habitat modification from otherwise lawful forest management activities consistent with the Forest Practices Act and pursuant to an approved habitat conservation plan, section 10(a)(1)(A) permit, or similar authorization.

Response: The final rule is not expected to hamper forestry activities or response to wildfires on Federal or non-Federal lands. Under the 10(j) rule, as with all designated NEPs, consultation under section 7(a)(2) of the Act is not required for Federal actions if they do not occur on a National Wildlife Refuge or NPS land. On National Forest System lands, this means consultation under section 7(a)(2) is not required, even if the proposed Federal action may affect grizzly bears of the NEP; however, Federal agencies including the USFS are still required to confer with the Service, consistent with section 7(a)(4), for any agency action that is likely to jeopardize the continued existence of the listed species. In addition, provided the USFS retains its agreement regarding maintaining core secure habitat in Management Area A, incidental take from a USFS action in Management Area A is allowed. On all non-Federal land, including State-managed lands, take of a grizzly bear is allowed if the take is incidental to, and not the purpose of, an otherwise lawful activity, and reported in accordance with the rule. Private land and State-managed lands within the NEP are in Management Area C, with the most flexibility in regard to grizzly management tools. We do not expect the NEP to hamper or substantially modify forest health treatments or otherwise lawful forestry activities, including those consistent with the Forest Practices Act, on Washington Department of Natural Resources (WDNR) and National Forest System lands.

Comment: A commenter requested that road use permits granted by the USFS on non-Federal lands be exempt from section 7(a)(2).

Response: In accordance with our general section 10(j) regulations, USFS proposed actions, including the proposed issuance of USFS permits, will not require consultation under section 7(a)(2) within the NEP area when authorizing activities under USFS permits, which includes road use permits on non-Federal lands.

Comment: One commenter recommended that section 7(a)(1) be applied only to the NCE Recovery Zone rather than the entire proposed NEP boundary, noting that the proposed rule recognized Management Area C as possibly unsuitable for grizzly bear.

Response: Section 7(a)(1) of the Act requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Under the Act, section 7(a)(1) remains applicable to all Federal agencies regardless of an NEP designation (see section 10(j)(2)(C)(i)). However, Federal agencies have broad discretion in how they fulfill their responsibilities under section 7(a)(1), and for grizzly bears within the NEP boundary, we anticipate that most agencies will focus their efforts within the NCE Recovery Zone.

Comment: Two commenters stated that the Service provides no evidence to the claim that added flexibility under the 10(j) rule would increase social tolerance and therefore success of the population.

Response: The need for the tools and flexibilities that a 10(j) experimental population designation provides was a recurring theme in public comment and community conversations beginning with the previous North Cascades Grizzly Restoration Plan/EIS process that was terminated in 2020. In our experience, by limiting impacts to property and safety, and providing more tools to address threats, the public's receptivity and tolerance to having grizzly bears on the landscape is likely to improve.

In the GYE, residents involved in resource extraction industries, livestock operators, and hunting guides were opposed to land-use restrictions that were perceived to place the needs of grizzly bears above human needs (Kellert 1994, p. 48; Kellert et al. 1996, p. 984). Surveys of these user groups have shown that they tolerate large predators when they are not seen as direct threats to their economic stability or personal freedoms (Kellert et al. 1996, p. 985). By increasing management flexibility, including allowing private citizens to take bears in certain situations, we believe the 10(j) rule will reduce conflicts and increase acceptance of grizzly bears.

Comment: Several commenters were concerned about the impacts of black bear hunting on grizzly bears due to mistaken identification, and that accidental killing of grizzly bears due to mistaken identity could result in prosecution under the Act. Other commenters stated that the 10(j) rule should not include a reference to the potential for mistaken shooting prosecution because of the ''McKittrick Policy.'' Commenters stated concerns about the potential for hound hunting of black bears being extended to grizzly bears as allowed by recent legislation in Montana and Idaho.

Response: The WDFW implemented a regulation that requires black bear hunters to take and pass a bear identification test when hunting black bears in specific areas within grizzly bear recovery zones, with the intent of minimizing the potential for accidental killings of grizzly bears due to mistaken identification (see *Management Efforts in the NCE and NCE Recovery Zone,* below). As to potential prosecution for mistakenly shooting a grizzly bear, the Service retains the general prohibitions against take of grizzly bears of the NEP other than as excepted by the 10(j) rule and retains the language that taking a grizzly bear that is wrongfully identified as another species is not considered ''incidental take'' and is not allowed under the rule. The determination of whether the shooting of a grizzly bear is a mistake is a fact-specific inquiry subject to investigation, which is not precluded by the McKittrick Policy (which is addressed to Federal prosecutors regarding appropriate jury instructions, see *WildEarth Guardians* v. *U.S. Dep't of Justice,* 752 Fed. Appx.

421 (9th Cir. 2018)). The decision to pursue prosecution is subject to the discretion of the applicable authority. The McKittrick Policy would not apply to prosecution determinations by the State of Washington under State law. As such, we retain the language that prosecution may result. As to the concern about hound hunting, Washington State law prohibits the use of hounds for hunting of black bear (see Washington Administrative Code 220–413–060).

Comment: One commenter suggested tools and actions used to address future impacts be based on prior large carnivore restoration efforts. One commenter requested we consider management tools described in the Colorado gray wolf NEP.

Response: We evaluated a range of management tools, including those described in the Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado (88 FR 77014, November 8, 2023). Grizzly bears present different management challenges than wolves because of their life-history traits, such as long time to parturition, slow reproducing, and sensitivity to mortality. The management tools we selected were chosen to facilitate grizzly bear recovery in a landscape shared with people.

Comment: A commenter suggested that species protections under a 10(j) rule are not adequate because the rule reduces habitat protections and may result in more bears being killed than under the 4(d) rule. One commenter stated that the 10(j) rule does not analyze how much more lethal take will occur under the rule compared to the 4(d) rule. One commenter stated that the Service should not rely on information from the NCDE and GYE to assess potential impacts to a reintroduced grizzly bear population in the NCE as the 10(j) regulation will provide less protection to the NCE population than the NCDE and GYE populations receive under the 4(d) rule.

Response: As previously noted, the Service is currently coordinating with the NPS and USFS to update the baseline and memorialize the 'no net loss' agreement for the U.S. portion of the NCE Recovery Zone, providing for the habitat security needed in support of grizzly bears in the Management Area A, the focal area for recovery of an NCE grizzly bear population. It is possible that more grizzly bears may be killed in the NCE under the 10(j) rule than had the Service decided to reintroduce grizzly bears to the ecosystem under the current 4(d) rule given the greater restrictions on lethal removal for grizzly bears under the 4(d) rule, but this is not a certainty. While designation as an NEP provides greater management flexibility than the existing 4(d) rule, that greater flexibility does not necessarily mean increased lethal take of grizzly bear. The management tools of the 10(j) rule are designed in large part to help the Service and authorized agencies to intervene to avoid situations that are likely to result in human-bear conflicts in the first place. Also, the additional management flexibility provided in the 10(j) rule is optional, not required, and lethal removal in particular is still subject to prior Service approval, with limited exceptions. In addition, the recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, p. 20). Because we anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero.

In terms of relying on information from the NCDE and GYE to assess potential impacts to the reintroduced population, the Service has tailored the 10(j) rule to focus on the NCE Recovery Zone, where protections similar to the 4(d) rule will apply. Therefore, we can use our experience managing grizzly bear populations in other ecosystems to assess potential effects to a reintroduced population in the NCE, particularly in Management Area A where the recovery effort is targeted. In addition, our experience managing grizzly bears under the 4(d) rule in the NCDE and GYE helped inform what additional flexibility for the NEP would be valuable in helping address issues with grizzly bears on the landscape.

Comment: A commenter stated that the Wildlife Crossings Program needs to be implemented with any translocation to reduce the threat that car or train collisions pose to grizzly bears.

Response: Part of what makes the NCE quality grizzly bear habitat is its large contiguous blocks of wilderness with comparatively few roads and railways, such that wildlife crossings may be less of an issue than in other areas, although the threat is not eliminated given the non-wilderness areas within the NCE. We will use a mortality management framework to ensure that total mortality rates do not approach an unsustainable level, and will limit discretionary mortalities (*i.e.,* management removals) if total mortality numbers (including any mortalities due to vehicle or train collisions) do not support an increasing population. Currently, more than 20 crossing structures over or under highways have been completed in Washington on the southern edge of the NCE Recovery Zone connecting areas south of I–90 to the NCE Recovery Zone (WSDOT 2023). Washington State Department of Transportation, their partners, and working groups continue to prioritize wildlife connectivity in Washington with special focus on I–90 and connecting the Cascades to the Kettle Mountain Range and Rocky Mountains (WSDOT 2023; Conservation Northwest 2023a; Conservation Northwest 2023b).

Comment: A commenter requested that the EIS and 10(j) rule describe habitat management components outside of travel management (*i.e.,* motorized road management) and should include habitat management components that support prey species, such as elk and other big game species. They also recommended that the EIS and 10(j) rule include a summary of active projects designed to improve habitat for wildlife, fuels reduction, timber management, etc., within the NCE and proposed NEP boundary, and an assessment of how grizzly bear restoration will affect active forest management projects.

Response: Consistent with other recovery areas, the Service's focus is on securing core habitat for grizzly bears, using motorized road management as the principal metric. This does not preclude partner agencies such as the NPS and USFS from providing other habitat management components, such as for prey species, through their planning processes, but these are beyond the scope of this rulemaking. The final EIS includes a cumulative effects analysis which addresses in part other ongoing and reasonably foreseeable planned projects that may affect the grizzly bear restoration plan; based on this analysis, we do not expect this NEP to affect active forest management projects.

Comment: A commenter stated that the EIS and 10(j) rulemaking process should be delayed allowing for additional modeling of high-value grizzly bear habitat outside of the NCE Recovery Zone. Several commenters expressed concerns about the lack of more specific demographic goals and clear recovery criteria for the NCE Recovery Zone.

Response: Recovery zones represent the Service's expectation of core areas for grizzly bear recovery in part because of their high-value habitat for grizzly bear. At approximately 9,500 mi^2 (25,000 km^2) in size, the NCE Recovery Zone is the largest of six recovery zones and represents an area large enough and of sufficient habitat quality to support a recovered grizzly bear population. While bears will likely disperse from and occupy areas outside the NCE

Recovery Zone in the future, we expect recovery actions to remain focused there due to the quality and quantity of habitat. The NCE supplement to the Grizzly Bear Recovery Plan provides general demographic and habitat assumptions and goals, including that the population will be considered recovered when it is large enough to offset human-caused mortality, and when reproducing bears are distributed throughout the recovery area (potentially between 200–400 grizzly bears) (USFWS 1997, p. 3).

Comment: One commenter questioned the projected annual growth rates (2–4 percent) for the reintroduced population of grizzly bears in the rule, particularly with a starting population of only 25 bears.

Response: To estimate the number of reintroduced bears needed to reach an initial population of 25 bears, we used the survival rates of bears placed in the CYE through augmentation. This survival rate of CYE augmented bears is the best available information for the initial phase of NCE reintroduction. We use the 2–4 percent projected annual growth rate as only a range of possible growth rates based on other populations in the CYE, GYE, NCDE, and Selkirk Ecosystem. Once the population reaches 25 bears, the annual growth rate will be largely dependent upon reproduction and survival of those 25 bears with occasional additions to replace bears lost due to mortality or to maintain genetic diversity.

Comment: A commenter suggested including additional metrics to emphasize grizzly bear mortality and adaptation resulting from climate-induced stressors. They suggested the following potential metrics: availability of food source susceptible to adverse effects due to climate change such as whitebark pine, body fat composition, hibernation den entry and exit patterns, length and elevation of hibernation, and climate-change-induced grizzly bear habitat changes.

Response: We will monitor the reintroduced population (see *Monitoring and Evaluation,* below). If we observe changes to bear mortality rates or other characteristics mentioned in this comment, we may adjust our management or monitoring accordingly to ensure conservation of the population (see *Adaptive Management,* below).

Comment: One commenter stated that the 10(j) rule does not allow State game agencies to manage the population of grizzly bears from the time of reintroduction to when population goals are met. They indicated there is too much time between when the Federal Government releases control to States and the implementation of a management plan.

Response: The Service retains the lead in management of grizzly bears in the NEP as they are part of the overall efforts to recover the federally listed grizzly bear in the United States. The Service will continue to partner with the WDFW and coordinate with the IGBC as the Service implements the 10(j) rule. The Service expects this collaborative management to occur until the grizzly bear is recovered and no longer requires listing under the Act. States that seek to manage grizzly bears can speed that timeline to delisting by supporting recovery efforts, including providing State management plans and regulations that will protect the grizzly bear in absence of the Act's protection.

Comment: A commenter suggested that a faster timeline for the translocation of bears may be better biologically and more cost effective than the 5–10 years proposed.

Response: The capture of bears within specific sex/age categories and bears with no history of conflicts limits the number of bears available or able to be captured in a given year. The adaptive management framework provides an opportunity to adjust our methods as results indicate.

Comment: Commenters asked what actions will be taken to ensure that relocated bears remain in the relocation area, requested more clarification about agency roles and responsibilities for the management of grizzly bears that leave the NEP area or Washington State, and expressed concern about the safety of bears emigrating into neighboring States in the event of a delisting of other distinct population segments.

Response: If a grizzly bear needs to be relocated within the NEP, relocation sites will be identified in remote areas away from homes, developed areas, and concentrated human use (see *Management Restrictions, Protective Measures, and Other Special Management,* below). Relocated grizzly bears will be able to move freely, and the location of collared bears will be monitored via radio collars. Grizzly bears that come into conflict may be relocated to remote locations as warranted based on the type of conflict involved. Some reintroduced bears will likely leave the NCE, but due to the large distances and relatively low landscape permeability of the habitat between reintroduction areas and surrounding States, we think few bears will emigrate into adjacent States in the near future. However, if a grizzly bear from the NCE migrates into adjacent States, it will be managed by State, Federal, or Tribal authorities based on the listing status of bears in that location. Grizzly bears from the U.S. portion of the NCE emigrating into Canada will be managed by Canadian authorities.

Comment: One commenter said the Service should commit to returning dispersing grizzly bears back to the NEP area and allow other agencies to facilitate the return of such bears to the NEP area.

Response: Aside from grizzly bears that may move north to the NCE in Canada, it is unlikely that reintroduced grizzly bears will disperse outside of the NEP in the near future due to the limited habitat connections and to human barriers. However, in the Cabinet Mountains augmentation program, several translocated bears left the target area, likely in attempt to return home. Some translocated bears in the NCE will likely attempt to travel home; however, the distance to potential source populations is much greater than in the Cabinet Mountains program, which may limit dispersal attempts. The NCE in the United States contains large blocks of unoccupied suitable habitat with adequate food resources and relatively low landscape permeability to areas outside of the NEP area. In the unlikely event that grizzly bears move outside of the U.S. portion of the NEP during population establishment, we will work with the relevant authorities to determine the best course of action given the specific context of the situation.

Comment: Commenters stated that notification on release sites and dates, and updates on the movement of collared bears, must be shared with agricultural producers. One commenter expressed concerns about collar technology not providing real-time data for proactive grizzly bear management. One commenter provided suggestions on how translocated bears should be monitored, pairing radio-transmitting Very High Frequency (VHF) devices with Global Navigation Satellite System Ultra High Frequency devices. Another commenter asked if translocated bears would have ear tags.

Response: Prior to releases, the Service will coordinate with relevant land management agencies, including local staff, to ensure that no people or livestock are in close proximity to release sites. The Service will provide periodic updates on bear movements to the public, and for situations where collared grizzly bears are in areas likely to result in conflict, the Service or the authorized agency will work closely with the affected parties to reduce the potential for conflict. If collar data is available for a bear involved in conflict,

current technology often allows managers to find the bear from the ground and track its movements in real time. Remote monitoring is limited by the frequency of satellite fixes (a tradeoff to battery life); therefore, bear location information is more delayed. GPS radio telemetry devices currently used by the Service already have a VHF component that can provide other means of radio tracking in the event of a satellite transmission failure. Translocated bears will have ear tags.

Comment: A commenter stated that a quarantine and decontamination protocol should be established for any bears considered for translocation to prevent the spread of noxious weeds.

Response: Grizzly bears selected for translocation will typically come from backcountry areas that are limited in invasive weed presence. Bears will be held in a culvert trap after capture and during transport, which should allow any ingested material to pass through the gastrointestinal tract and be voided prior to release.

Comment: A commenter requested that a management plan be developed to ensure a smooth and timely transition from Federal management under the Act to State management upon reaching grizzly bear population objectives.

Response: As stated in the final rule, if grizzly bears are recovered and delisted under the Act, the experimental population designation and associated regulation will also be removed as part of the delisting rulemaking. In the event grizzly bears are considered for delisting due to recovery, we will work with the appropriate States and Tribes to develop plans for a smooth and timely transition of management responsibilities.

Comment: A commenter suggested that bears with a history of human contact may be better suited for translocation than those without.

Response: Bears with a history of human contact may be more prone to seek out anthropogenic foods and come into conflict. We want to give reintroduced bears the best chance to act as wild bears and avoid humans and human-occupied areas. Therefore, we retain the bear selection criteria described in *Effects on Wild Populations.*

Comment: Multiple commenters questioned if the NEP might be modified based on various factors. One commenter asked whether, if public tolerance rises to sufficient levels over the course of the restoration, could the ESA listing status of the population be changed. Another commenter noted that if bear mortality is too high the population will not be able to recover and suggests a threshold of zero human-caused mortalities in Management Area A. Yet another commenter questioned if the reintroduction effort would be stopped or the population re-designated as essential if the mortality reaches a certain threshold.

Response: As stated in the final rule, we will consider removing the NEP designation only if (a) the reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in the rule might be removed; or (b) the grizzly bear is recovered and delisted in accordance with the Act (see *Exit Strategy,* below). While zero human-caused mortalities is best, zero mortalities may not be practical given the need to protect human safety and property, and due to accidental mortalities (*e.g.,* vehicle collisions). As discussed above, the recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones. Because we anticipate the NCE population to remain small for the near future, we will attempt to keep human-caused mortality to zero. If grizzly bears of the NEP experience unexpectedly high natural mortality, if donor bears are not available, or if we conclude that we and our partners have insufficient funding for an extended period to support management of the NEP, we may consider ending the releases and removing the NEP designation. This would be done only after coordination with partners and a new public process where we would evaluate the NEP designation before making any decisions to exit the restoration program and remove or revise the 10(j) rule as appropriate.

Comment: One commenter requested that the 10(j) rule include an ''escape clause'' that authorizes the State to lethally remove all grizzly bears in the NEP if the Service's nonessential determination for the NEP is at risk due to litigation challenging that determination.

Response: The Service does not consider an ''escape clause'' appropriate for the NCE grizzly bear NEP. Lethal removal of all grizzly bears of the NEP is inconsistent with our goal of restoring grizzly bears to the NCE. If litigation results in the Service being required to reevaluate its nonessential determination for the NCE experimental population, we will evaluate our management options at that time.

Comment: Commenters stated that we cannot designate an experimental population because the NCE is not outside of the current range or wholly geographically separate from nonexperimental populations. One commenter cited the possible presence of three female grizzly bears north of the border in British Columbia. Another commenter stated that the NCE includes land in Canada and, therefore, introducing an experimental population of grizzly bears lacks justification under the Act because it would not be wholly geographically separate from other populations of the species.

Response: In our most recent status review, we concluded that the NCE Recovery Zone no longer contains a grizzly bear population (88 FR 41560 at 41579, June 27, 2023). We summarize why this experimental population designation would be wholly separate from nonexperimental populations in the *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* section, below).

Comment: One commenter stated that the proposal to make the 10(j) rule's management provisions effective regardless of whether any reintroduction of grizzly bears into the NCE has occurred yet is inconsistent with section 10(j) of the Act and would violate NEPA because this was not evaluated in the draft EIS.

Response: The 10(j) rule, consistent with the Act, defines how the NEP can be identified, in this case by geographic area—the NEP area. This is also consistent with the NEPA analysis, which has an alternative (Alternative C) that includes restoration of grizzly bears with a 10(j) nonessential population designation using geographic location to identify members of the NEP. Nevertheless, in response to this comment, we carefully reviewed how we will treat any bears in the NEP area before and after translocation and have determined that it is appropriate to change our approach.

The Act and our regulations define an experimental population as a population (and any offspring arising solely therefrom) authorized for release as experimental, but only when and at such times as the population is wholly separate geographically from nonexperimental populations. Likewise, experimental population releases are required to be outside the current range of the species, and the Act and our regulations require that we provide a means to identify the experimental population. The purpose of these provisions is to ensure that nonexperimental populations do not receive the reduced protections associated with the NEP designation (49 FR 33885, August 27, 1984). Based on the Act, our regulations, and the legislative history, we have determined that the experimental population

designation should not apply before any individuals are released.

Therefore, the Service has changed its approach in this final rule to better align with the intent and purpose of identifying the experimental population, as reflected in our regulations. Any grizzly bears that are found in the NCE NEP area before the Service has translocated grizzly bears into the NEP area will be managed in accordance with the 4(d) rule. However, after our initial release of one or more grizzly bears into the NEP area, any grizzly bears—including those moving from Canada into the NEP area—will be treated as part of the NEP while they are present within the NEP area, with all of the associated ESA protections and exceptions that apply to the experimental population. As discussed under *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?,* we have concluded that it is unlikely that bears will move into the NEP area from other U.S. populations and it is, therefore, reasonable that any bears found after the initial release originated from the release.

Comment: One commenter requested that the EIS and 10(j) rulemaking process be put on hold until 12-month findings are issued by the Service in response to petitions requesting the Service delist grizzly bears from the Act in the GYE and NCDE.

Response: The Service's response to petitions requesting that we remove the grizzly bear from the List of Endangered and Threatened Wildlife is outside the scope of the rule. The 10(j) rule does not preclude revisions to the listed entity. If the Service revises the grizzly bear listed entity, the effect on this NEP, if any, will be addressed at that time.

Comment: One commenter stated that, during grizzly bear mating seasons, a moratorium on off-highway vehicle (OHV) use should be enforced to ensure that the grizzly bears have the best chance of reproducing.

Response: Management Area A, which is the core area targeted for recovery of grizzly bears, is already largely composed of designated wilderness, which precludes motorized access generally. In addition, for those areas outside of wilderness, the 'no net loss' agreement by NPS and USFS within Management Area A will provide for the habitat security needed in support of grizzly bears in this portion of the NEP area. A moratorium on OHV use is not necessary to support the restoration program in the NCE.

Final Rule Issued Under Section 10(j) of the Act

Background and Biological Information

We provide detailed background information on grizzly bears in a separate Species Status Assessment (SSA) (USFWS 2022, entire). Information in the SSA is relevant to reintroduction efforts for grizzly bears that may be undertaken in Washington, and it can be found along with this final rule at *https://www.regulations.gov* in Docket No. FWS–R1–ES–2023–0074 (see *Supporting and Related Material*). We summarize relevant information from the SSA below.

Taxonomy and Species Description

Grizzly bears are a member of the brown bear species (*U. arctos*) that occurs in North America, Europe, and Asia. In the lower 48 States, the grizzly bear subspecies occurs in a variety of habitat types in portions of Idaho, Montana, Washington, and Wyoming. Grizzly bears weigh up to 800 pounds (363 kilograms) and live more than 25 years in the wild. Grizzly bears are light brown to nearly black and are so named for their ''grizzled'' coats with silver or golden tips (USFWS 2022, p. 40).

Historical and Current Range

Historically, grizzly bears occurred throughout much of the western half of the lower 48 United States, central Mexico, western Canada, and most of Alaska. Prior to European settlement, an estimated 50,000 grizzly bears were distributed in one large contiguous area throughout all or portions of 18 western States (*i.e.,* Washington, Oregon, California, Idaho, Montana, Wyoming, Nevada, Colorado, Utah, New Mexico, Arizona, North Dakota, South Dakota, Minnesota, Nebraska, Kansas, Oklahoma, and Texas). Populations declined in the late 1800s with the arrival of European settlers, government-funded bounty programs, and the conversion of habitats to agricultural uses. Grizzly bears were reduced to less than 2 percent of their former range in the lower 48 States by the time the species was listed as a threatened species under the Act in 1975, with an estimated population (in the lower 48 States) of 700 to 800 individuals (USFWS 2022, p. 4). The grizzly bear is listed under the Act in the conterminous United States, which comprises the lower 48 States. Unless specified otherwise, we use the term ''the grizzly bear in the lower 48 States'' to refer to the entity currently listed as a threatened species under the Act.

Since their listing under the Act, grizzly bear populations in the lower 48 States have expanded in number and range. Current populations combined contain approximately 2,200 bears and occupy portions of Idaho, Montana, Wyoming, and Washington. Outside the lower 48 States, approximately 55,000 grizzly bears exist in the largely unsettled areas of Alaska and western Canada.

Grizzly Bear Ecosystems and Recovery Zones

The recovery plan refers to six grizzly bear ecosystems identified to target the species' recovery (USFWS 1993, p. 10). Currently, approximately 2,200 grizzly bears exist primarily in 4 ecosystems in the lower 48 States: the NCDE, the GYE, the CYE, and the Selkirk Ecosystem. There are no known grizzly bear populations in the remaining two ecosystems, the NCE and BE, nor any known populations outside these ecosystems, although we have documented bears, primarily solitary, outside the NCE and BE. Current populations in the NCDE, Selkirk Ecosystem, and CYE extend into Canada to varying degrees. Although there is currently no known population in the NCE, it constitutes a large block of contiguous habitat that spans the international border. The Service has not explicitly defined ecosystem boundaries, but we have identified recovery zones at the core of each ecosystem (USFWS 2022, p. 56) (figure 1). Therefore, each recovery zone pertains to a specific area within the larger ecosystem.

At the time of the original recovery plan, grizzly bear distribution within the lower 48 States was primarily within and around areas identified as recovery zones (USFWS 1993, pp. 10–13, 17–18). The Service identified the six recovery zones, which correspond with the six ecosystems. These recovery zones and the most recent grizzly bear population estimates for each zone are as follows:

(1) The GYE Recovery Zone in northwestern Wyoming, eastern Idaho, and southwestern Montana (9,200 mi^2 (24,000 km^2)) at approximately 965 individuals inside the Demographic Monitoring Area (Gould et al. 2023, p. 37);

(2) the NCDE Recovery Zone of north-central Montana (9,600 mi^2 (25,000 km^2)) at approximately 1,138 individuals (Costello et al. 2023, p. 10);

(3) the NCE Recovery Zone of north-central Washington (9,500 mi^2 (25,000 km^2)), although no functional population of grizzly bears currently exists in the NCE (see *Status of Grizzly Bears in the North Cascades Ecosystem,* below);

(4) the Selkirk Ecosystem Recovery Zone of northern Idaho, northeastern Washington, and southeastern British Columbia (2,200 mi² (5,700 km²)) at approximately 83 individuals (Proctor et al. 2012, p. 31). An updated British Columbia-only estimate of 69 was made in 2022 though it includes some bears with home ranges in the United States (Proctor et al. 2023 p. 2);

(5) the CYE Recovery Zone of northwestern Montana and northern Idaho (2,600 mi² (6,700 km²)) at approximately 60–65 bears (Kasworm et al. 2023a, p. 43); and

(6) the BE Recovery Zone of central Idaho and western Montana (5,830 mi² (15,100 km²)), although no functional population of grizzly bears currently exists in the BE.

NCE and NCE Recovery Zone Relation to the Experimental Population

Although the Service considers the North Cascades *Ecosystem* to include areas within Canada, the North Cascades *Recovery Zone* is a component of the ecosystem and occurs only within the United States. Throughout this final rule, we will reference the broader North Cascades Ecosystem, which includes habitat in Canada, as the ''NCE'' and reference its recovery zone (solely within the United States) as the ''NCE Recovery Zone.'' The nonessential experimental population area (see ''Experimental Population'' below) in this rulemaking action encompasses the entire NCE Recovery Zone and the portion of the larger NCE within the United States.

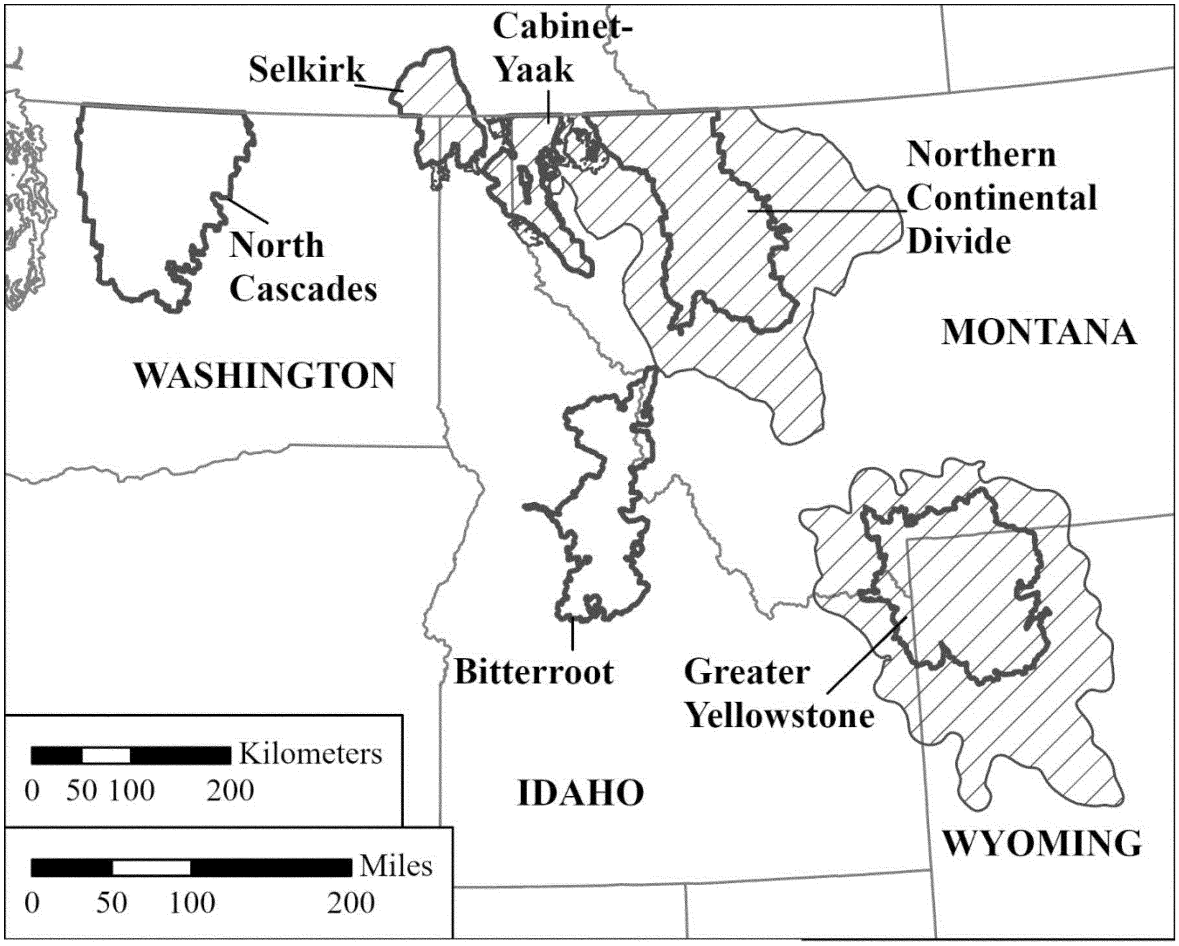


Figure 1. Current estimated distribution of grizzly bears in the lower 48 States and grizzly bear recovery zones based on 2008–2022 data.

Behavior and Life History

Adult grizzly bears are normally solitary except when females have dependent young, but they are not territorial and home ranges of adult bears frequently overlap. Home range sizes vary among ecosystems because of population densities and habitat productivity. Average home range size for males varies from 183 to 835 mi^2 (475–2,162 km^2) and for females from 50 to 138 mi^2 (130–358 km^2) across the recovery areas in the United States (USFWS 2022, p. 44).

Grizzly bears have a promiscuous mating system. Mating occurs from May through July with a peak in mid-June. Average age of first reproduction can vary from 3 to 8 years of age. Litter sizes range from one to four cubs, although two is the most common. Cubs are typically born in the den in late January or early February and typically remain with the female for 2.5 years, making the average time between litters (*i.e.,* the interbirth interval) approximately 3 years. Grizzly bears have one of the slowest reproductive rates among terrestrial mammals, resulting primarily from the late age of first reproduction, small average litter size, and the long interbirth interval. A population is made up of numerous overlapping generations. It is possible for mothers, daughters, and granddaughters to be reproductively active at the same time. Grizzly bear females typically cease reproducing some time in their mid-to-late 20s (Schwartz et al. 2003a, pp. 109–110; USFWS 2022, pp. 44–45).

Grizzly bears hibernate for 4 to 6 months each year in winter to cope with seasons of low food abundance. Grizzly bears in the lower 48 States typically enter dens between October and December. In the 2 to 4 months before den entry, bears increase their food intake dramatically during a process called hyperphagia. Grizzly bears must consume foods rich in protein and carbohydrates during this time (between August and November) in order to build up fat reserves to survive denning and post-denning periods. Grizzly bears typically hibernate alone in dens, except for females with young and subadult siblings who occasionally hibernate together. Most dens are located at higher elevations, above 8,000 feet (ft) (2,500 meters (m)) in the GYE and above 6,400 ft (1,942 m) in the NCDE and on slopes ranging from 30 to 60 degrees. Grizzly bears exit their dens between March and May; females with cubs exit later than other adults (Mace and Waller 1997, p. 37; Haroldson et al. 2002, p. 29; Kasworm et al. 2021a, pp. 51–54; Kasworm et al. 2021b, pp. 33–36; USFWS 2022, pp. 45–46).

When not hibernating, grizzly bears use a variety of cover types to rest and shelter. Grizzly bears often select bed sites with horizontal and vertical cover, especially at day bed sites, suggesting that bed site selection is important for concealment from potential threats. The relative importance of cover to grizzly bears was documented in a 4-year study of grizzly bears in the GYE. Of 2,261 aerial radio signals from 46 instrumented bears, 90 percent were located in forest cover too dense to observe the bear (Blanchard 1978, pp. 27–29).

Grizzly bears make seasonal movements within their home ranges to locations where food is abundant (*e.g.,* ungulate winter ranges and calving areas, talus slopes). They are opportunistic omnivores and display great diet plasticity, even within a population, shifting their diet according to foods that are most nutritious (*i.e.,* high in fat, protein, and/or carbohydrates) and available (USFWS 2022, pp. 47–48). They will consume almost any food available including living or dead mammals or fish, insects, worms, plants, human-related foods, garbage, livestock, and agricultural crops. Cattle and sheep depredation rates are generally higher where bear densities are higher and in later summer months (Wells et al. 2018, pp. 5–6). In areas where animal matter is less available, berries, grasses, roots, bulbs, tubers, seeds, and fungi are important in meeting protein and caloric requirements (USFWS 2022, pp. 47–48; LeFranc et al. 1987, pp. 111–114; Schwartz et al. 2003b, pp. 568–569).

In general, an individual grizzly bear's habitat needs and daily movements are largely driven by the search for food, water, mates, cover, security, or den sites. Grizzly bears display dietary adjustability across ecosystems and exploit a broad diversity of habitat types. Large intact blocks of land directly influence the quality and quantity of the species' resource needs, highlighting the importance of this habitat factor to all life stages. The larger, more intact, and ecologically diverse the block of land, it follows that high-caloric foods, dens, and cover would be more readily available to individuals. Grizzly bears also need large, intact blocks of land with limited human influence and thus low potential for displacement and human–bear or livestock–bear conflict that could result in human-caused mortality. Grizzly bears in the lower 48 States need multiple resilient ecosystems distributed across a geographical area to reduce the risk of catastrophic events. A wide distribution of multiple ecosystems ensures that all ecosystems are not exposed to the same catastrophic event at the same time, thereby reducing risk to the species. Grizzly bears also need genetic and ecological diversity across their range in the lower 48 States to adapt to changing environmental conditions (USFWS 2022, pp. 98–100).

Kasworm et al. (2014, entire) evaluated grizzly bear food data from the CYE. The CYE has a Pacific maritime climate that may be similar to the climate in the central and western Cascade Mountains. Therefore, an evaluation of grizzly bear food selection in the CYE could be useful for predicting food habits of grizzly bears in the NCE. Huckleberry (*Vaccinium* spp.) is an important component of the grizzly bear's diet in the CYE. Data were collected over several years, using both isotope analysis on hairs and scat. Isotope analysis showed a highly variable use of meat (6 percent to 37 percent of diet), and that meat was found in many scats in some months (40 percent of dry matter in April and May), including fall (carrion). Overall, mammals and shrubs (berries) constituted 64 percent of total dry matter annually. In a study analyzing grizzly bear habitat selection, fitness, and density, huckleberry patches were the most influential bottom-up factors (Proctor et al. 2023, p. 48). In a diet study of grizzly bears in several western ecosystems, researchers found that adult male grizzly bears were more carnivorous than any other age or sex class, with diets composed of around 70 percent meat (Jacoby et al. 1999, pp. 924–926). Other sex and age groups of grizzly bears displayed diets similar to black bears living in the same areas reflective of diets described by Kasworm et al. 2014 (Jacoby et al. 1999, pp. 924–926). Grizzly bear source populations may also include interior British Columbia. Grizzly bear female diets in the interior of British Columbia were based largely on plant material (58 percent) and terrestrial meat (31 percent) (Adams et al. 2017, pp. 7–10). Male diets were similar but had a higher proportion of plants (63 percent) and less terrestrial meat (8 percent). These amounts are similar to those of the CYE diets, which were largely plants (66 percent) and a lesser amount of terrestrial meat (26 percent).

Threats

Excessive human-caused mortality, including ''indiscriminate illegal killing,'' defense of life and property mortality, accidental mortality, and management removal, was the primary

factor contributing to rangewide grizzly bear decline during the 19th and 20th centuries, eventually leading to their listing as a threatened species in 1975 (40 FR 31734, July 28, 1975). Habitat destruction, modification, and isolation and conflict resulting from human access to formerly secure habitat were also identified as threats in the 1975 listing. In the State of Washington, the northwest fur trade was probably the primary driver of rapid grizzly bear decline in the period 1810–1870. In addition to the influx of trappers, resource extraction and livestock production fragmented and degraded grizzly bear habitat in Washington; a mining boom in the early 1800s created a rapid increase in human activity and habitat alteration to accommodate mining infrastructure and human settlements. In the NCE, grizzly bears were also regularly shot and removed by herders of sheep and cattle, and by the late 1800s habitat fragmentation and isolation of the ecosystem accelerated due to the dominance of logging, as well as the expansion of rural development, road and railway access, and orchards (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143).

Though human-caused mortality has been greatly reduced since the 1800s, human-caused mortality is still currently the primary factor affecting grizzly bears at both the individual and ecosystem levels (USFWS 2022, p. 7). However, mortality thresholds currently in place have mitigated this threat such that grizzly bear populations have increased in number and range in the lower 48 States. Human-caused mortalities of grizzly bears currently include: (1) management removals; (2) defense-of-life-killings; (3) illegal killings or poaching; (4) accidental killings; and (5) mistaken-identity killing (USFWS 2022, pp. 144–145). Human activities are the primary factor currently impacting habitat security and the ability of bears to find and access foods, mates, cover, and den sites. Users of public lands and recreationists in grizzly bear habitat often increase the risk of human–bear conflict by leaving containers of food, garbage, and other bear attractants open or unstored (Gunther et al. 2004, pp. 13–14). However, road access to grizzly bear habitat likely poses the most imminent current threat to grizzly bears by reducing the availability of the necessary large, intact blocks of land; increasing disturbance and displacement of individual bears through increased noise, activity, or human presence; and increasing mortality of individual bears through vehicle strikes or other activities associated with human-caused mortality (Proctor et al. 2019, p. 19; Schwartz et al. 2010, p. 661, USFWS 2022, p. 117).

While existing motorized access levels are unknown on National Forest System lands within the NCE (USFWS 2022, p. 212), there have been prior assessments (Lyons et al. 2018, entire; Gaines et al. 2003, entire; IGBC–NCE 2001, entire). However, the primary factors related to past destruction and modification of grizzly bear habitat have been reduced through changes in management practices that have been formally incorporated into regulatory documents. In the NCE Recovery Zone, approximately 64 percent of the public lands are designated Wilderness Areas or IRAs, and the remaining Federal lands are managed under a 'no net loss' agreement that supports core habitat. Across the grizzly bear range, all data collected by Federal, State, and Tribal agencies is used to help identify where human–bear conflicts occur and compare trends in locations, sources, land ownership, and types of conflicts to inform proactive management of human–bear conflicts.

Fire is a natural part of all grizzly bear ecosystems, but fire frequency, severity, and burned area may increase with late-summer droughts predicted under climate change scenarios (Nitschke and Innes 2008, p. 853; McWethy et al. 2010, p. 55; Halofsky et al. 2020, p. 10; Whitlock et al. 2017; pp. 123–131, 216, XXXII). In the North Cascades, wildfire is projected to burn nearly four times more area by the 2080s compared to the historical period of 1980 to 2006 (Halofsky et al. 2020, p. 10). High-intensity fires may reduce grizzly bear habitat quality immediately afterwards by decreasing hiding cover, changing movement patterns, and delaying regrowth of vegetation. Predators with large territories, like grizzly bears, have more flexibility to exploit resources in burned and unburned landscapes (as cited in Nimmo et al. 2019, p. 986). Moreover, in conifer-dominated forest ecosystems, wildfires transition forest to earlier succession stages, which can increase prey densities due to increases in the availability of vegetative food resources (Snobl et al. 2022, pp. 14–15; Lyons et al. 2018, p. 10).

Even if cover is lost, movement is changed, and vegetation growth is delayed, depending on their size and severity, fires may have only short-term adverse impacts on grizzly bears while providing more long-term benefits. For example, fire plays an important role in maintaining an open forest canopy, shrub fields, and meadows that provide for grizzly bear food resources, such as increased production of forbs, root crops, and berries (Hamer and Herrero 1987, pp. 183–185; Blanchard and Knight 1996, p. 121; Apps et al. 2004, p. 148; Pengelly and Hamer 2006, p. 129). Because grizzly bears have shown resiliency to changes in vegetation resulting from fires, we do not expect altered fire regimes predicted under most climate change scenarios to have significant negative impacts on grizzly bear survival or reproduction, despite the potential short-term effects on vegetation important to grizzly bears. Climate models predict that the NCE will experience substantial vegetation changes from longer growing seasons, drier summer months and wetter winter and spring months, decreased snowpack, and an increased number of disturbance events that are expected to improve food resources for grizzly bears and thus increase habitat quality (Ransom et al. 2018, p. 26). Modeling of grizzly bear habitat in the North Cascades under various projected climate change scenarios shows increased carrying capacity and increased potential grizzly bear density estimates under all scenarios (Ransom et al. 2023, pp. 6–8; USFWS 2022, table 27, p. 243). The complex relationship between changes in climate, natural processes, and natural and anthropogenic features will ultimately determine the future quality of grizzly bear habitat across the ecosystem (Ransom et al. 2018, entire).

Status of Grizzly Bears in the North Cascades Ecosystem

In the Service's 2023 status review, we determined that the NCE no longer contained a population of grizzly bears (88 FR 41560 at 41579, June 27, 2023). We also indicated that we were continuing to evaluate options for restoring grizzly bears to the NCE (88 FR 41560 at 41580, June 27, 2023).

Factors contributing to the extirpation of a functional population of grizzly bears from the NCE include historical habitat loss and fragmentation and human-caused mortality (USFWS 2022, pp. 49–51). Historical records indicate that grizzly bears once occurred throughout the NCE (Bjorklund 1980, p. 7; Sullivan 1983 p. 4; Almack et al. 1993 p. 2, Rine et al. 2020, pp. 10–13). There has been no confirmed evidence of grizzly bears within the U.S. portion of the NCE since 1996 when an individual grizzly bear was observed on the southeastern side of Glacier Peak within the Glacier Peak Wilderness Area in the northern Cascade Mountains of Washington State. The most recent direct evidence of reproduction in the U.S. portion of the NCE was a confirmed

observation of a female and cub on Lake Chelan in 1991 (Almack et al. 1993, p. 34).

In the United States, most habitat within the NCE Recovery Zone is federally owned and managed by the NPS including North Cascades National Park, Ross Lake National Recreation Area (NRA), and Lake Chelan NRA, and the USFS including parts of the Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF. Sixty-four percent of the NCE Recovery Zone is protected from motorized routes due to designation as Wilderness or protected from roads due to designation as IRAs. Despite the lack of recent observations, five studies have evaluated portions of the NCE for grizzly bear habitat suitability (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire), and all conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population.

Grizzly bear populations in Canada are not part of the U.S. listed grizzly bear entity. However, suitable habitat within the NCE spans the international border. The NCE within Canada is relatively isolated from other ecosystems with grizzly bear populations in Canada (Morgan et al. 2019, p. 3). The current range of grizzly bears in British Columbia is divided into 55 grizzly bear population units (GBPUs) that are used for monitoring and management. The British Columbia North Cascades GBPU is immediately north of the U.S. portion of the NCE and is isolated and small, with several surveys (DNA sampling, live-trapping effort, aerial survey for a helicopter darting attempt) between 1998 and 2003 yielding only one DNA sample and one sighting that included a female with offspring (USFWS 2022, appendix E, p. 321). To the north and west of this GBPU lie the Stein-Nahatlach and Garibaldi-Pit GBPUs, which are also small and largely isolated with estimated female populations of 12 and 2, respectively (Morgan et al. 2019, p. 19). All three of these units are ranked as being of extreme management concern (Morgan et al. 2019, p. 21) using the NatureServe methodology, integrating rarity (*e.g.,* range extent, population size), population trend, and severity of threats to produce a conservation status rank for discrete geographical units (Morgan et al. 2019, p. 6). The International Union for the Conservation of Nature classified these populations as critically endangered on their Red List due to small size and isolation (McLellan et al. 2017, p. 2). The Kettle-Granby GBPU lies 60 mi (97 km) to the northeast of the NCE across the Okanogan River in British Columbia with an estimated female population of 48 grizzly bears in 2018 (Morgan et al. 2019, p. 19). Based on this information there appears to be little demographic or genetic connectivity from other GBPUs to the North Cascades GBPU or to the NCE Recovery Zone.

Recovery Efforts to Date

In accordance with section 4(f)(1) of the Act, the Service completed the grizzly bear recovery plan in 1982 (USFWS 1982, entire) and released a revised recovery plan in 1993 (USFWS 1993, entire; other revisions and supplements affecting other populations can be found in ECOS). Recovery plans serve as ''road maps'' for species recovery—they lay out where we need to go and how to get there through specific actions. Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, other Federal agencies, States, Tribes, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved.

In 1993, the Service revised the grizzly bear recovery plan to include additional tasks and new information that increased the focus and effectiveness of recovery efforts (USFWS 1993, pp. 41–58). In 1997, we released a supplemental chapter to the recovery plan to guide recovery in the NCE Recovery Zone (USFWS 1997, entire). In our recovery plan supplement for the NCE Recovery Zone, we outlined the following recovery goals for the U.S. portion of the NCE:

(1) that the population is large enough to offset some level of human-induced mortality despite foreseeable influences of demographic and environmental variation; and

(2) reproducing bears are distributed throughout the NCE Recovery Zone. Such a population may comprise 200–400 grizzly bears in the U.S. portion of the ecosystem (USFWS 1997, p. 3).

This supplement to the recovery plan supported fostering grizzly bear restoration in the NCE Recovery Zone, specifically identifying translocations as an alternative for recovering this population (USFWS 1997, pp. 24–25).

Interagency Grizzly Bear Committee

In 1983, the IGBC was established ''to ensure recovery of viable grizzly bear populations and restoration of their habitats in the lower 48 States through interagency coordination of policy, planning, management and research'' (IGBC 1983, entire). The IGBC consists of representatives from the Service, USFS, NPS, the Bureau of Land Management, the U.S. Geological Survey, and representatives of the State wildlife agencies of Idaho, Montana, Washington, and Wyoming. At the ecosystem level, Native American Tribes that manage grizzly bear habitat and county governments are represented, along with other partners.

The IGBC NCE subcommittee guides and coordinates habitat management and conflict prevention for grizzly bears in the NCE Recovery Zone (USFWS 1997, p. 8). In 1997, the North Cascades NP Superintendent and three NF Supervisors (Mount Baker Snoqualmie NF, Okanogan NF, and Wenatchee NF) agreed to a 'no net loss' agreement within any bear management unit to protect and secure grizzly bear core area habitat in the NCE Recovery Zone (see USFS 1997, entire), and they have managed the NPS and National Forest System lands using that guidance since. Under this approach, ''core area'' is defined as the area more than 0.3 mi (500 m) from any open-motorized access route or high-use nonmotorized trail (more than 20 parties per week).

Management Efforts in the NCE and NCE Recovery Zone

A number of habitat management measures have been implemented within the NCE Recovery Zone to improve habitat connectivity, habitat security, and safety for grizzly bears and humans, in areas where encounters are likely. These measures include management of human access to grizzly bear habitat and improved sanitation and food storage measures to prevent or minimize human–grizzly bear conflict.

Management of human access is one of the most important and significant management strategies for grizzly bears (Proctor et al. 2019, pp. 22–33). It includes balancing the need for road and motorized trail access with providing secure areas for grizzly bears. Access management in the NCE Recovery Zone is guided by the 'no net loss' agreement described above (USFS 1997, entire). In simple terms, this approach indicates that if a road is constructed or opened to motorized travel, another road must be closed to motorized use in order to maintain core habitat. Essentially, the open motorized access network is managed for 'no net loss' of core area habitat, which can entail a variety of management strategies.

In an effort to minimize the potential for human-caused mortality of grizzly bears, substantial outreach efforts have been put in place by the NPS and USFS over the last 30 years to reduce unsecured attractants (*e.g.,* garbage,

anthropogenic food) and provide the public with tips on identifying and managing with grizzly bears on the landscape (*e.g.,* Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8). The NPS has service-wide food storage regulations (36 CFR 2.2(a), 2.10(d), and 2.14(a)), including requiring campers to use food storage canisters or park-provided food storage lockers at the North Cascades NPS Complex. The Colville NF has a forest-wide, seasonal (April 1—December 1) food storage order in place. Mount Baker Snoqualmie NF has a forest-wide, year-round food storage order. Okanogan-Wenatchee NF does not currently have food storage restrictions; however, developing a food storage order is part of its 2024 Program of Work, and NF employees continue to place bear-resistant facilities, including food storage lockers, at campgrounds.

It is illegal to negligently feed, attempt to feed, or attract large carnivores to land or a building in Washington State (see Revised Code of Washington (RCW) 77.15.790). There are exceptions for individuals engaging in acceptable practices related to waste disposal, forestry, wildlife control, and farming or ranching operations. Any person who intentionally feeds or attempts to feed or attracts large carnivores to land or a building is guilty of a misdemeanor (see RCW 77.15.792). The WDFW has also implemented a regulation that requires black bear hunters to take and pass a bear identification test when hunting black bears in specific areas, with the intent of minimizing the potential for accidental killings of grizzly bears because of mistaken identification (WDFW 2023, p. 70).

State and Canadian Protections

Grizzly bears are State-listed as an endangered species in Washington (RCW 77.12.020; Washington Administrative Code 220–610–010; Lewis 2019, p. 1). In British Columbia, grizzly bears are ranked as ''Special Concern'' by both the British Columbia Conservation Data Centre and federally under Canada's Species at Risk Act (B.C. Conservation Data Centre 2023; SARA 2018). The International Union for Conservation of Nature (IUCN) identifies four populations within British Columbia on the IUCN Red List of Threatened Species, including three that border Washington State with Red List Categories reflecting heightened extinction risk (North Cascades–Critically Endangered, South Selkirk–Vulnerable, and the Yahk/Yaak–Endangered, McLellan et al. 2016, pp. 1–2).

The feasibility of recovering grizzly bears in the Canadian portion of the NCE is under consideration in British Columbia. First Nations have declared grizzly bears within the North Cascades GBPU as in immediate need of restoration and protection (ONA 2014, entire; Piikani Nation 2018, entire). The British Columbia Government in collaboration with Canadian First Nations have established a Joint Nation partnership to outline population recovery objectives and strategies in a North Cascades Grizzly Bear Stewardship Strategy (in review). The team is also developing a communication strategy to assess public reception for recovery in the area. Additionally, the Provincial Government has identified management options for all grizzly bear populations as outlined in the British Columbia Grizzly Bear Stewardship Framework (in review). Should augmentation efforts occur in British Columbia, some grizzly bears reintroduced into the Canadian portion of the ecosystem may move into the NEP area in the United States, either as transients that return to Canada or that ultimately remain in the United States.

Statutory and Regulatory Framework

Section 9 of the Act (16 U.S.C. 1538) sets forth the prohibitions afforded to species listed under the Act. Section 9 of the Act prohibits take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for populations of listed species planned to be reintroduced to be designated as ''experimental populations.'' The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties by giving the Secretary of the Interior greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners. The Secretary may designate as an experimental population a population of endangered or threatened species that will be released into habitat that is capable of supporting the experimental population outside the species' current range. Under section 10(j) of the Act, we must make a determination as to whether or not an experimental population is essential to the continued existence of the species based on best available science. Our regulations define an essential population as one whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are classified as nonessential (50 CFR 17.80(b)).

We treat any population determined by the Secretary to be an experimental population as if we had listed it as a threatened species for the purposes of establishing protective regulations under section 4(d) of the Act with respect to that population (50 CFR 17.82). We may apply any of the prohibitions of section 9 of the Act to the members of an experimental population, including the prohibitions against the sale or possession, import and export, or ''take'' (50 CFR 17.82). The designation as an experimental population allows us to develop tailored ''take'' prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population will contain applicable prohibitions as appropriate, and exceptions for that population, allowing us discretion in devising management programs to provide for the conservation of the species.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. We treat an NEP as a threatened species when the population is located within the National Wildlife Refuge System (NWRS) or unit of the NPS, and those programs are required to consult with us under section 7(a)(2) of the Act (50 CFR 17.83; see 16 U.S.C. 1539 (j)(2)(C)(i)). When NEPs are located outside of an NWRS or NPS unit, for the purposes of section 7, we treat the population as proposed for listing and

only sections 7(a)(1) (50 CFR 17.83) and 7(a)(4) (50 CFR 402.10) of the Act apply (50 CFR 17.83). In these instances, NEPs allow additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find by regulation that such release will further the conservation of the species. In making such a finding the Service uses the best scientific and commercial data available to consider:

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see *Effects on Wild Populations,* below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see *Likelihood of Population Establishment and Survival,* below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see *Effects of the Experimental Population on Grizzly Bear Recovery,* below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see *Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears,* below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

(1) appropriate means to identify the experimental population, including but not limited to its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population (see *Means To Identify the Experimental Population,* below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see *Findings,* below);

(3) management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from nonexperimental populations (see *Management Restrictions, Protective Measures, and Other Special Management,* below); and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see *Review and Evaluation of the Success or Failure of the NEP,* below).

Under 50 CFR 17.81(e), the Service must consult with appropriate State fish and wildlife agencies, affected Tribal governments, local government agencies, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, rules issued under section 10(j) of the Act represent an agreement between the Service, the affected State and Federal agencies, Tribal governments, local governments, and persons holding any interest in land or water that may be affected by the establishment of an experimental population. Hereafter in this document, we refer to the regulations for establishing the NEP of the grizzly bear within the U.S. portion of the NCE as the ''10(j) rule.''

Experimental Population

Experimental Population Area

The geographic area for the grizzly bear NEP occurs within the U.S. portion of the NCE and encompasses the entire NCE Recovery Zone. It also includes all of Washington State except an area in northeastern Washington around the Selkirk Ecosystem Recovery Zone where there is currently a population of grizzly bears (see figure 2). The northeastern boundary of the NEP is defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington–Idaho border. We are designating an NEP area beyond the NCE Recovery Zone to allow management of grizzly bears within the NCE Recovery Zone as well as grizzly bears that move outside of the NCE Recovery Zone.

In the U.S. portion of the NCE, the majority of land is under Federal ownership managed primarily by the USFS, including portions of the Mount Baker Snoqualmie NF and the Okanogan-Wenatchee NF, and the NPS. The North Cascades NPS complex includes North Cascades NP, Ross Lake NRA, and Lake Chelan NRA.

In drawing the NEP area and management area boundaries, we considered the following: Those areas where a population of grizzly bears could be successfully established; an evaluation of the opportunities for grizzly bears to move between blocks of high-quality grizzly bear habitat in Washington (Singleton et al. 2004, p. 96, USFWS 2022, pp. 305–309, Kasworm et al. 2022a, entire); the potential for human–bear conflicts; grizzly bear movement data from other populations; the location of the closest existing grizzly bear populations and historical observations of dispersers from those populations; ease of implementation (using readily discernible features for management area boundaries such as roads and Federal land ownership boundaries); and input from NPS, WDFW, USFS, and the public.

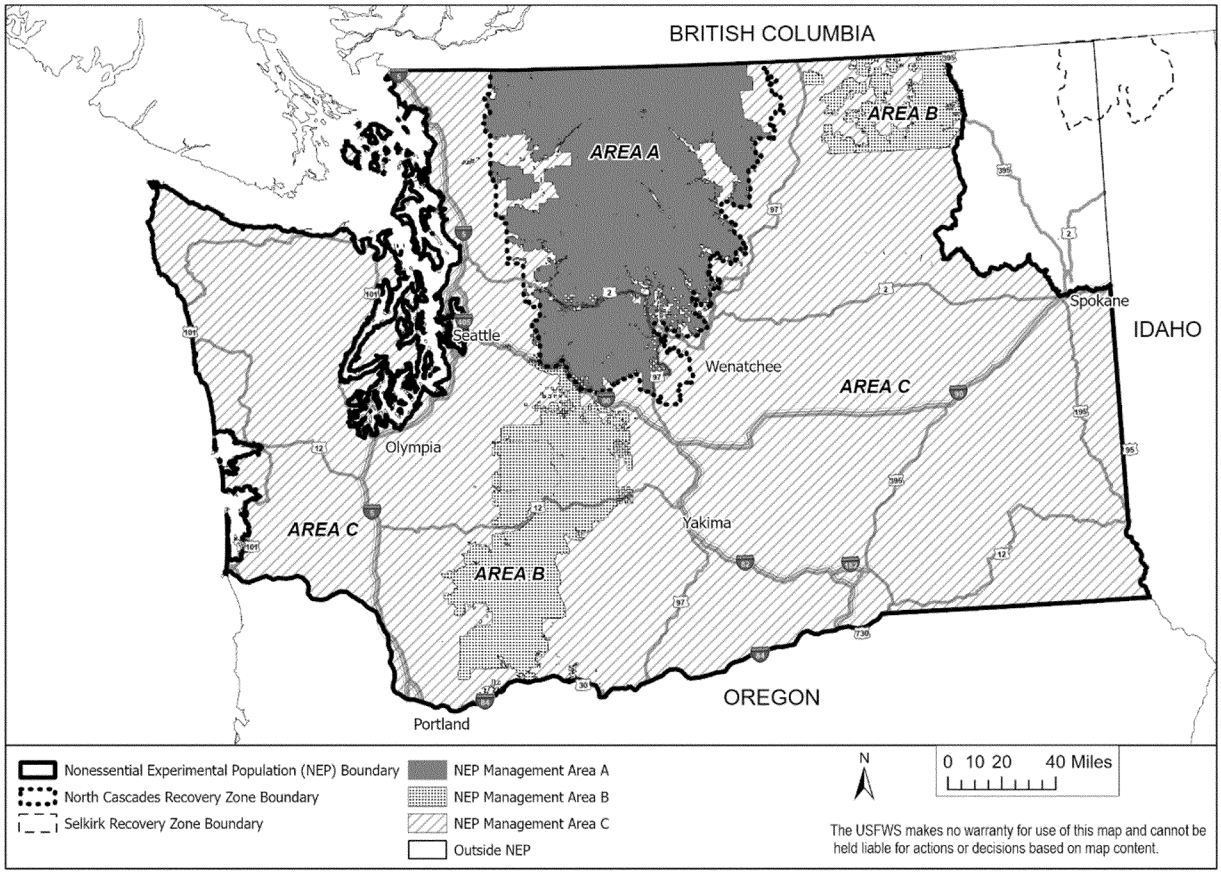


Figure 2. Map of grizzly bear North Cascades NEP and NEP management areas.

Management Areas

Within the NEP area, we identified three management areas (see figure 2) based on suitability for occupancy by grizzly bears and the likelihood of human–bear conflicts, which are often associated with private lands. We are establishing these management areas to help focus grizzly bear conservation within the NCE Recovery Zone and to allow more flexible management in the remaining portion of the NEP. Details of the management regulations for each management area are provided below in *Management Restrictions, Protective Measures, and Other Special Management.*

Management Area A includes the Mount Baker Snoqualmie NF, Okanogan-Wenatchee NF, and Colville NF north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades NPS complex. To define the Management Area A boundary, we used the NCE Recovery Zone but then excluded State-owned and private lands so that it is easily identifiable. Management Area A is the primary area for the experimental population restoration and serves as core habitat for survival, reproduction, and dispersal of the NEP. Management Area A primarily consists of remote Federal lands that support grizzly bear diet, habitat, and reproduction needs (see *Behavior and Life History* section above). Therefore, Management Area A serves as the core habitat for grizzly bear reintroductions, where all release sites would occur (see *Release Areas,* below).

Management Area B includes the Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF south of Interstate 90, Gifford Pinchot NF, and Mount Rainier NP. Management Area B also would include the Colville NF and Okanogan-Wenatchee NF lands east of Washington State Route 97 within the experimental population boundary, though it is less likely that bears will disperse into this area due to the distance from Management Area A to the west. Management Area B is meant to accommodate natural movement or dispersal by grizzly bears. We expect some level of grizzly bear transience as well as occupancy in Management Area B because of the existing habitat on public lands with limited human influence, resulting in lower potential levels of human-bear conflict (due to food storage regulations and limited human-attractants).

Management Area C comprises all other lands in the NEP outside of Management Area A and B, including non-Federal lands within the NCE Recovery Zone. Although some areas within this management area are capable of supporting grizzly bears, Management Area C contains large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality. The intent of Management Area C is to allow more management flexibility to minimize impacts of grizzly bears on landowners and other members of the public.

The NEP area contains human infrastructure and activities that pose some risk to the success of the restoration effort from human-caused mortality of grizzly bears. These activities include both controllable and uncontrollable sources of mortality. Controllable sources of mortality are discretionary, can be limited by the managing agency, and include authorized take and direct agency

control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population size and include things such as natural mortalities, illegal take, and accidental deaths (*e.g.,* vehicle collisions, capture-related mortalities, defense-of-life kills) (USFWS 2022, pp. 144–145). Accidental mortality caused by vehicle collision is difficult to control but is not anticipated to be a significant cause of mortality in the NCE. The main types of human-caused mortality in the GYE, NCDE, CYE, and Selkirk Ecosystem Recovery Zones result from human site conflicts (*e.g.,* when grizzly bears are drawn to areas with unsecured chickens, garbage, or bird and livestock feed where individuals attempt to deter the bear or protect themselves), self-defense, mistaken-identification kills, and illegal kills, some of which can be partially mitigated through management actions (Servheen et al. 2004, p. 21; USFWS 2022, p. 144). We expect the same types of human-caused mortality identified within other ecosystems to occur within the NEP.

Despite these human-caused mortalities, grizzly bear populations in other ecosystems have continued to increase in size and expand their current distribution (USFWS 2022, pp. 167–168). The NEP would build on continuing success in recovering grizzly bears through longstanding cooperative and complementary programs by a number of Federal, State, and Tribal agencies. In particular, through coordination of policy, planning, management, and research, and communication between Federal, State, Tribal and Provincial agencies, the IGBC has proven to be a successful model for agencies working cooperatively and coordinating recovery efforts over multiple jurisdictions; substantial progress has been made toward recovering the species in other ecosystems. With continued coordination through the IGBC NCE subcommittee, we do not expect Federal, State, Tribal, or private actions and activities in Washington to have significant adverse effects on grizzly bears within the NEP area.

For management of grizzly bears on Tribal lands, we expect to defer monitoring and management of grizzly bears, consistent with this 10(j) rule, to the relevant Tribe if they have the interest and capacity to undertake that management. Otherwise, we expect that the Service and/or other Federal and/or State bear management staff could assist in grizzly bear management on these Tribal lands. The Service would coordinate with the affected Tribe regarding Service grizzly bear management actions on Tribal lands and could develop a memorandum of understanding to further document expectations and roles for agency involvement on Tribal lands if requested.

Grizzly bears in Washington State that are not within the NEP area, *i.e.,* grizzly bears that are within and around the Selkirk Ecosystem Recovery Zone (see figure 2), would not be subject to management under this final rule; they are subject to the existing species-specific rule for grizzly bears under section 4(d) of the Act, found at 50 CFR 17.40(b).

Release Areas

Grizzly bear release areas would be limited to Federal lands and include portions of North Cascades NP and Ross Lake NRA, administered by NPS, and Glacier Peak, Pasayten, and Stephen Mather Wilderness areas, administered by USFS. The Service will prioritize release sites on NPS lands but retains the option to conduct initial releases of grizzly bears on National Forest System lands if unforeseen circumstances prevent access to release sites on NPS lands (*e.g.,* aircraft issues). We will work with WDFW and the associated land management partner (such as the USFS) to avoid administrative complications as appropriate. Primary release sites would be remote areas that could be accessed by helicopter and capable of accommodating helicopter support staging areas (NPS and FWS 2024, p. 30). Secondary release sites would be remote areas that could be accessed by vehicle or boat transportation and capable of accommodating appropriate staging areas. Secondary release sites would be considered if helicopter sites were not available due to weather limitations affecting flight safety or due to other logistical issues. Staging areas would be identified in previously disturbed areas large enough for the safe landing of a helicopter, parking for a fuel truck, and any other grizzly bear transport and handling needs.

Release sites would be chosen based on habitat suitability, connectivity to other release sites within the NEP, and the need to have released grizzly bears in close proximity to one another to facilitate interaction and breeding. Additional criteria for acceptable release sites include the following:

- Areas that consist largely of high-quality seasonal habitat; specifically, areas that contain readily available berry-producing plants that are known grizzly bear foods.
- Areas that are largely roadless, are an adequate distance from high visitor use and motorized areas, and have low human use.
- Areas with a suitable helicopter landing site or a suitable vehicle- or boat-accessible site with little public use.

Sites for subsequent releases of grizzly bears would be chosen based on the criteria listed above and limited to Federal lands, unless otherwise authorized by relevant authorities and landowners. Future additional release sites would be informed by grizzly bear resource selection as determined through monitoring of grizzly bears previously released into the NEP.

Capture and Release Procedures

Grizzly bears will be captured using culvert traps as a primary method, but foot snares may be used in some capture locations. Culvert traps provide the option of releasing non-candidate bears without anesthetization. All bears will be captured and handled humanely using established protocols (Jonkel 1993, entire) and with effort to minimize restraint time (Cattet et al. 2003, 651; Dickens et al. 2010, entire). Helicopters will be used to transport culvert traps from which grizzly bears would be released. It is possible that helicopter support will also be used for the capture of grizzly bears through use of helicopter-based capture darting. The capture and release of grizzly bears will take place during the summer (June–September), depending on the selected capture and release site(s) and food availability. Grizzly bears will be moved and transported from capture locations to release staging areas by vehicle. Grizzly bears will then be transported from staging areas to remote release sites by helicopter or by vehicle or boat on NPS or National Forest System lands in Management Area A (NPS and USFWS 2024, pp. 30–31). Each release could take up to 8 hours (1 day) depending on the distance between staging and release areas, potentially resulting in 5 to 10 days of helicopter use per year for releases. Helicopters could make up to four round trip flights, traveling approximately 500 ft (150 m) above the ground, and make up to four landings in wilderness per release, which would be necessary for the release of each grizzly bear and drop-off and retrieval of staff and the culvert trap. All operations would be conducted during daylight hours.

We will attempt to capture three to seven bears per year. Capture success and availability of bears will govern the exact annual numbers captured and source population(s). Additional grizzly bears could be needed depending on a variety of factors, including human-

caused mortality, genetic limitations, population trends, and the population's sex ratio. Population modeling indicates the need for release of 36 bears into the NEP to obtain an initial population of 25 individuals in approximately 8–9 years (NPS and USFWS 2024, p. 32). Until a population of 25 individuals is reached, we will capture and release grizzly bears to replace any previously released grizzly bears that die. We expect additional releases to maintain genetic diversity in this population as determined by long-term monitoring. Bears released would be roughly 60 percent or greater females, and ages of all released animals (males and females) are expected to be 2–6 years old.

How does the experimental population contribute to the conservation of the species?

Under 50 CFR 17.81(b), before authorizing the release as an experimental population, the Service must find by regulation that such release will further the conservation of the species. We explain our rationale for making our finding below. In making such a finding, we must consider effects on donor populations, the likelihood of establishment and survival of the experimental population, the effects that establishment of the experimental population will have on recovery of the species, and the extent to which the experimental population will be affected by Federal, State, or private activities.

Effects on Wild Populations

Our regulations at 50 CFR 17.81 require that we consider any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere. The preferred donor populations for the reintroduction of grizzly bears to the NEP occur in south-central British Columbia or in the United States, such as the NCDE or GYE. We will seek source areas that have a healthy grizzly bear population so that removal of grizzly bears would not affect population viability, as the capture and removal of grizzly bears would be considered a loss for the source population.

Sourcing NEP grizzly bears from NCDE, GYE, and/or south-central British Columbia populations will not negatively affect the donor populations for the following reasons. The NCDE and GYE demonstrate stable to slightly increasing demographic trends with an estimated 1,114 grizzly bears in the NCDE and 965 bears in the GYE in 2021. Further, grizzly bear distribution has expanded well beyond these recovery zones (figure 1; USFWS 2022, pp. 63–67). Given the demonstrated resilience and recovery trajectory of these populations in the United States and Canada, and the limited number of grizzly bears that will be translocated (36 grizzly bears to obtain an initial population of 25 individual bears), we expect the donor populations in the NCDE and the GYE to remain stable and persist despite the translocation of these 36 individuals for the NEP. Further, the number of individuals necessary for the NEP is minimal in relation to the demographic recovery criteria and the annual mortality of the NCDE and GYE populations; therefore, we do not expect translocations to the NCE to cause population-level effects or impede connectivity from the NCDE to the GYE. Further, the Service will coordinate with States to ensure NCE translocations are balanced with other management needs (*e.g.,* augmentation programs from NCDE to CYE and GYE). South-central British Columbia has several GBPUs with a sufficient number of bears and conservation status secure enough to use as sources. Wells Gray, North Purcells, Central Rockies, and North Selkirk GBPUs have a combined total estimated grizzly bear population of 1,100, and populations are stable or increasing (Environmental Reporting BC, 2020, entire).

In addition to sourcing NEP grizzly bears from healthy populations, we will prioritize source areas that are ecologically similar to the NCE area and will only select grizzly bears that do not have a history of coming into conflict with humans. We will attempt to capture grizzly bears that share a similar ecology and food economy to potential release areas. Food economy refers to the dominant foods available to grizzly bears in a given area. Dominant foods in the NCE are expected to be similar to the west side of the NCDE in northwestern Montana, adjacent grizzly bear habitat in British Columbia, Canada, and grizzly bear habitat in south-central interior British Columbia. In these areas, berries are the dominant food source providing calories and ultimately fat production necessary for a grizzly bear to successfully hibernate and reproduce. As a result, these areas will most likely be selected for capturing grizzly bears for release into the NEP as compared, for example, to areas where grizzly bears rely predominately on salmon (Adams et al. 2017, pp. 6–9). However, mortality thresholds in these source populations may limit the number of grizzly bears available for the NEP reintroduction effort, and other ecosystems, such as the GYE, may be considered in those circumstances. If the number of mortalities in a source population is close to or at the allowable threshold for that year, we would not take bears from that source population in that year.

Lastly, the entities managing the source area must also be willing to donate grizzly bears that meet the selection criteria described above and allow trapping of an adequate number of grizzly bears. We will coordinate in advance with the relevant authorities managing the potential source populations before seeking to capture and translocate grizzly bears. All applicable regulatory requirements would be fulfilled prior to translocation of grizzly bears.

Likelihood of Population Establishment and Survival

In our findings for designation of an experimental population, we must consider if the reintroduced population will become established and survive in the foreseeable future. In this section of the preamble, we address the likelihood that populations introduced into the NEP area will become established and survive. The term ''foreseeable future'' appears in the Act in the statutory definition of ''threatened species.'' However, the Act does not define the term ''foreseeable future.'' Similarly, our implementing regulations governing the establishment of experimental populations under section 10(j) of the Act use the term ''foreseeable future'' (50 CFR 17.81(b)(2)) but do not define the term. Our implementing regulations at 50 CFR 424.11(d), regarding factors for listing, delisting, or reclassifying species, set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions as it relates to life history of the species and its response to threats. While we use the term ''foreseeable future'' here in a different context (to determine the likelihood of experimental population establishment and to establish boundaries for identification of the experimental population), we apply a similar conceptual framework. Our analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant effects of release and management of the species and to the species' likely responses in

view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

For the purposes of this final rule, we define the foreseeable future for our evaluation of the likelihood of survival and establishment of this NEP as approximately 30–45 years. We selected this timeframe because it captures approximately two to three generation intervals for the grizzly bear. A generation interval is the approximate time that it takes a female grizzly bear to replace herself in the population. Given the longevity of grizzly bears, two to three generation intervals represent a time period during which a complete turnover of the population would have occurred and any positive or adverse changes in the status of the population would likely be evident. Additionally, because human-caused mortality is the primary threat to the species, this timeframe considers the possibility that USFS land management plans, the primary regulatory mechanism managing human access to grizzly bear habitat on Federal lands outside of designated wilderness or NPS lands, could go through at least one revision.

In evaluating the likelihood of establishment and survival of this NEP in the foreseeable future, we consider the extent to which causes of extirpation in the NEP area have been addressed, habitat suitability and food availability within the NEP area, and existing scientific and technical expertise and experience with reintroduction efforts. As discussed below, we expect that grizzly bears will become established during the foreseeable future.

Addressing the Causes of Extirpation in the Experimental Population Area

In the NEP, the northwest fur trade was probably the primary driver of rapid grizzly bear decline, while the effects of mining, logging, livestock production, agriculture, and development also fragmented and degraded grizzly bear habitat and increased conflict-related mortality (Almack et al. 1993, p. 3; Rine et al. 2020, pp. 5–13; USFWS 2022, p. 143). By 1975, grizzly bear populations in the U.S. portion of the NCE had been reduced in number and restricted largely to remote areas (USFWS 2022, p. 52). Though the NEP currently contains one of the largest contiguous blocks of Federal land remaining in the lower 48 States, diminished grizzly bear numbers from past intensive killing and isolation from other grizzly bear populations contributed to the extirpation of the historic population and the low likelihood of natural recolonization (Lewis 2019, p. 7; USFWS 2022, p. 52; 88 FR 41560, June 27, 2023).

Regulation of human-caused mortality has substantially reduced the number of grizzly bear mortalities caused by humans. Because road access was identified by the IGBC as one of the most imminent threats to grizzly bears, the recovery plan recommended that road management be given the highest priority for grizzly bear recovery (USFWS 1993, pp. 21–22; USFWS 2022, p. 52). Land management agencies across the grizzly bear range have incorporated habitat management guidance from the recovery plan (USFWS 1993, entire). In addition to road access, the IGBC and member entities identified and implemented conflict prevention measures in the U.S. portion of the NCE including sanitation measures, signage about grizzly bears and sanitation on NPS and National Forest System lands, and funding for education and outreach programs (IGBC 2019, p. 9). North Cascades NP and several nonprofit organizations provide resources, educational material, and workshops to the public to prevent human-bear conflict in the NCE. Regulating human-caused mortality through habitat management and conflict prevention are effective approaches to reduce negative effects to grizzly bear populations, as evidenced by increasing grizzly bear populations in the lower 48 States (USFWS 2022, p. 7). We will consider using a range of conflict prevention efforts, such as securing of attractants (*e.g.,* bird feeders, pet food, garbage containers, barbeque grills), electric fences and electric mats, animal husbandry practices (range riders, human presence), and bear aware education. The best available data indicate that, due to ongoing conservation efforts in the GYE, NCDE, CYE, and Selkirk Ecosystem, grizzly bear population trends in these ecosystems are stable or increasing, and range extent has continued to expand (figure 1; USFWS 2022, p. 208). Given the intent to implement similar conservation efforts in the NCE Recovery Zone as guided by the IGBC, we can expect human-caused mortality and direct and indirect effects of human activity for the NEP to be managed in a way so that these threats would not prevent population growth and stability.

Habitat Suitability

As noted above (in *Status of Grizzly Bears in the North Cascades Ecosystem*), five studies conclude that the U.S. portion of the NCE has the habitat resources essential for the maintenance of a grizzly bear population (Agee et al. 1989, entire; Almack et al. 1993, entire; Gaines et al. 1994, entire; Lyons et al. 2018, entire; Ransom et al. 2023, entire). The IGBC NCE Subcommittee had two separate research teams (Almack et al. 1993, entire; Gaines et al. 1994, entire) evaluate an area encompassing more than 10,000 mi^2 (25,900 km^2) of the NCE for grizzly bear habitat types and foods. The survey area included all of the North Cascades NPS complex and most of Mount Baker Snoqualmie NF and Okanogan-Wenatchee NF. Each team evaluated the survey area for viable grizzly bear habitat using common criteria, including the presence, abundance, and diversity of grizzly bear foods; habitats of seasonal importance and their distribution; and delineation of human activities (*i.e.,* roads, habitation, timber harvest, recreation). In addition to these criteria, Almack et al. (1993, p. 22) evaluated the study area for grizzly bear habitat according to the seven characteristics identified by Craighead et al. (1982, p. 10): space, isolation, denning, safety, sanitation, vegetation types, and food.

The results of these surveys were presented to a technical review team, which ultimately determined based on the available data, that the U.S. portion of the NCE could support a viable grizzly bear population of 200 to 400 individuals (Servheen et al. 1991, p. 7). More recent work using a suite of spatially explicit, individual-based population models that integrate information on habitat selection, human activities, and population dynamics estimated a mean carrying capacity for grizzly bears in the U.S. portion of the NCE between 250 and 300 grizzly bears (Lyons et al. 2018, entire). Using the modeling framework developed in Lyons et al. (2018, entire), Ransom et al. (2023, entire) evaluated grizzly bear habitat quality and carrying capacity across a range of future climate scenarios through 2099. The net amount of high-quality habitat was shown to increase across all modeled future scenarios as compared to current conditions. Assuming a home range size of 108 mi^2 (280 km^2), carrying capacity increased from a baseline of 139 female bears under current conditions to 241–289 female bears (Ransom et al. 2023, p. 6).

Almack et al. (1993, pp. 7–10) and Gaines et al. (1994, pp. 534–356) used Landsat multispectral scanner imagery and field observations to produce vegetation cover maps of the study area according to vegetation structure (*e.g.,* forest, shrub, and barren rock) and community composition. The teams also

identified 124 plant species known to be grizzly bear foods through an exhaustive review of sighting reports, scat analysis, and studies conducted on grizzly bears south of Alaska. Analysis of the vegetation maps indicated that 100 of the 124 identified plant species exist in the U.S portion of the NCE, and every vegetation cover type contained some plants that were on the list. The teams also mapped ranges of wildlife prey species known to occur in the NCE. Salmonid species were more abundant in streams on the western slope of the NCE, and ungulates were dispersed relatively evenly throughout. These results led both teams to conclude that sufficient vegetative grizzly bear foods are readily available in the U.S. portion of the NCE, and the occurrence of wildlife prey species can sustain a grizzly bear population (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544).

Some developed areas outside of the NCE Recovery Zone but within the NEP, such as industrial timber lands, agricultural areas, and towns and cities, contain habitat resources for grizzly bears. Although these areas may be capable of supporting grizzly bears, human influences may make those areas not conducive or compatible with persistent grizzly bear occupation. Our zoned management approach is intended to allow additional management options for grizzly bears that may move into these areas.

Translocation Expertise and Experience

Similar grizzly bear translocations to those we will conduct for the NEP have been conducted in the Cabinet Mountains portion of the CYE since the 1990s. Specifically, researchers and managers have been augmenting the CYE's small grizzly bear population by introducing one to two grizzly bears per year in the period 1990–1994 and from 2005 to the present. All augmented bears have originated from the NCDE and British Columbia. The success of the CYE augmentation pilot program of four bears prompted additional augmentations between populations in the United States. In the period 2005–2021, in cooperation with Montana Department of Fish, Wildlife and Parks, 10 female bears and 8 male bears were moved from the Flathead River to the Cabinet Mountains (Kasworm et al. 2022b, pp. 25–33). Analysis of DNA from hair corrals has been occurring since 2000 and from rub trees since 2012. Based on this analysis, three females and two males are known to have produced at least 15 first-generation, 23 second-generation, and 4 third-generation offspring. Of 22 bears released through 2020, 8 are known to have left the target area (1 was recaptured and brought back, 2 returned in the same year, and 1 returned a year after leaving), 3 were killed within 4 months of release, and 1 was killed 16 years after release (Kasworm et al. 2022b, p. 26). Annual survival rates of augmentation bears (0.784) are lower than native subadult female CYE bears (0.852) (Kasworm et al. 2022b, pp. 37–38).

Data collected since the 1988 population estimate now suggest the CYE population may have been even smaller than previously thought with an estimated 15 or fewer individuals in 1988. However, recent data also suggest that the number of grizzly bears in the Cabinet portion of the CYE has increased. Current population size for the CYE is estimated to be 60–65 bears with approximately half this number in the Cabinet Mountains (Kasworm et al. 2022b, p. 42). The population increase in the Cabinet Mountains has occurred almost exclusively through the augmentation effort and reproduction from those individuals (Kasworm et al. 2022b, pp. 31–33). Grizzly bears in the CYE are expected to continue to increase in population and resiliency with ongoing augmentation efforts (USFWS 2022, pp. 229–242).

These data demonstrate our technical expertise, experience, and success with grizzly bear translocations. We will rely on the same measures for the NEP translocations, and we anticipate grizzly bear translocations in the NEP to be as successful as those conducted in these other areas. Based on the available data from other grizzly bear populations, we modeled annual population growth rates of 2 to 4 percent and estimated there will likely be 46–81 grizzly bears (2 percent annual growth) or 62–146 grizzly bears (4 percent annual growth) in the NEP area 30–45 years after translocations are initiated (Costello et al. 2023, pp. 10–11; Kasworm et al. 2023b, pp. 41–42; Kasworm et al. 2023b, pp. 28–29; Haroldson et al. 2022, pp. 12–18).

Summary

The best available scientific data indicate that the restoration of grizzly bears into the NEP is biologically feasible and would promote the conservation of the species. Specifically, we anticipate that grizzly bears can be successfully reestablished in the NEP for the following reasons:

(1) The reintroduced population will receive ongoing demographic support (population augmentation) from source populations to replace bears that die or are killed until a population of 25 individuals is achieved and to maintain genetic diversity in this population as determined by long-term monitoring (NPS and USFWS 2024, p. 32).

(2) The primary causes of historical grizzly bear extirpation from the region (direct killing by humans and habitat loss as a result of conversion to agriculture and resource extraction) are now regulated to ensure the population will survive and grow (Lewis 2019, pp. 8–9).

(3) An established IGBC NCE Subcommittee can help guide the restoration effort. This subcommittee helps coordinate policy, planning, management, and research with the Federal and State agencies responsible for grizzly bear recovery and management (IGBC 2019, pp. 9–10). Tribal governments are also represented on IGBC subcommittees and engage as desired, although there are no Tribal governments currently represented on the NCE subcommittee.

(4) Landscape-scale modeling and studies of available habitat and food resources indicate the NEP area has the capacity to support a population of grizzly bears (Almack et al. 1993, pp. 21–22; Gaines et al. 1994, p. 544; Lyons et al. 2018, p. 29; Ransom et al. 2023, p. 6).

(5) We have experience in successfully translocating grizzly bears in other areas and have established effective protocols (Kasworm et al. 2007, pp. 1262–1265; Kasworm et al. 2022b, pp. 31–33) that we will apply to NEP reintroductions.

Based on these considerations, we anticipate that the reintroduced population of grizzly bears is likely to become established and persist in the NEP.

Effects of the Experimental Population on Grizzly Bear Recovery

Restoring the grizzly bear to the NEP area and establishing the associated protective measures and management practices under this final rule would further the conservation of grizzly bears by establishing another population in a portion of the species' historical range where the species is presently functionally extirpated. Our recovery plan includes a recovery objective to recover grizzly bears in all of the ecosystems known to have suitable space and habitat (USFWS 1993, pp. 15–16). The NEP area contains one of the largest remaining areas of high-quality habitat for the grizzly bear in the lower 48 United States (USFWS 1997, p. 1). Reintroducing grizzly bears into the NEP area and establishing a grizzly bear population focused on the NCE Recovery Zone fulfills an important

recovery need for the grizzly bear in the lower 48 United States.

We assess species' viability through the lens of the conservation biology principles of resiliency, redundancy, and representation (collectively known as the ''3Rs'') (USFWS 2016, entire). Resiliency describes the ability of the species to withstand stochastic disturbance events, which is associated with population size, growth rate, and habitat quality. Redundancy is the ability for the species to withstand catastrophic events, for which adaptation is unlikely, and is associated with the number and distribution of populations. Representation is the ability of a species to adapt to changes in the environment and is associated with its ecological, genetic, behavioral, and morphological diversity. Resiliency of grizzly bear ecosystems is measured using both habitat and demographic factors. Despite the moderate condition of habitat, without a known population, the NCE currently has no resiliency, and as a result does not currently contribute to redundancy and representation of grizzly bears in the lower 48 United States (USFWS 2022, pp. 10–14). If successful, reintroduction in the NCE would improve resiliency by reestablishing a population of the species within its historical range that is demographically viable. Successful reintroduction would also improve redundancy by further reducing the likelihood that any one catastrophic event would affect all populations. It would also increase the ecological diversity of the habitats occupied by the species and improve representation by facilitating adaptation to a variety of ecological settings and potentially increasing the future genetic diversity of grizzly bears. For these reasons, reestablishment of a population of grizzly bears in the NCE as an NEP, if implemented and successful, would increase resiliency, redundancy, and representation, and hence viability, of the currently listed lower 48 States entity.

Actions and Activities in Washington That May Affect Reintroduced Grizzly Bears

Although the NEP area contains a variety of land ownership types (see *Experimental Population Area,* above), it contains large blocks of land with limited ongoing human influence, such as remote Federal lands (including those managed as designated wilderness), some State lands, and lands acquired for conservation by nongovernmental organizations. These areas provide sufficient high-quality habitat for grizzly bears, and low potential for both displacement and human–bear conflict. However, grizzly bears will likely use other lands within the NEP, depending on human development and other human activities.

Primary land uses on lands in Management Area A (see *Management Areas,* above) include protection and conservation of natural and cultural resources, non-motorized land-based recreation (hiking, climbing, skiing, cycling, camping, hunting), motorized land-based recreation (off-highway vehicle and snowmobile riding), water-based recreation (boating, fishing), hydropower production, timber harvest, mineral extraction, livestock grazing, research, and education. Although much of Management Area A is public land, is largely unavailable and/or unsuitable for intensive development, and contains an abundance of wild ungulates, livestock grazing does occur within the Area, which may increase the potential for mortality of grizzly bears via lethal control of depredating bears. There are 62 total grazing allotments representing 19.5 percent of the total acreage in Management Area A. Of those allotments, 30 are currently active, representing 9 percent of the total acreage in Management Area A. Most of these permits are for grazing cattle, and five allotments allow for sheep grazing, all of which are in the southern half of Management Area A close to Wenatchee and Cle Elum (USDA 2023, entire). Similar land management practices in the GYE and NCDE, and the expanding grizzly bear populations in those areas, indicate that livestock allotments and associated habitat loss are not limiting grizzly bear populations (USFWS 2022, p. 124).

Primary land uses in Management Area B (see *Management Areas,* above) are similar to those in Management Area A. As described in Management Area A, these activities pose some risk to grizzly bears, but will not likely preclude grizzly bear presence in Management Area B.

Management Area C (see *Management Areas,* above) contains a mixture of land ownerships and uses, including developed areas, and areas where agricultural and industrial uses predominate. Large areas in this management area may be incompatible with grizzly bear presence due to relatively high amounts of private land ownership and associated development and/or potential for bears to become involved in conflicts and resultant bear mortality. Grizzly bears may still occupy portions of Management Area C, but human activities will limit their presence.

Experimental Population Regulation Requirements

Our regulations at 50 CFR 17.81(c) include a list of what we should provide in regulations designating experimental populations under section 10(j) of the Act. We explain what our regulations include and provide our rationale for those regulations, below.

Means To Identify the Experimental Population

Our regulations require that we provide appropriate means to identify the experimental population, which may include geographic locations, number of individuals to be released, anticipated movements, and other information or criteria. The purpose of this requirement is to ensure that nonexperimental populations of the same species receive the appropriate level of protection afforded to the species by its listing under the Act. In other words, it ensures that the special regulations issued under section 10(j) apply only to the designated experimental population and not to other populations of the same species. We recognize that it would not be possible for members of the public to determine the origin of any individual grizzly bear. As discussed below, we conclude that, once we have released a grizzly bear, it is highly likely that any grizzly bears found in the NEP area will have originated from and be members of the NEP. Therefore, we will use geographic location to identify members of the NEP. The NEP area encompasses the entire State of Washington except for the area within and around the Selkirk Ecosystem Recovery Zone (figure 2). After we have released one or more grizzly bears for reintroduction into the NEP area, any grizzly bear within the NEP area, regardless of origin, will be treated as part of the experimental population. Any grizzly bears found in the NCE NEP area before the Service has one or more grizzly bears into the NEP area will be managed in accordance with the existing 4(d) rule (50 CFR 17.40(b)). After our initial release of one or more grizzly bears into the NEP area, any grizzly bears, including those moving from Canada into the NEP area, will be treated as part of the NEP while they are present within the NEP area, with all the associated ESA protections and exceptions of the experimental population under this 10(j) rule. However, currently, no population of grizzly bears exists within the NEP area, and the likelihood of a grizzly bear moving into the NEP area from the nearest population of ESA-listed grizzly

bears in the Selkirk Ecosystem is small (see *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below).

We anticipate that eventually some grizzly bears may move between portions of the NCE in Canada and the United States (see *Is the Experimental Population Wholly Geographically Separate from Nonexperimental Populations?* below). As stated above, bears entering the NEP area prior to our initial release will be managed in accordance with the existing 4(d) rule. After our initial release of one or more grizzly bears into the NEP area, any grizzly bears moving from Canada to the NEP area will be treated as part of the NEP and addressed under the 10(j) rule while they are within the NEP area. Likewise, a bear originating in the NEP but located in the British Columbia portion of the ecosystem would be managed in accordance with appropriate Canadian regulations.

Is the experimental population wholly geographically separate from nonexperimental populations?

Section 10(j) of the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. Grizzly bears reintroduced in the NEP would be separated from the nearest population of bears in the United States, located in the Selkirk Ecosystem. The NEP is approximately 100 mi (161 km) to the west of the Selkirk Ecosystem, which contains approximately 83 individuals, and the NEP is 75 mi (121 km) from any verified grizzly bear observations to the west of the Selkirk Ecosystem (Proctor et al. 2012, p. 31). The area between the two populations also contains significant portions of human-altered landscape (*e.g.,* major roads, agricultural lands, rural/urban development) or major natural landscape features (*e.g.,* Columbia River) that reinforce continued geographic separation (Singleton et al. 2004, pp. 95–101). Due to the highly fragmented landscape between these areas, as well as the distance between these ecosystems, which is beyond the average female dispersal distance of 6.1–8.9 mi (9.8–14.3 km) (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108), we conclude the NEP to be wholly separate from all other extant populations of grizzly bears in the United States. Dispersal between the NEP and other U.S. populations or the likelihood of overlap is low; therefore, we do not expect natural recolonization of the NEP area could happen on its own.

As noted above, the Act requires that an experimental population of a listed species be wholly geographically separate from other populations of the same listed species. In this case, the listed species is the grizzly bear in the lower 48 States, and thus the NEP is required to be wholly geographically separate only from other populations of the ESA-listed species, that is, other populations within the United States. However, the NEP is also currently separated from any known grizzly bear populations in Canada, which are not part of the listed species. Connectivity from the east in Canada is unlikely as the nearest population is over 62 mi (100 km) across the heavily human-settled Okanagan Valley (North Cascades Grizzly Bear Recovery Team 2004, p. 7, McLellan et al. 2017, p. 2).

The closest GBPUs to the north include the Canadian North Cascades GBPU (adjacent to the U.S. portion of the NCE) and the Stein-Nahatlatch GBPU (22 mi (37 km) from NCE). The North Cascades GBPU grizzly bears (with no confirmed sighting in over a decade) is isolated from other populations, and there is no known reproduction. The Stein-Nahatlatch hosts a very low estimated bear density and very low genetic diversity (USFWS 2022, appendix E, p. 323). Both units are designated as M1, the highest level of conservation concern, according to British Columbia's conservation ranking assessment (Morgan et al. 2020, pp. 19–24) and are designated as ''Critically Endangered'' by the IUCN Red list (McLellan et al. 2017, p. 2). While the Stein-Nahatlatch GBPU is within the dispersal distance of both male (18.6–26 mi (29.9–41.9 km)) and female (6.1–8.9 mi (9.8–14.3 km)) grizzly bears (McLellan and Hovey 2001, p. 842; Proctor et al. 2004, p. 1108) to the North Cascades GBPU, only the northern half of the Stein Nahatlatch GBPU is occupied by grizzly bears (Apps et al. 2008, p. 25; Apps et al. 2014, p. 30). The distance between the North Cascades GBPU and the occupied portion of the Stein-Nahatlatch GBPU is significant and consists of the large Fraser River valley and canyon, the heavily travelled Trans-Canada Highway, two railways, human settlements, and other developments (USFWS 2022, pp. 321–324; McLellan et al. 2017, entire). Therefore, dispersal of grizzly bears from the Stein-Nahatlatch GBPU to the NEP is unlikely.

As discussed above, restoring a grizzly bear population in the Canadian portion of the NCE through augmentation by the Canadian Government is under consideration. Should those augmentation efforts occur in British Columbia, some grizzly bears reintroduced into the Canadian portion of the ecosystem may likely move into the NEP area in the United States, either as a transient that returns to Canada or that ultimately remains in the United States. A restored population of grizzly bears in British Columbia would not affect the designation of a section 10(j) experimental population of grizzly bear listed in the United States because the ''wholly geographic'' separation requirement does not apply to populations that are not a part of the listed species. After our initial release of one or more grizzly bears into the NEP, any bears entering the NEP area from Canada will be managed under this final 10(j) rule.

Is the experimental population essential to the continued existence of the species in the wild?

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. This determination is based solely on the best scientific and commercial data available. Our regulations state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild (50 CFR 17.80(b)). All other populations are considered nonessential. Although the experimental population in the U.S. portion of the NCE will contribute to the recovery of the grizzly bear in the United States, several factors suggest the restored population is not essential to the grizzly bear's continued existence in the wild:

(1) Approximately 2,200 grizzly bears exist in other ecosystems in the contiguous United States that are intensively monitored and managed (USFWS 2022, p. 61, see *Historical and Current Range* and *Grizzly Bear Ecosystems and Recovery Zones;*

(2) We are proposing to capture and translocate a relatively small number of grizzly bears (up to three to seven per year) from populations that are demographically healthy and therefore will not be measurably affected by this removal (see *Effects on Wild Populations*);

(3) The experimental population is not expected to provide demographic support to the existing grizzly bear populations in the lower 48 United States due to geographic distance and existing barriers to dispersal (see *Status of Grizzly Bears in the North Cascades Ecosystem*); and

(4) The experimental population will be established from extant grizzly bear

populations (see *Effects on Wild Populations*) and therefore will not possess any unique genetic or adaptive traits that are critical to the survival of the species.

For these reasons, the loss of the experimental population would not appreciably reduce the likelihood of survival of that species in the wild. Therefore, as required by 50 CFR 17.81(c)(2), we find that the experimental population is not essential to the continued existence of the species in the wild, and we designate the experimental population in the U.S. portion of the NCE as an NEP.

Management Restrictions, Protective Measures, and Other Special Management

Authorized Federal, State, and (as desired) Tribal agencies will manage the reintroduced grizzly bears in the NEP. These entities will collaborate on monitoring, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful management of the NEP consistent with a Service-partner agency MOU specific to implementing this 10(j) rule. Specific management considerations related to the experimental population, including prohibitions and exceptions involving the taking of individual animals, are addressed below. Unless otherwise agreed to by the Service in the provision of the applicable MOU, management actions involving capturing, relocating, or lethally taking a grizzly bear must be approved by the Service with limited exceptions as described in the rule.

Section 9 of the Act prohibits various actions regarding species listed as endangered, which may be applied as part of protective regulations for experimental populations. Section 9 prohibitions include among other things prohibition against the import or export of species, restrictions on possession, sale, and transport (whether commercial or otherwise), and the prohibition against ''take'' of any such species. Section 3(19) of the Act defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Experimental population rules may contain specific prohibitions and exceptions, including regarding take; these rules help the reintroduction and management of an experimental population to be compatible with most routine human activities in the expected reestablishment area. This section 10(j) rule generally prohibits the take of any grizzly bear in the NEP area, with exceptions as follows:

Defense of life—A grizzly bear in the NEP may be taken in self-defense or in defense of others, based on a good-faith belief that the actions are necessary to protect any individual from bodily harm.

Deterrence—''Deterrence'' means an intentional, nonlethal action to haze, disrupt, or annoy a grizzly bear out of close proximity to people or property to promote human safety, prevent conflict, or protect property. Any deterrence must not cause lasting bodily injury to any grizzly bear (*i.e.,* permanent damage or injuries that limit the bear's ability to effectively move, obtain food, or defend itself for any length of time), or death to the grizzly bear. Any person who deters a grizzly bear must use discretion and act safely and responsibly in confronting grizzly bears. Acceptable deterrence techniques may include non-projectile auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, and noise-making projectiles. Unacceptable deterrence methods include screamers/whistlers, rubber bullets/batons, and bean bag and aero sock rounds. For more information about appropriate nonlethal deterrents, individuals can contact the Service for the most current Service-approved guidelines. Anyone is allowed to deter a grizzly bear in the case of self-defense (*e.g.,* using bear spray or loud noises). Bear spray is an effective deterrent that has a higher success rate at stopping dangerous bear behavior and preventing human injury compared to firearms (Smith et al. 2008, p. 645; Smith et al. 2012, p. 12). An individual may not bait, stalk, or pursue a grizzly bear for the purposes of deterrence. Pursuit is defined as deterrence carried out beyond 200 yards (183 m) of a human-occupied area or lawfully present livestock.

Incidental take—''Incidental take'' is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; it must be unintentional and not due to negligent conduct. Individuals will not be in violation of the Act for taking a grizzly bear of the NEP, provided that: (1) the take is incidental to, and not the purpose of, an otherwise lawful activity; (2) they promptly report the take to the Service; and (3) if the take occurs due to USFS actions within National Forest System lands in Management Area A, that the USFS has maintained its 'no net loss' agreement and implemented food storage restrictions throughout USFS-managed lands in Management Area A. The 'no net loss' agreement is described above under *Threats.* Given the importance of maintaining core habitats and restricting human disturbance in these habitats for grizzly bear population establishment and persistence, we are tailoring the exception to the prohibition against incidental take by USFS actions on lands managed by the USFS as National Forest System lands under this 10(j) rule to be contingent upon maintenance and implementation of that longstanding approach within the NCE Recovery Zone. This exception would apply only to actions authorized, funded, or implemented by the USFS on lands managed by the USFS as National Forest System lands in Management Area A. We are currently coordinating with the USFS to memorialize the 'no net loss' agreement for Management Area A in an updated MOU.

Research and recovery actions—Any employee or agent of the Service, or any employee or agent of another Federal, State, or Tribal entity defined in a current MOU with the Service who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears (which we define as a Federal, State, or Tribal ''authority''), may, when acting in the course of official duties and with prior authorization from the Service, take a grizzly bear in the NEP area consistent with this rule and the applicable MOU if such action is necessary for: scientific purposes; to aid a sick or injured grizzly bear, including euthanasia if it is unlikely to survive or poses an immediate threat to human safety; to salvage a dead specimen that may be useful for scientific study; to dispose of a dead specimen; or to aid in law enforcement investigations involving the grizzly bear.

Relocation and management actions—As detailed more specifically in the regulation that follows, any employee or agent of the Service, or any employee or agent of another Federal, State, or Tribal entity defined in a current MOU with the Service who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears (which we define as a Federal, State, or Tribal ''authority''), may, when acting in the course of official duties, take a grizzly bear in the wild in the NEP area with prior authorization from the Service consistent with this rule and the applicable MOU if such action is necessary to accomplish the following:

- Avoid conflict with human activities;
- Prevent a grizzly bear from becoming habituated to humans;
- Improve grizzly bear survival;

• Release or relocate nontarget grizzly bears that have been incidentally trapped;
• Aid a law enforcement investigation;
• Salvage a dead bear; or
• Euthanize a grizzly bear that has been wounded severely enough such that it is unlikely to survive or poses an immediate threat to human safety.

Relocation sites will be identified in remote areas away from homes, developed areas, and concentrated human use. When a grizzly bear is captured, the employee or agent will consult with the appropriate land management agency to determine a relocation site that is most suitable for the bear, considering age/sex of the bear, conflict history, and current human use at available relocation sites. Such taking must be coordinated with the Service. Non-Service or other non-authorized personnel must acquire a permit from the Service for these activities.

Removal of grizzly bears involved in conflict—Grizzly bears can cause substantial property damage, including depredation, or pose a threat to human safety if they become food conditioned, *i.e.,* if they have learned to associate human presence with anthropogenic food because of repeatedly being rewarded with food without consequence (Beausoleil et al. 2022, p. 96). When it is not reasonably possible to eliminate such threat by securing attractants, nonlethal deterrence, or relocation, we may allow lethal removal of a grizzly bear involved in conflict under certain conditions. Lethal removal of grizzly bears involved in conflict in Management Area A may be conducted by authorized Federal, State, or Tribal authorities with prior approval by the Service in accordance with the provisions of this rule and the applicable MOU. Decisions on lethal removal will be based on many factors, including the ability to identify a particular bear (*e.g.,* markings, collars, track size, canine spacing), the individual bear involved (*e.g.,* sex, age, presence of dependent young, conflict history), relevant conflict history in the immediate area, and number of bears in the area.

To become an ''authorized'' Federal, State, or Tribal authority, we must have a written agreement, *i.e.,* an MOU, addressing grizzly bear management roles and responsibilities consistent with this 10(j) rule between the Service and the other Federal, State, or Tribal agency. While we may provide for grizzly bear management in the NEP area via other regulatory processes (such as a conference opinion issued by the Service to a Federal agency pursuant to section 7(a)(4) of the Act, an agreement under section 6 of the Act as described in 50 CFR 17.31 for State game and fish agencies with authority to manage grizzly bears, or a valid permit issued by the Service pursuant to 50 CFR 17.32), a prior written agreement is required to be considered an ''authorized'' Federal, State, or Tribal authority under this 10(j) rule.

In Management Areas B and C, the Service may authorize conditioned lethal take for individuals after a livestock depredation has been confirmed by the Service or authorized agency and if it is not reasonably possible to otherwise eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. In Management Area C, the Service may authorize conditioned lethal take to individuals if the Service or an authorized agency determines both of the following: grizzly bears present a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property and it is not reasonably possible to otherwise eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Also in Management Area C, any individual may take (injure or kill) a grizzly bear in the act of attacking livestock, including working dogs, on private land under certain conditions.

Management Area Management Actions

Management Area A (see *Management Areas* above) management actions include:
• Take of bears in self-defense or defense of others;
• Take resulting from otherwise lawful activities (*e.g.,* timber harvest, road construction, recreation), with the proviso that take resulting from otherwise lawful USFS activities on National Forest System lands in Management Area A are contingent on the USFS having maintained its 'no net loss' agreement and implemented food storage restrictions throughout Management Area A;
• Deterrence of bears;
• Take associated with research and recovery actions;
• Relocation or deterrence of bears by Federal, State, or Tribal authorities for recovery purposes, including as a preemptive action to prevent conflict; and
• Lethal removal by authorized Federal, State, or Tribal authorities of grizzly bears involved in conflict as defined in this 10(j) rule, including that it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

Management Area B (see *Management Areas* above) management actions include all actions authorized for Management Area A, plus the ability for the Service to issue written time-limited conditioned lethal take authorization to an individual if all the following conditions exist: a depredation of livestock has been confirmed by the Service or authorized agency, the Service or authorized agency determine a bear is a demonstrable and ongoing threat, and it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

Management Area C (see *Management Areas* above) management actions include all actions authorized for Management Areas A and B, plus the ability for the Service to issue written time-limited conditioned lethal take authorization to an individual to kill a bear under the following conditions: the Service or an authorized agency identifies the bear as an ongoing threat to human safety, livestock, or other property (*e.g.,* compost, chickens, beehives); and it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Also in Management Area C, any individual may take (injure or kill) a grizzly bear in the act of attacking livestock on private lands under specified conditions, including the absence of excessive unsecured attractants (*e.g.,* carcasses or bone piles), no intentional feeding or baiting of the grizzly bear or wildlife, prompt reporting of the take, and no disturbance of the area to allow for review.

Prohibited Activities

This rule prohibits all take of grizzly bear unless expressly excepted, as well as the possession, sale, delivery, carrying, transporting, shipping, or exporting, by any means whatsoever, any grizzly bear or part thereof from the experimental population taken in violation of the rule or in violation of applicable Tribal or State laws or regulations or the Act. This rule also makes it unlawful for individuals to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in the rule.

To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another

species is not considered incidental take and may be referred to appropriate authorities for prosecution.

Public Awareness and Cooperation

Coinciding with the November 14, 2022, publication in the **Federal Register** of the notice of intent to prepare an EIS (87 FR 68190), we issued a joint news release with the NPS announcing the EIS process and proposed section 10(j) rulemaking and sought comments as part of the EIS scoping phase. The news release was shared directly with counties and municipalities in the NCE, nongovernmental organizations, and other stakeholders. During the 30-day scoping phase, four informational virtual public meetings were held, inviting the public to ask questions about the EIS process, section 10(j) experimental populations, and grizzly bear recovery. Representatives from the Service and NPS also participated in numerous news media interviews to raise awareness about the EIS process, section 10(j) rulemaking, and associated public comment period.

Similar outreach techniques were used during the 45-day comment period for the proposed 10(j) rule and draft EIS to increase awareness and engage the public. These techniques included the distribution of a news release, participation in media features, and the direct sharing of information. One informational virtual meeting took place on October 17, 2023, and four in-person public meetings were held, on October 30, 2023, in Okanogan, WA, November 1, 2023, in Newhalem, WA, November 2, 2023, in Darrington, WA, and November 3, 2023, in Winthrop, WA. Video of an informational presentation was also posted online for the public to review.

Further public outreach and education will occur, both in the media and in the community, as grizzly bears are moved into and establish in the ecosystem. Education and outreach about how to minimize conflict, for the safety of both humans and bears, will be an important part of implementation. The Service will work with partners to increase outreach to people who live, work, and recreate in the NCE and surrounding areas. Outreach and education efforts will be modeled after similar efforts and practices developed in other grizzly bear ecosystems over multiple decades. Direct outreach and briefings to local governments and community organizations are also anticipated. Many different Federal, State, Tribal, and local government agencies and organizations in the State of Washington have wildlife education programs that can be partnered with and supported.

Interagency Consultation

As stated above under *Statutory and Regulatory Framework,* for purposes of section 7(a)(2) of the Act, our section 10(j) regulations (50 CFR 17.83) provide that NEPs are treated as species proposed for listing under the Act except when on NPS and NWRS lands, where they are treated as a threatened species for the purposes of section 7(a)(2) consultations. Therefore, Federal agency actions not affecting NPS lands or NWRS lands would be required to confer with the Service under the terms of section 7(a)(4) of the Act. On the other hand, Federal agency actions affecting grizzly bears within the experimental population area on NPS lands or NWRS lands would be required to consult with the Service under section 7(a)(2) of the Act. The provisions of section 7(a)(1) of the Act would still apply within the NEP area.

Review and Evaluation of the Success or Failure of the NEP

Monitoring and Evaluation

All translocated grizzly bears will be fitted with global positioning system (GPS) collars and ear tags prior to release to aid in monitoring habitat use and spatial distribution, and tissue samples will be collected to establish baseline information for genetic monitoring purposes. Monitoring of the releases and subsequent population monitoring will follow radio collaring and genetic monitoring techniques used in the Cabinet Mountains grizzly bear augmentation effort (Kasworm et al. 2022b, pp. 9–16). Periodic recaptures will be conducted to maintain a GPS-collared sample of the population. Other monitoring will include habitat and resource selection, survival metrics, reproductive success, rate of population growth, genetic composition of the population, and instances of conflicts between humans and grizzly bears. Radio collars that communicate locations from satellites to biologists via periodic downloads will limit the need for aircraft monitoring. However, periodic use of fixed-wing aircraft will be necessary to determine reproductive status. Camera stations and hair-snagging corrals will also be established in remote locations to monitor grizzly bear presence and gather genetic information that could also be used to assess reproductive contributions and monitor genetic diversity.

The Service and authorized agencies will monitor the status of grizzly bears in the NEP annually. The Service will evaluate the status of grizzly bears in the NEP in conjunction with our species status assessments and status reviews of the grizzly bear. Evaluations in our status reviews will include, but not be limited to: a review of management issues; grizzly bear movements; demographic rates; causes of mortality; project costs; and progress toward establishing a population. The recovery plan calls for maintaining human-caused mortality below 4 percent of the population for all recovery zones (USFWS 1993, p. 20). Because we anticipate the NCE population to remain low for the near future, we will attempt to keep human-caused mortality to zero. However, zero mortalities may not be practical given the need to protect human safety and property and due to accidental mortalities (*e.g.,* vehicle collisions).

Adaptive Management

We anticipate that our management of grizzly bears of the NEP will be adaptive, meaning we will apply management interventions, monitor outcomes, and incorporate learning from these interventions and outcomes (Williams and Brown 2012, entire) to achieve grizzly bear restoration objectives while maximizing social acceptance. If modifications to grizzly bear monitoring and management are needed, we will coordinate closely with NPS, WDFW, USFS, Tribal Governments, and others to ensure progress toward achieving recovery goals while concurrently minimizing human–grizzly bear conflicts in the NEP area.

Exit Strategy

In light of the Service's positive 90-day finding on two petitions to delist grizzly bears in the NCDE and the GYE (see ''Previous Federal Actions,'' above), we acknowledge that the boundaries of the listed entity of the grizzly bear in the United States may change in the future. We anticipate leaving this experimental population designation in place until all grizzly bears have been delisted due to recovery, regardless of whether the boundaries of the listed entity change. However, if grizzly bears of the NEP experience unexpectedly high natural mortality, if donor bears are not available, or if we conclude that we and our partners have insufficient funding for an extended period to support management of the NEP, we may consider ending the releases and removing the NEP designation. This would be done only after coordination with partners and a new public process where we would evaluate the NEP designation before making any decisions

to exit the restoration program and remove or revise the 10(j) rule as appropriate.

Consultation With State, Local, Tribal, Federal, and Affected Private Landowners

In April 2018, the Service reached out to more than 90 agencies and organizations to discuss a potential section 10(j) experimental population rulemaking and a zoned management approach for possible grizzly bear restoration efforts in the NCE. These included Federal, State, and local elected officials; federally recognized Tribes in Washington and Montana; natural resource and land management agencies; interest groups (including those representing timber, ranching or farming, and recreation interests); and environmental and conservation organizations. Between May and July 2018, the Service held more than 30 meetings with representatives from 49 different agencies and organizations for receiving feedback on the management framework and the zoned management approach.

Since the start of the public scoping period in November 2022, agency representatives have held 28 different meetings with local governments, State agencies, Tribes (including federally recognized Tribes in Washington and Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming), nongovernmental organizations, and congressional staff to present information and answer questions.

Nine public meetings were also held, both virtually and in-person. During the comment period for the proposed rule, four in-person meetings were held in communities on both the east (two) and west (two) sides of the NCE Recovery Zone. Meeting attendees were able to provide comments in writing or verbally to a stenographer, with options to do so privately and/or in front of other meeting attendees. Speakers were also encouraged to provide written comments by postal mail or online if 2 minutes was not sufficient for their verbal comment. At all four of these in-person meetings, everyone who requested to provide verbal comment was provided an opportunity to do so, and at all four meetings the list of speakers was exhausted, with additional time remaining. Before the public comment portion of each in-person meeting, attendees had the opportunity to review informational banners and ask agency staff questions. Throughout the public comment period, written comments on the draft EIS and proposed 10(j) rule were accepted online, by postal mail or hand-delivery, and at the in-person meetings.

Feedback from the dozens of outreach meetings dating back to 2018 were also used in the development of this final rule.

Findings and Regulatory Revisions

Based on the best scientific information available, as described above and in accordance with 50 CFR 17.81, we find that releasing grizzly bears into the NCE with the regulatory provisions in this rulemaking will further the conservation of the species. The NEP status is appropriate for the introduced population; the potential loss of the experimental population would not appreciably reduce the likelihood of the survival of the species.

Therefore, as a result of the findings just described, we are amending the entry for the grizzly bear on the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to add an entry for the North Cascades NEP. We are also correcting the entry for the Bitterroot NEP of the grizzly bear. In the ''Listing citations and applicable rules'' column, the information for the Bitterroot NEP of the grizzly bear included an error. We are replacing the incorrect **Federal Register** citation, 70 FR 69854, 11/17/2005, with the correct citation for the final rule that established the Bitterroot NEP: 65 FR 69624, 11/17/2000.

As set forth in the rule portion of this document, we are revising 50 CFR 17.84 to add a new paragraph (y) to establish the North Cascades NEP of the grizzly bear. For the purpose of clarity, we are also revising the opening text of the regulations that set forth the Bitterroot NEP of the grizzly bear at 50 CFR 17.84(l). Currently, the regulations for the Bitterroot NEP begin with ''Grizzly bear (*Ursus arctos horribilis*).'' However, as stated above, through this rule we are adding another grizzly bear NEP to the regulations at § 17.84. To differentiate the regulations for the two grizzly bear NEPs in that section, we are revising the heading for the Bitterroot NEP at paragraph (l) to read: ''Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population,'' and the heading for the North Cascades NEP at paragraph (y) will read: ''Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.''

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

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 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this final rule in a manner consistent with these requirements.

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 not significant.

The North Cascades Ecosystem Grizzly Bear Restoration Plan/final EIS (NPS and USFWS 2024) analyzed the potential impacts of restoration of grizzly bears to the North Cascades including potential impacts to visitor use and recreational experience (NPS and USFWS 2024, pp. 115–130), human safety (NPS and USFWS 2024, pp. 130–139), and socioeconomic effects of the restoration of grizzly bear on various sectors in a seven-county area (including gateway communities) (NPS and USFWS 2024, pp. 139–156). The final EIS evaluation included the impacts of restoration of grizzly bear as managed under this final section 10(j) rule, which was the agencies' preferred alternative (NPS and USFWS 2024, pp. 37–50).

The final EIS evaluated impacts to visitor use and recreational use experience qualitatively. Recreational use of Federal land in the NCE is estimated to be more than 8 million recreation visitor-days per year, most of which is associated with dispersed recreation rather than developed campgrounds or wilderness areas (NPS and USFWS 2024, p. 117). Potential beneficial and adverse impacts on visitor use and experience could result from the initial restoration of grizzly bears in the NCE, and visitation could increase or decrease depending on visitor interest in or aversion to them (NPS and USFWS 2024, p. 125). Benefits would be derived from the restoration of the grizzly bear population and the opportunity provided to visitors to see grizzly bears in their natural setting. Adverse impacts

would include the potential for temporary closures lasting from a few hours to a few days, requiring some visitors to adjust their stay to avoid closed areas, and noise associated with helicopter operations. Compared to current conditions, these impacts, in addition to past, present, and reasonably foreseeable planned actions, would be beneficial. Restoration under this final rule would allow for greater wildlife management flexibility that would provide an additional increment of benefit to the visitor use and recreational experience by minimizing negative human-bear conflicts (NPS and USFWS 2024, p. 130).

For potential impacts to public and employee safety, the final EIS qualitatively addressed risks associated with human-grizzly bear encounters related to employees working to restore and manage bears, as well as risks to visitors and residents in and around the NCE (NPS and USFWS 2024, p. 130). Overall, restoration of grizzly bears would have adverse impacts on public and employee safety in terms of potential conflicts with grizzly bears. However, the probability of adverse impacts occurring would be low for a variety of reasons. Restoration would begin in remote areas and occur in low density, and even as density increases as the restoration population is achieved, existing safety and related protocols would be implemented, such as food storage restrictions, general bear safety education, temporary public closures, and management protocols for the capture and release of bears. These tools have been demonstrated to be effective in reducing impacts to public safety, even in areas with a much higher density of grizzly bears than projected for the ultimate population targeted in this proposal (NPS and USFWS 2024, pp. 136–137). With the implementation of this final section 10(j) rule, additional management measures will be available to authorized agencies to use lethal and nonlethal measures to reduce impacts from grizzly bears that move outside the ecosystem, or to mitigate human-bear conflicts, including those associated with public safety. These management actions could further reduce the potential for human-bear conflicts and would contribute a reduced potential for adverse impacts on visitor and employee safety (NPS and USFWS 2024, p. 139).

The final EIS evaluated the socioeconomic impacts of the proposed restoration considering a seven-county region of influence (Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties) (NPS and USFWS 2024, p. 139), qualitatively assessing potential impacts to tourism, agricultural and livestock grazing, and timber harvest and mining, as well as the effects to employment in each of these categories. For tourism, occasional localized wilderness closures for public safety during release activities could occur, but these closures would be site-specific and short (hours to days). These closures are not expected to substantially affect tour operators or recreational visitors, including hunters or horseback riders. Any area closures are anticipated to be infrequent and small in scope; therefore, revenue and employment associated with tourism, including hunting, horseback riding, hiking, sightseeing, and tour operations, would not be noticeably affected as a result of implementing restoration under this final section 10(j) rule. Collaboration with potential user groups and public outreach and education would likely mitigate many potential tourism-related concerns as wilderness users become accustomed to backcountry practices that reduce chances for human-bear conflict. Therefore, potential adverse tourism-related impacts would be mitigated to the extent that no adverse impacts on tourism are expected (NPS and USFWS 2024, p. 155).

Agriculture and livestock grazing operations could experience reduced employment or increased costs of operating cattle ranching operations. Direct impacts may occur through grizzly bear depredation of cattle or sheep. Impacts are somewhat less likely to occur given that no staging or release areas would be near active grazing allotments; in addition, we provided in the final rule that individuals such as livestock producers on private lands in Management Area C could take grizzly bear in the act of attacking livestock under certain conditions. Specific descriptions of the effects of potential livestock depredation are described in the final EIS on pages 143–146 and further analyzed in *Regulatory Flexibility Act (5 U.S.C. 601 et seq.*), below. Impacts on timber harvesting and mining from restoration of grizzly bears are anticipated to be intermittent and short term, lasting minutes to hours, as workers become aware of grizzly bear presence in the area, and grizzly bears avoid areas of active timber harvest and mining (NPS and USFWS 2024, p. 156).

As to employment, restoration of bears could result in impacts on employment related to tourism (both positive and negative), agriculture, livestock grazing, mining, timber harvest, wildlife management, or Federal land management. Wildlife management and Federal land management may experience increases in employment resulting from implementation of this final section 10(j) rule as wildlife and Federal land managers capture and release grizzly bears and educate the public.

As displayed in the final EIS, implementation of a final section 10(j) designation is expected to reduce the potential for any adverse socioeconomic impacts as compared with other final restoration alternatives. The final section 10(j) designation allows for additional management measures for lethal and nonlethal actions to minimize and prevent human-bear conflicts. Additionally, the section 10(j) designation eliminates the requirement for Federal agencies to consult with the Service under section 7(a)(2) of the Act for grizzly bears in the NEP (except on NPS or NWRS lands). Except for USFS actions on National Forest System lands in Management Zone A, all take of grizzly bears that is incidental to otherwise lawful activity is allowed. For USFS actions on National Forest System lands in Management Zone A, this final rule excepts all incidental take as long as the U.S. Forest Service has maintained its 'no net loss' agreement and implemented food storage restrictions throughout National Forest System lands in Management Area A. As a result, implementation of the final section 10(j) designation for grizzly bears would reduce the potential costs and operational constraints that may have temporarily affected regular business operations from the presence of grizzly bear.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will 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 a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this final rule would not have a

significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be both significant and substantial to prevent certification of the rule under the Regulatory Flexibility Act and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the final rule, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Because of the regulatory flexibility provided by designating an NEP in the NCE, we do not expect this rule to have significant effects on any activities within Federal lands within the experimental population area. In regard to section 7(a)(2) of the Act, except on NPS and NWRS lands, the population is treated as proposed for listing; therefore, Federal action agencies are not required to consult on their activities. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing is unlikely to be required within the NEP. The USFS will not be required to consult under section 7(a)(2) about impacts to the NEP when authorizing activities under USFS permits, such as for grazing, mining, and timber harvest activities, including permits for road hauling that may include travel on non-Federal lands. In addition, section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the experimental population area. As a result, and in accordance with these regulations and this final rule, some modifications to the Federal actions within the experimental population area may occur to benefit the grizzly bear, but we do not expect projects on Federal lands to be precluded or likely to be substantially modified as a result of these regulations.

However, this final rule authorizes and governs the management of reintroduced grizzly bears in the NCE. The presence of reintroduced grizzly bears has the potential to affect small entities involved in ranching and livestock production, particularly beef cattle ranching (business activity code North American Industry Classification System (NAICS) 112111) and sheep farming (business activity code NAICS 112410). Small businesses involved in ranching and livestock production may be affected by grizzly bears depredating on domestic animals, particularly beef cattle and sheep. Direct effects to small businesses could include forgone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd. However, as detailed further below, we do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector; in addition, the final rule designating the grizzly bears as experimental with this special management rule under section 10(j) is in part designed to help minimize the potential for conflicts that could increase costs to ranching and livestock production.

The small size standard for beef cattle farming entities and sheep farms as defined by the Small Business Administration are those entities with less than $2.5 million for beef cattle ranching and $3.5 million for sheep farming in average annual receipts (*https://www.sba.gov/document/support-table-size-standards*). As of 2017, there were approximately 9,088 cattle and calf farms and approximately 1,930 sheep farms in Washington (USDA 2019, p. 181). Of these, 13 beef cattle farms and zero sheep farms had average annual receipts above the Small Business Administration thresholds for small entities (USDA 2019, p 181). Therefore, we find the vast majority of cattle ranches and sheep farms in the State of Washington potentially affected by the reintroduction and management of grizzly bears to be small entities.

Because the reintroduction of grizzly bears will occur only on Federal lands within Management Area A, the NPS and FWS evaluated socioeconomic impacts in a seven-county region of influence (ROI), including Chelan, King, Kittitas, Okanogan, Skagit, Snohomish, and Whatcom Counties, centered on Management Area A (the focal point for grizzly bear recovery in the NCE). While these counties contain several larger cities, including Bellingham, Everett, Seattle, and Wenatchee, the NCE is located in a predominantly rural area away from large urban areas. The NCE is approximately 52 percent of the total land area of the ROI (NPS and USFWS 2024, p. 139). Approximately 25 percent of farms in the State of Washington occur in the ROI (NPS and USFWS 2024, p. 145). Therefore, we estimate approximately 2,272 cattle and calf farms and 483 sheep farms in the ROI. The actual number of farms that may be affected is far less than 25 percent because the grizzly bear release areas occur on Federal lands and do not overlap with active grazing allotments, the ROI includes several counties that extend beyond the borders of the NCE Recovery Zone, and the farms occur in areas where we do not expect grizzly bear occupancy due to low habitat suitability (NPS and USFWS 2024, p. 146).

As of 2015, 773,788 acres (313,141 hectares) of land were actively under permit for cattle and sheep grazing on Okanogan-Wenatchee NF, with 320,044 acres (129,517 hectares) occurring within the NCE Recovery Zone. Most of the acreage permitted on Okanogan-Wenatchee NF was for cattle grazing. There are no grazing permits on Mount Baker Snoqualmie NF. The 2015 Okanogan-Wenatchee Allotment Information Sheet reports that there were 4,151 animal unit months (AUMs) of permitted sheep and 47,686 AUMS of permitted cattle grazing on National Forest System lands within the NCE Recovery Zone. In 2015, 4,100 ewe/lamb pairs were grazing, and 4,552 cow/calf pairs were authorized to graze during the summer on USFS allotments within the NCE Recovery Zone. No livestock were present within the North Cascades

NPS complex as of 2015 (NPS and USFWS 2024, p. 145).

We assessed whether this final rule would have a significant economic impact by estimating the annual number of depredations we expect to occur when the grizzly bear population will be at the restoration population of 200 (which is not expected for several decades). Grizzly bear depredation is highly variable between and among years. Estimates of potential grizzly bear depredation were generated using grizzly bear population estimates for the NCDE and livestock losses of cattle and sheep, generating an estimated annual rate of livestock loss per grizzly bear of 0.093 cattle and 0.019 sheep. When these rates were applied to an NCE grizzly bear population of 25, annual livestock loss estimates were two to three cattle and up to one sheep. When these rates were applied to an NCE grizzly bear restoration population of 200, annual livestock loss estimates were 18 to 19 cattle and 3 to 4 sheep. Rates developed with these data may represent overestimates of expected livestock loss in restored populations of grizzly bears in the NCE if grizzly bears do not occupy private lands where more livestock may be present.

It is probable that the actual number of cattle and sheep killed per year would fall within the range of the 2 estimates (1 to 19 cattle per year, and 1 to 4 sheep per year). The number would likely fall on the lower end of the range because of a number of factors, including juxtaposition of grizzly bear habitat and grazing; type of grazing operation; distribution and abundance of other predators; and abundance and distribution of prey. Even with this uncertainty, the total number of cattle and sheep depredated within the NCE would result in minimal, adverse impacts on agriculture and the livestock grazing industry, contributing to less than 0.01 percent of the total number of cattle and sheep in the ROI.

To the extent that some cattle farms will most likely not be impacted by grizzly bear recovery because they are not located in suitable habitat but are included in the total estimate of potentially affected farms, this estimate could understate the percentage of livestock potentially affected. However, for other reasons, this estimate could very well overstate the percentage of farms affected as we recognize that annual depredation events have not been, and may not be, uniformly distributed across the farms operating in occupied grizzly bear range. Rather, grizzly bears seem to concentrate in particular areas where concentrated attractants occur within productive grizzly bear habitat (Lamb et al. 2023, pp. 6–12; Wilson et al. 2005, entire; Wilson et al. 2006, entire). The extent of depredation would be most influenced by the extent that livestock overlap with grizzly bears, the size of the grazing operation, and the presence of attractants. Additionally, these impacts are somewhat less likely to occur given that no staging or release areas would overlap active grazing allotments.

As of 2017, 4,100 ewe/lamb pairs and 4,552 cow/calf pairs are authorized to graze during the summer on USFS allotments within the NCE Recovery Zone. Few livestock are present within the central portion of the NCE Recovery Zone because it is a national park. Because only approximately three to seven bears per year would initially be released into the NCE, we anticipate depredation events to be rare during the primary phase; however, depredation is likely to increase in frequency as the population grows over time during the adaptive management phase. Based on a weighted average market value for a depredated cow/calf of $1,021.33 ($2022) and for a depredated sheep of $311.96 ($2022), a total estimated depredation of 1 to 19 cattle per year and 1 to 4 sheep per year could result in a loss of revenue at auction ranging from $1,021.33 to $19,405.29 for cattle and $311.96 to $1,247.84 for sheep.

This final rule is assessed as alternative C in our final EIS, the preferred alternative for restoring grizzly bears to the NCE. Under this alternative, the designation of an experimental population with the special regulations of this final rule would allow several forms of take of grizzly bears on Federal and non-Federal land to address conflict situations between grizzly bears and livestock. These forms of take would generally not be allowed if reintroduced grizzly bears were not designated as an experimental population (another alternative that was considered in our final EIS). Additionally, reintroduced grizzly bears would be released only into Federal lands in Management Area A. While we anticipate that bears will move into areas within Management Areas B and C, any grizzly bear in these areas posing a demonstrable threat to human safety, livestock, or property may be relocated or removed by the Service or authorized Federal, State, or Tribal authorities with prior approval by the Service and in accordance with the process for ''removal of grizzly bears involved in conflict'' as defined in this10(j) rule. Individuals may also nonlethally take grizzly bears for the purpose of deterrence to prevent conflict, provided the deterrence does not cause lasting bodily injury (*i.e.,* permanent damage or injuries that limit the bear's ability to effectively move, obtain food, or defend itself for any length of time), or death to the grizzly bear. In addition, with the final rule we authorize individuals to take a grizzly bear in the act of attacking livestock under certain conditions. These flexibilities further reduce the impacts to small businesses.

Agriculture and grazing operations located closest to release areas or high-quality grizzly bear habitat would be the most likely to be affected. However, adverse impacts on agriculture and livestock grazing would be limited compared to the total number of livestock present in or adjacent to the NCE. The potential for impacts would be further reduced by the implementation of this final rule, including associated conflict-prevention efforts such as the public outreach on minimizing unsecured attractants (*e.g.,* Western Wildlife Outreach 2023; Braaten et al. 2013, pp. 7–8).

Based on the preceding information, we find that the impact of direct effects of grizzly bear depredations on livestock would not be significant. That is, less than 0.01 percent of the total number of cattle and sheep in the ROI could be affected, and the high end of the annual potential loss of revenue across all farms is estimated at approximately $22,000. We do not consider either the number of potential livestock affected nor the potential loss of revenue to be a significant economic impact. Considering that less than 25 percent of the total farms in Washington occur within the ROI and no farms occur within final grizzly bear release areas, far fewer than 25 percent of farms in Washington would be likely to experience economic impacts. While we are not able to quantify this number, we do find that there would not be a substantial number of small entities impacted.

For the above reasons and based on currently available information, we certify that the final nonessential experimental population designation of grizzly bears would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates

Reform Act, 2 U.S.C. 1502 *et seq.,* that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. Small governments would not be affected because the final NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This final NEP designation of the grizzly bear in the NCE would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the final rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced population are significantly reduced.

A takings implication assessment is not required because this final rule (1) would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This final rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this final rule has significant federalism effects and have determined that a federalism assessment is not required. This final rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in Washington. Establishing an experimental population of grizzly bears in the NCE Recovery Zone would contribute positively toward the status of the species, which in turn would be factored into future assessments of the status of grizzly bears in the lower 48 States.

We acknowledge a Washington State law that addresses grizzly bear reintroduction in the State. Revised Code of Washington 77.12.035, Protection of grizzly bears—*Limitation on transplantation or introduction—Negotiations with Federal and State agencies,* provides as follows: ''The commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington State may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with Federal and State agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section.''

This State law provision governs only the activities of the Washington Department of Fish and Wildlife (WDFW) and prohibits WDFW from transplanting or introducing grizzly bears into the State (see Washington State Office of the Attorney General memorandum to the WDFW (WA AG in litt. 2017)). Further, the State provision is interpreted to require WDFW to protect grizzly bears and develop programs that will encourage their natural regeneration on public lands with suitable bear habitat, and to allow for WDFW's engagement in monitoring, habitat enhancement, and response to grizzly bears that are endangering public safety or damaging private property.

We developed this final rule in cooperation with WDFW, and in consideration of this Washington State law, grizzly bear reintroduction would occur on Federal lands administered by the NPS or the USFS, and efforts from WDFW to transplant or introduce grizzly bears would not be required. In response to comments from WDFW on the proposed rule, in this final rule we confirm that we will prioritize reintroduction releases on NPS lands as encouraged by WDFW and will work with WDFW to avoid any administrative complications. The final rule provides for the State's participation in the management of bears introduced by Federal agencies on Federal lands within the State. For these reasons, no intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The final rule would operate to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Washington. Therefore, this final rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of E.O. 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

This final rule contains existing and new collections of information that require approval by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB has reviewed and approved the information collection requirements associated with the establishment of an NEP of the grizzly bear in the State of Washington, under section 10(j) of the Act, and assigned the OMB Control Number 1018–0199.

Experimental populations established under section 10(j) of the Act, as amended, require information collection and reporting to the Service. The Service would collect information on the grizzly bear NEP to help further the recovery of the species and to assess the success of the reintroduced populations. There are no forms associated with this information collection. The respondents would notify the Service when an incident occurs, so there would be no set frequency for collecting the information. Federal, State, and participating Tribal agencies would provide the Service with the vast majority of the information on grizzly bears within the NEP. However, the public also would provide some information to the Service. The final new information collection requirements identified below require approval by OMB:

1. *Reporting requirements*—The respondents would notify the Service when an incident occurs and annually report the number of grizzly bears relocated and removed. The State and other Federal agencies would provide the Service with the vast majority of the information on experimental

populations under interagency agreements for the conduct of the recovery programs. However, the public also would provide some information to the Service. Reporting parties would include, but would not be limited to, individuals or households, businesses, farms, nonprofit organizations, and State/Tribal governments. The Service would collect the information by means of telephone calls from the public. Standard information collected would include:

a. Name, address, and phone number of reporting party.

b. Species involved.

c. Type of incident.

d. Take (quantity).

e. Location and time of reported incident.

f. Description of the circumstances related to the incident.

Some of these contacts would be necessary followup reports under where the Service has authorized lethal take of experimental animals (*e.g.,* livestock depredation). The Service would collect information in three categories:

i. *Lethal take* must be reported by individuals within 24 hours to the Service's Ecological Services point of contact in this rule. Lethal take must be reported by a Federal, State, or Tribal authority of an authorized agency within 24 hours by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service.

ii. *Nonlethal take that results in injury* by an individual must be reported within 5 days to the Service's Ecological Services point of contact in this rule. Nonlethal take that results in injury by a Federal, State, or Tribal authority of an authorized agency must be reported within 5 days by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service. Incidental take that results from indirect activities such as incidental take in the form of harm resulting from habitat modification does not need to be reported.

iii. *Recovery or reporting of dead individuals and specimen collection from experimental populations.* This type of information is for the purpose of documenting incidental or authorized scientific collection. Most of the contacts with the public would deal primarily with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

2. *Memorandums of Understanding (MOUs)*—The Service would enter into MOUs with Federal, State, or Tribal agencies to authorize grizzly bear management consistent with this 10(j) rule. The Service does not expect to enter into MOUs with local governments or authorities. We are not reporting burden for Federal agencies as they are exempt from the requirements of the PRA. The Service would collect information in two general categories from the relevant agencies in relation to these MOUs:

a. *Relocation of bears.* With prior approval from the Service, a Federal, State, or Tribal authority may live-capture any grizzly bear occurring in the NEP area and transport and release it in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land-managing agency.

b. *Removal of grizzly bears involved in conflict.* Authorized Service, Federal, State, or Tribal authorities may lethally take a grizzly bear in the NEP area with prior approval from the Service if the Service or an authorized agency determines it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed, and if the taking is done in a humane manner. Grizzly bears may be taken in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm.

3. *Written Authorization—conditioned lethal take*—With prior written agreement from the Service, individuals may lethally take a grizzly bear within 200 yards (183 m) of legally present livestock in Management Areas B and C if a depredation has been confirmed by the Service or an authorized agency and it has been determined that it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed. Additionally, the Service may issue written authorization to an individual to kill a grizzly bear in Management Area C if the Service or an authorized agency identifies the grizzly bear as an ongoing threat to human safety, livestock, or other property (*e.g.,* compost, chickens, beehives), and it is not reasonably possible to eliminate the threat through nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed.

This information collection was incorrectly listed as part of the MOU information collection in the proposed rule submission to OMB. It is a stand-alone information collection, not related to the MOUs.

4. *Recovery or reporting of dead individuals and specimen collection from experimental populations*—This type of information would be for the purpose of documenting incidental or authorized scientific collection and surrender of grizzly bear carcasses as the result of lethal take. Most of the contacts with the public primarily would be with the reporting of sightings of experimental population animals, or the inadvertent discovery of an injured or dead individual.

5. *Obtaining Landowner/Land Management Entity Authorization*—Individuals requesting the written authorizations mentioned above must also obtain or confirm authorization from the landowner or land management entity, where appropriate.

The Service would use the information described above to document the locations of reintroduced animals, determine causes of mortality and conflict with human activities so that Service managers could minimize conflicts with people, and improve management techniques for reintroduction. The information would help the Service assess the effectiveness of management activities and develop means to reduce problems with livestock for those species where depredation is a problem. Service recovery specialists would use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

Changes Since Submission at the Proposed Rule Stage

We initially proposed the following information collection at the proposed rule stage. However, we are no longer seeking approval of them for the reasons stated below:

1. Appointment of Designated Agent—

A designated agent is an employee of a Federal, State, or Tribal agency that is authorized by the Service to conduct grizzly bear management. A prospective designated agent would submit a letter to the Service requesting designated agent status. The letter would include a proposal for the work to be completed and resume of qualifications for the work they wish to perform. The Service would then respond to the requester with a letter authorizing them to complete the work.

Reason for Discontinuance: We removed this information collection because it is redundant with the information collections for MOUs. Authorized individuals of an authorized agency would be reporting the information specified above under their agency-specific MOU.

2. Memorandums of Understanding—Relocation of Bears (Individual and Private Sector Respondents)

Reason for Discontinuance: We removed this information collection for individual and private sector respondent categories as they will not be authorized to relocate bears. This information collection applies only to State/Tribal governments.

3. Memorandums of Understanding—Conditioned Lethal Take (State/Local/Tribal Govt and Private Sector)

Reason for Discontinuance: We removed this information collection because it is already addressed for State/Tribal government respondents under the Memorandum of Understanding—Removal of Grizzly Bears collection, and conditioned lethal take is not authorized for the private sector. We have also revised the title for information collection from individuals for conditioned lethal take accordingly.

4. Memorandums of Understanding—Removal of Grizzly Bears (Individuals and Private Sector)

Reason for Discontinuance: We removed the information collections for individual and private sector respondent categories as they will not be authorized to remove bears pursuant to Memorandums of Understanding. This information collection applies only to State/Tribal governments.

Title of Collection: Endangered and Threatened Wildlife, Experimental Populations—Grizzly Bear (50 CFR 17.84).

OMB Control Number: 1018–0199.

Form Numbers: None.

Type of Review: New.

Respondents/Affected Public: Individuals; private sector; and State/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually for annual report and on occasion for other requirements.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Number of annual respondents	Number of annual responses each	Total annual responses	Average completion time	Total annual burden hours
Notification—Lethal Take:					
Individuals	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Private Sector	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Notification—Nonlethal Take:					
Individuals	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Private Sector	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Notification—Recovery or Reporting of Dead Specimen and Specimen Collection:					
Individuals	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Private Sector	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Memorandums of Understanding—Relocation of Grizzly Bears					
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Memorandums of Understanding—Removal of Grizzly Bears:					
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Written Authorization–Conditioned Lethal Take:					
Individuals	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Obtaining Landowner/Land Management Entity Authorization:					
Individuals	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Private Sector	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
State/Tribal Gov't	1	1	1	30 min (reporting); 30 min (recordkeeping).	1
Totals	15	.....	15	.....	15

On September 29, 2023, we published in the **Federal Register** (88 FR 67193) a proposed rule (RIN 1018–BG89) to establish a nonessential experimental population (NEP) of the grizzly bear (*Ursus arctos horribilis*) in the NCE, under section 10(j) of the ESA. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on November 28, 2023. In response to that proposed rule, we received the following three comments that addressed the information collection requirements:

Comment 1: Electronic comment submitted via *Regulations.gov* (FWS–R1–ES–2023–0074–7310) on November 10, 2023, from the Sierra Club. The commenter expressed concern regarding the timeframe for reporting injuries (*i.e.,* nonlethal take) compared to lethal take. The proposed rule required 24 hours for reporting lethal take and 5 days for reporting nonlethal take. The commenter recommended that nonlethal take also have a 24-hour reporting requirement in case the injury ultimately results in the death of the bear.

Agency Response to Comment 1: The 5-day reporting window is consistent with our practices under the existing 4(d) rule for the grizzly bear outside the NEP, and we retain that reporting window for this NEP. In other grizzly bear ecosystems with this same 5-day reporting requirement, partners report this type of injury immediately. We would anticipate the same response in the NCE but include a 5-day reporting window in recognition that reporting an injury within 24 hours is not always feasible, especially because the areas where bears are being reintroduced are very remote, and individuals may be in the backcountry without access to telephones or internet.

Comment 2: Electronic comment submitted via *Regulations.gov* (FWS–R1–ES–2023–0074–12199) on November 12, 2023, from the American Forest Resource Council. The commenter indicated that the nonlethal incidental take reporting requirements due to 'habitat modification resulting from otherwise lawful activities' are impractical and should be exempted from reporting.

Agency Response to Comment 2: We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we are requiring reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (*e.g.,* through self-defense, deterrence, conflict management, or vehicle collision, etc.) and have clarified that nonlethal incidental take reporting is not required.

Comment 3: Electronic comment submitted via *Regulations.gov* (FWS–R1–ES–2023–0074–12015) on November 12, 2023, from the Washington Forest Protection Association. The commenter indicated that the nonlethal incidental take reporting requirements due to 'habitat modification resulting from otherwise lawful activities' are impractical and should be exempted from reporting.

Agency Response to Comment 3: We did not intend for the general reporting requirements for nonlethal take to apply to incidental take in the form of harm via habitat modification; rather, we are requiring reporting when lethal or nonlethal take occurs as a result of direct interactions with the grizzly bear (*e.g.,* through self-defense, deterrence, conflict management, or vehicle collision, etc.) and have clarified that nonlethal incidental take reporting is not required.

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.

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.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** 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 1018–0199 in the subject line of your comments.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), we have prepared, jointly with NPS, a final EIS to describe the impacts of restoring grizzly bears to the NCE and establishment of the restored population as experimental and managed in accordance with this final rule, see 89 FR 20469 (March 23, 2024). The final EIS evaluated options for a regulatory framework, including a rule consistent with section 10(j) of the Act, for the reintroduction and management of grizzly bears in part of the species' historical range in Washington. The final EIS analyzed potential environmental impacts that may result from two action alternatives and the no-action alternative and includes relevant and reasonable measures that could avoid or mitigate potential impacts.

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 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized 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.

Throughout the development of this final rule, we sought the input of Tribal governments near the final release sites as well as Tribal governments near the potential source populations in the NCDE and GYE. In collaboration with

the NPS, we extended an invitation for government-to-government consultation to all federally recognized Tribes in the NEP area and formally met with Tribes that requested government-to-government consultation. Corresponding with the start of the EIS process in November 2022, all federally recognized Tribes in Washington and the Nez Perce Tribe in Idaho were invited to consult on grizzly bear recovery and the draft EIS assessing options to restore grizzly bears to the NCE. An invitation to consult specifically on the development of the 10(j) rule was sent to all federally recognized Tribes in Washington in February 2023. Invitations to consult were also sent in March 2023 to Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Corresponding with the release of the proposed rule and draft EIS in September 2023, notification of the publication of the documents and invitations to consult were sent to all federally recognized Tribes in Washington, as well as Tribal governments near potential source populations in the NCDE and GYE, including in the States of Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. We remain available to meet with other Tribes that request government-to-government or informal consultation and will fully consider information received through the consultation process as we implement this final rule.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This final rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or online at *https://www.regulations.gov* in Docket No. FWS–R1–ES–2023–0074.

Authors

The primary authors of this final rule are staff of the Service's Washington Fish and Wildlife Office, along with staff of the Service's Grizzly Bear Recovery Program (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Final Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 paragraph (h) by revising the entry for ''Bear, grizzly'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
		Mammals		
*	*	*	*	*
Bear, grizzly	*Ursus arctos horribilis*.	U.S.A., conterminous (lower 48) States, except where listed as an experimental population.	T	32 FR 4001, 3/11/1967; 35 FR 16047, 10/13/1970; 40 FR 31734, 7/28/1975; 72 FR 14866, 3/29/2007; 75 FR 14496, 3/26/2010; 82 FR 30502, 6/30/2017; 84 FR 37144, 7/31/2019; 50 CFR 17.40(b) [4d].
Bear, grizzly [Bitterroot XN].	*Ursus arctos horribilis*.	U.S.A. (portions of ID and MT; see § 17.84(l))	XN	65 FR 69624, 11/17/2000; 50 CFR 17.84(l)[10j].
Bear, grizzly [North Cascades XN].	*Ursus arctos horribilis*.	U.S.A. (WA, except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River to its confluence with the Spokane River, then upstream on the Spokane River to the WA–ID border; see § 17.84(y)).	XN	89 FR [*INSERT* **Federal Register** *PAGE WHERE THE DOCUMENT BEGINS*], 5/3/2024; 50 CFR 17.84(y)[10j].
*	*	*	*	*

■ 3. Amend § 17.84 by:

■ a. Revising paragraph (l) introductory text and paragraph (l)(1); and

■ b. Adding paragraph (y).

The revisions and addition read as follows:

§ 17.84 Species-specific rules—vertebrates.

* * * * *

(l) Grizzly bear (*Ursus arctos horribilis*)—Bitterroot nonessential experimental population.

(1) *Where does this rule apply?* (i) The rule in this paragraph (l) applies to the designated Bitterroot Grizzly Bear Experimental Population Area (Experimental Population Area), which is found within the species' historic range and is defined in paragraph (l)(1)(ii) of this section.

(ii) The boundaries of the Experimental Population Area are delineated by U.S. 93 from its junction with the Bitterroot River near Missoula, Montana, to Challis, Idaho; Idaho 75 from Challis to Stanley, Idaho; Idaho 21 from Stanley to Lowman, Idaho; State Highway 17 from Lowman to Banks, Idaho; Idaho 55 from Banks to New Meadows, Idaho; U.S. 95 from New Meadows to Coeur d'Alene, Idaho; Interstate 90 from Coeur d'Alene, Idaho, to its junction with the Clark Fork River near St. Regis, Montana; the Clark Fork River from its junction with Interstate 90 near St. Regis to its confluence with the Bitterroot River near Missoula, Montana; and the Bitterroot River from its confluence with the Clark Fork River to its junction with U.S. Highway 93, near Missoula, Montana (See map at the end of this paragraph (l)).

* * * * *

(y) Grizzly bear (*Ursus arctos horribilis*)—North Cascades nonessential experimental population.

(1) *Purpose.* The regulations in this paragraph (y) set forth the provisions of a rule to establish an experimental population of grizzly bears. The Service finds that establishment of an experimental population of grizzly bears as described in this paragraph (y) will further the conservation of the species.

(2) *Determinations.* The grizzly bears identified in this paragraph (y) constitute a nonessential experimental population (NEP) under § 17.81(c)(2). These grizzly bears will be managed in accordance with the provisions of this rule within the boundaries of the NEP area as identified in paragraph (y)(4) of this section. After our initial release of one or more grizzly bears into the NEP area, any grizzly bears found within the NEP area will be considered a member of the NEP.

(3) *Definitions.* Key terms used in this paragraph (y) have the following definitions:

Authorized agency means a Federal, State, or Tribal agency designated by the Service in a memorandum of understanding (MOU) to assist in implementing all or part of the specified actions in this paragraph (y).

Demonstrable and ongoing threat refers to a grizzly bear actively chasing or attacking livestock or lingering in close proximity to livestock following a depredation.

Depredation means the confirmed killing or wounding of lawfully present livestock by one or more grizzly bears. The Service or an authorized agency must confirm grizzly bear depredation on lawfully present livestock. Livestock trespassing on Federal, State, or private lands are not considered lawfully present.

Deterrence means an intentional action to haze, disrupt, or annoy a grizzly bear to move out of close proximity to people or property to promote human safety, prevent conflict, or protect property and that does not cause death or lasting bodily injury to the grizzly bear.

Domestic animal means an individual of an animal species that has been selectively bred over many generations to enhance specific traits for their use by humans, including for use as a pet or livestock.

Federal, State, or Tribal authority means an employee of a State, Federal, or federally recognized Indian Tribal government who, as part of their official duties, normally handles large carnivores and is trained and/or experienced in immobilizing, marking, and handling grizzly bears.

Grizzly bear involved in conflict means a grizzly bear that has caused substantial property damage, obtained anthropogenic foods (*e.g.,* pet food, livestock feed, garbage), killed or injured lawfully present livestock, damaged beehives, breached an intact structure or electrified perimeter to obtain fruit or crops (*e.g.,* greenhouse, garden, orchard, field, stackyard or grain bin), shown repeated and persistent signs of habituation in proximity to human-occupied areas (*e.g.,* has been repeatedly hazed or previously relocated), exhibited aggressive behavior (*i.e.,* not acting in defense of offspring or food or in response to a surprise encounter), or has been involved in a human-grizzly encounter resulting in substantial human injury or loss of human life.

Human-occupied areas means any structures or areas currently used or inhabited by humans (*e.g.,* homes, residential areas, occupied campgrounds or trailheads, job sites).

In the act of attacking means the actual biting, wounding, grasping, or killing of livestock (including working dogs) by a grizzly bear.

Lasting bodily injury refers to any permanent damage or injury that limits a grizzly bear's ability to effectively move, obtain food, or defend itself for any length of time.

Livestock means cattle, sheep, pigs, horses, mules, goats, domestic bison, alpacas, llamas, donkeys, and working dogs but not poultry, feral dogs, or domestic dogs (working or otherwise) that are not in close proximity to human-occupied areas or to lawfully present livestock.

Threat to human safety means a grizzly bear that exhibits aggressive (*i.e.,* nondefensive) behavior towards humans.

(A) Grizzly bear presence alone does not constitute a threat to human safety.

(B) Grizzly bears less than 2 years of age with no history of food-conditioning are not considered a threat to human safety.

Working dog means a herding or guard dog that is actively herding or guarding in close proximity to human-occupied areas or to lawfully present livestock.

(4) *Where is the grizzly bear North Cascades NEP?* (i) The grizzly bear NEP area includes Washington State except the portion of northeastern Washington defined by the Kettle River from the international border with Canada, downstream to the Columbia River, to its confluence with the Spokane River, then upstream on the Spokane River to the Washington-Idaho border. The area shown in figure 1 to paragraph (y)(4) of this section will remain designated as the experimental population area unless the Service determines in a future rulemaking that:

(A) The reintroduction has not been successful, in which case the NEP boundaries might be altered or the regulations in this paragraph (y) might be removed; or

(B) The grizzly bear is recovered and delisted in accordance with the Act.

(ii) Management Area A of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest, Okanogan-Wenatchee National Forest, and Colville National Forest north of Interstate 90 and west of Washington State Route 97, as well as the North Cascades National Park Service complex. Management Area A will be the primary area for restoration of grizzly bears and will serve as core habitat for survival, reproduction, and dispersal of the NEP.

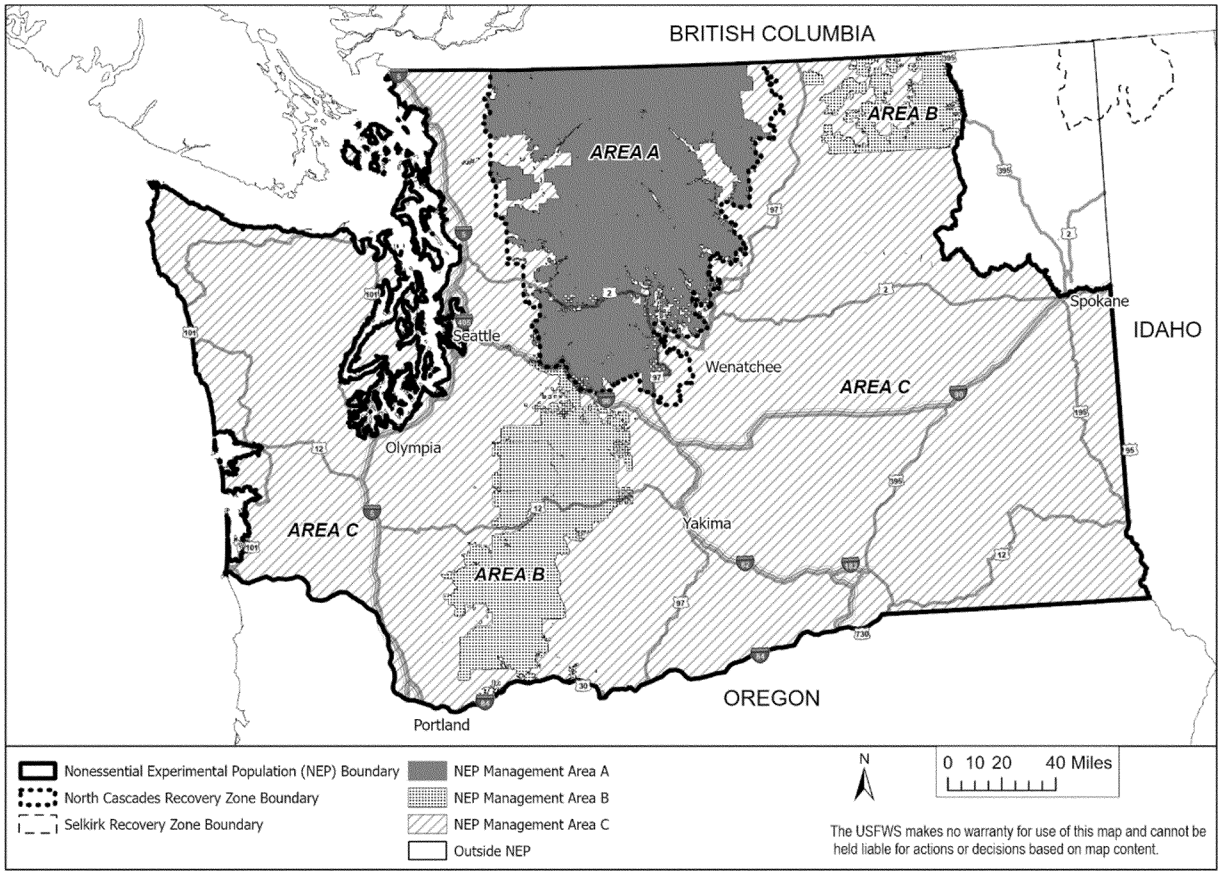
(iii) Management Area B of the grizzly bear North Cascades NEP includes the Mount Baker Snoqualmie National Forest and Okanogan-Wenatchee National Forest south of Interstate 90, Gifford Pinchot National Forest, and Mount Rainier National Park. Management Area B also includes the Colville National Forest and Okanogan-Wenatchee National Forest lands east of Washington State Route 97 within the experimental population boundary. Management Area B includes areas that may be used for natural movement and/or dispersal by grizzly bears and that have a lower potential for human-bear conflicts.

(iv) Management Area C of the grizzly bear North Cascades NEP comprises all non-Federal lands within the North Cascades Ecosystem Recovery Zone and

all other lands outside of or not otherwise included in Management Areas A and B within the NEP boundary. Management Area C contains large areas that may be incompatible with grizzly bear presence due to high levels of private land ownership and associated development and/or potential for bears to become involved in conflicts with resultant bear mortality, although some areas within this management area are capable of supporting grizzly bears and grizzly bears may occur there.

(v) Map of the NEP area and associated management areas for the grizzly bear in the North Cascades Ecosystem follows:

Figure 1 to Paragraph (y)(4)



(5) *What take of the grizzly bear is allowed in Management Area A of the North Cascades NEP area?* The exceptions to take prohibitions described in paragraphs (y)(5)(i) through (viii) of this section apply in Management Area A:

(i) *Defense of life.* Any person may take a grizzly bear in self-defense or in defense of other persons, based on a good-faith belief that the actions taken were to protect the person from bodily harm. Such taking must be reported as described in paragraph (y)(8) of this section.

(ii) *Deterrence.* Any person may take a grizzly bear for the purpose of deterrence (see definition in paragraph (y)(3)) of this section, under the provisions set forth in this paragraph (y)(5)(ii):

(A) Once a grizzly bear has moved out of close proximity, deterrence is unlikely to be effective and must cease.

(B) Any deterrence action must not cause lasting bodily injury or death to the grizzly bear.

(C) Deterrence must be by acceptable techniques, which include non-projectile auditory deterrents, visual stimuli/deterrents, vehicle threat pressure, and noise-making projectiles. Unacceptable deterrence methods include screamers/whistlers, rubber bullets/batons, and bean bag and aero sock rounds. For more information about appropriate nonlethal deterrents, contact the Service for the most current Service-approved guidelines.

(D) A person may not bait, stalk, or pursue a grizzly bear for the purposes of deterrence. Pursuit is defined as deterrence carried out beyond 200 yards (183 m) of a human-occupied area or lawfully present livestock.

(E) Any person who deters a grizzly bear must use discretion and act safely and responsibly.

(iii) *Incidental take.* (A) Except as provided in paragraph (y)(5)(iii)(B) of this section, take of a grizzly bear is allowed if it is incidental to (*i.e.,* unintentional and not the purpose of) an otherwise lawful activity and is not due to negligent conduct.

(B) Take of a grizzly bear resulting from U.S. Forest Service actions on National Forest System lands in Management Area A that is incidental to otherwise lawful activity is allowed if the U.S. Forest Service has maintained its 'no net loss' agreement and implemented food storage restrictions throughout National Forest System lands in Management Area A.

(iv) *Take under permits.* Any person with a valid permit issued under § 17.32 by the Service may take a grizzly bear pursuant to the terms of the permit.

(v) *Take under section 6 of the Act.* Any State conservation agency may take a grizzly bear under section 6(c) of the Act as described in § 17.31.

(vi) *Research and recovery actions.* With prior approval of the Service, an authorized agency as defined in paragraph (y)(3) of this section may take a grizzly bear if such action is necessary:

(A) For scientific purposes;

(B) To aid a sick or injured grizzly bear, including euthanasia if the grizzly bear is unlikely to survive or poses an immediate threat to human safety;

(C) To salvage a dead specimen that may be useful for scientific study;

(D) To dispose of a dead specimen; or

(E) To aid in law enforcement investigations involving the grizzly bear.

(vii) *Removal of grizzly bears involved in conflict.* With prior approval of the Service, a grizzly bear involved in conflict in the NEP area may be taken by an authorized agency, including by lethal removal, but only if:

(A) It is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed in a remote area agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land management agency; and

(B) The taking is done in a humane manner (with compassion and consideration for the bear and minimizing pain and distress) by a Federal, State, or Tribal authority of an authorized agency.

(viii) *Relocation of a grizzly bear.* With prior approval from the Service, an authorized agency may live-capture one or more grizzly bears and transport and release them in a remote location agreed to by the Service, the Washington Department of Fish and Wildlife, and the applicable land managing agency:

(A) For a grizzly bear involved in conflict;

(B) To prevent unnatural use of food materials that have been reasonably secured from the bear or unnatural use of anthropogenic foods;

(C) After aggressive (*i.e.,* not defensive) behavior toward humans results in injury to a human or constitutes a demonstrable immediate or potential threat to human safety;

(D) As a preemptive action to prevent a conflict that appears imminent or in an attempt to prevent habituation of bears; or

(E) For any other conservation purpose for the grizzly bear as determined by the Service.

(ix) *Reporting requirements.* Any take pursuant to this paragraph (y)(5) resulting in lasting injury or death of a grizzly bear must be reported as indicated in paragraph (y)(8) of this section.

(6) *What take of the grizzly bear is allowed in Management Area B of the North Cascades NEP area?* Grizzly bears in Management Area B will be accommodated through take exceptions described in paragraph (y)(6)(i) of this section, in addition to those take exceptions allowed in Management Area A as set forth in paragraph (y)(5) of this section. ''Accommodated'' means a grizzly bear in Management Area B will not be disturbed unless it demonstrates a threat to human safety or to protect property.

(i) *Conditioned lethal take.* The Service may issue prior written authorization allowing an individual to kill a depredating grizzly bear within 200 yards (183 m) of legally present livestock. Such authorizations will be valid for 5 days, but the Service may extend the authorization of lethal take an additional 5 days if additional grizzly bear depredations or injuries to livestock occur and circumstances indicate that the offending bear can be identified. Such authorizations will be issued only if:

(A) A depredation has been confirmed by the Service or authorized agency;

(B) The Service or an authorized agency determines it is not reasonably possible to otherwise eliminate the threat by deterrence or live-capturing and releasing the grizzly bear unharmed;

(C) The taking is done in a humane manner (*i.e.,* showing compassion and consideration for the bear and minimizing pain and distress);

(D) The taking is reported as indicated in paragraph (y)(8) of this section; and

(E) The grizzly bear carcass and any associated collars or ear tags are surrendered to the Service.

(7) *What take of the grizzly bear is allowed in Management Area C of the North Cascades NEP area?* In addition to the take exceptions described in paragraph (y)(7)(i) of this section, all take exceptions allowed in Management Areas A and B as set forth in paragraphs (y)(5) and (6) of this section are also allowed in Management Area C of the NEP.

(i) *Conditioned lethal take.* (A) The Service may issue prior written authorization allowing an individual to kill a grizzly bear in Management Area C when deemed necessary for human safety or to protect property. Such authorizations will be valid for 5 days, may be reissued by the Service if deemed warranted, and will be issued only if:

(*1*) The Service or authorized agency determines that a grizzly bear presents a demonstrable and ongoing threat to human safety or to lawfully present livestock, domestic animals, crops, beehives, or other property and that it is not reasonably possible to otherwise eliminate the threat by nonlethal deterrence or live-capturing and releasing the grizzly bear unharmed;

(*2*) The individual requesting the written authorization is the landowner, livestock producer, or designee (*e.g.,* an employee or lessee);

(*3*) The taking is done in a humane manner;

(*4*) The taking is reported as indicated in paragraph (y)(8) of this section; and

(*5*) The carcass and any associated collars or ear tags are surrendered to the Service.

(B) Any individual may take (injure or kill) a grizzly bear in the act of attacking livestock on private lands (*i.e.,* nonpublic lands) under the provisions set forth in this paragraph (y)(7)(i)(B):

(*1*) The individual is the landowner or livestock producer or a designee (*e.g.,* an employee or lessee).

(*2*) Any grizzly bear taken is reported to the Service or authorized agency within 24 hours.

(*3*) The carcass of any grizzly bear and the surrounding area is not disturbed to preserve physical evidence of the attack.

(*4*) The Service or authorized agency is able to confirm that the livestock or working dog was injured or killed by a grizzly bear. The taking of any grizzly bear without such evidence may be referred to the appropriate authorities for prosecution.

(*5*) There is no evidence of excessive unsecured attractants (*e.g.,* carcass piles or bone yards) or of intentional feeding or baiting of grizzly bears or wildlife.

(8) *What are the reporting requirements for take of grizzly bears in the North Cascades NEP?* (i) *Lethal take.* Any grizzly bear that is killed by an individual under the provisions of this paragraph (y) must be reported within 24 hours to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800–7960. Any grizzly bear that is killed by a Federal, State, or Tribal authority of an authorized agency under the provisions of this paragraph (y) must be reported within 24 hours by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service.

(ii) *Nonlethal take resulting in injury.* Any direct take of a grizzly bear by an individual under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence to the Service's Washington Fish and Wildlife Office special reporting hotline: (360) 800–7960. Any direct take of a grizzly bear by a Federal, State, or Tribal

authority of an authorized agency under the provisions of this paragraph (y) that does not result in death of a grizzly bear but causes lasting bodily injury must be reported within 5 calendar days of occurrence by following the reporting instructions as described in the authorized agency's MOU and included in an annual report to the Service. Indirect incidental take, such as harm to a grizzly bear resulting from habitat modification, does not need to be reported under this provision.

(9) *What take of the grizzly bear is not allowed in the North Cascades NEP area?* (i) Other than expressly provided by the regulations in this paragraph (y), all take is prohibited and considered a violation of section 9 of the Act. Take of a grizzly bear within the NEP area must be reported as set forth in paragraph (y)(8) of this section.

(ii) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any grizzly bear or part thereof from the NEP taken in violation of this paragraph (y) or in violation of applicable Tribal or State laws or regulations or the Act.

(iii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any take of the grizzly bear, except as expressly allowed in paragraphs (y)(5) through (7) of this section.

(iv) To avoid illegally shooting a grizzly bear, persons lawfully engaged in hunting and shooting activities must correctly identify their target before shooting. The act of taking a grizzly bear that is wrongfully identified as another species is not considered incidental take and is not allowed under this rule and may be referred to appropriate authorities for prosecution.

(v) Any grizzly bear or grizzly bear part taken legally in accordance with the regulations in this paragraph (y) must be turned over to the Service unless otherwise authorized by the Service in writing.

(10) *How will the effectiveness of the grizzly bear restoration effort be monitored?* The Service will monitor grizzly bears in the North Cascades NEP annually and will evaluate the status of grizzly bears in the NEP in conjunction with the Service's species status assessments and status reviews of the grizzly bear. Evaluations in the Service's status reviews will include, but not be limited to, a review of management issues, grizzly bear movements, demographic rates, causes of mortality, project costs, and progress toward establishing a population.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–09136 Filed 5–2–24; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 702
Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 702

[EPA–HQ–OPPT–2023–0496; FRL–8529–02–OCSPP]

RIN 2070–AK90

Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is finalizing amendments to the procedural framework rule for conducting risk evaluations under the Toxic Substances Control Act (TSCA). The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the conditions of use. EPA reconsidered the procedural framework rule for conducting such risk evaluations and is revising certain aspects of that framework to better align with the statutory text and applicable court decisions, to reflect the Agency's experience implementing the risk evaluation program following enactment of the 2016 TSCA amendments, and to allow for consideration of future scientific advances in the risk evaluation process without need to further amend the Agency's procedural rule.

DATES: This final rule is effective on July 2, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OPPT–2023–0496. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Susanna Blair, Immediate Office, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4371; email address: *blair.susanna@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

EPA is amending procedural requirements that apply to the Agency's activities in carrying out TSCA risk evaluations. EPA is also amending the process and requirements that manufacturers (including importers) are required to follow when they request an Agency-conducted TSCA risk evaluation on a particular chemical substance. You may be potentially affected by this action if you manufacture or import chemical substances regulated under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding North American Industrial Classification System (NAICS) codes for entities that may be interested in or affected by this action. The following list of 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:

- Petroleum Refineries (NAICS code 324110);
- Chemical Manufacturing (NAICS code 325);
- Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing (NAICS code 326113);
- Unlaminated Plastics Profile Shape Manufacturing (NAICS code 326121);
- Plastics Pipe and Pipe Fitting Manufacturing (NAICS code 326122);
- Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing (NAICS code 326130);
- Polystyrene Foam Product Manufacturing (NAICS code 326140);
- Urethane and Other Foam Product (except Polystyrene) Manufacturing (NAICS code 326150);
- Plastics Bottle Manufacturing (NAICS code 326160);
- Plastics Plumbing Fixture Manufacturing (NAICS code 326191);
- All Other Plastics Product Manufacturing (NAICS code 326199);
- Tire Manufacturing (except Retreading) (NAICS code 326211);
- Tire Retreading (NAICS code 326212);
- Rubber and Plastics Hoses and Belting Manufacturing (NAICS code 326220);
- Rubber Product Manufacturing for Mechanical Use (NAICS code 326291);
- All Other Rubber Product Manufacturing (NAICS code 326299);
- Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS code 327110);
- Clay Building Material and Refractories Manufacturing (NAICS code 327120);
- Flat Glass Manufacturing (NAICS code 327211);
- Other Pressed and Blown Glass and Glassware Manufacturing (NAICS code 327212);
- Glass Container Manufacturing (NAICS code 327213);
- Glass Product Manufacturing Made of Purchased Glass (NAICS code 327215);
- Cement Manufacturing (NAICS code 327310);
- Ready Mix Concrete Manufacturing (NAICS code 327320);
- Concrete Block and Brick Manufacturing (NAICS code 327331);
- Concrete Pipe Manufacturing (NAICS code 327332); and
- Other Concrete Product Manufacturing (NAICS code 327390).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA is promulgating this final rule pursuant to the authority in TSCA section 6(b)(4) (15 U.S.C. 2605(b)(4)). EPA has inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983).

C. What action is the Agency taking?

EPA is amending regulations that address how the Agency conducts risk evaluations on chemical substances under TSCA. These changes include, but are not limited to, targeted changes to certain definitions, clarifications regarding the required scope of risk evaluations, considerations related to peer review and the Agency's implementation of the scientific standards, the approach for risk determinations on chemical substances

and considerations related to unreasonable risk, and the process for revisiting a completed risk evaluation. EPA is also amending the process and requirements for manufacturers making a voluntary request for an Agency-conducted risk evaluation.

D. Why is the Agency taking this action?

As further explained in Units I., II., III. and IV., EPA reexamined the July 20, 2017, final rule (Ref. 1) (hereinafter ''2017 final rule'') that established procedures and requirements for chemical risk evaluation under TSCA, in consideration of:

- The statutory text and structure and Congressional intent.
- The November 14, 2019, opinion issued by U.S. Court of Appeals for the Ninth Circuit in response to petitions for judicial review, consolidated under *Safer Chemicals, Healthy Families* v. *USEPA* (Ref. 2), of the 2017 final rule and related court orders.
- Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Ref. 3).
- Lessons learned from the Agency's implementation of the risk evaluation program to date including feedback from the National Academies of Science Engineering and Medicine and scientific peer reviewers.

The Agency is amending the 2017 final rule as a result of this reexamination for the reasons explained elsewhere through the preambles of the proposed and final rules and the response to comments.

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

The incremental impacts of this action are associated with procedural requirements, as described in Unit IV.J., which apply to manufacturers when manufacturers (including importers) elect to request that EPA perform a risk evaluation on a particular chemical substance. EPA estimated the potential burden and costs associated with the amended requirements for submitting a request for an Agency-conducted risk evaluation on a particular chemical substance. The estimates of burden and costs are available in the docket, and are discussed in Unit VII.B. and briefly summarized here (Ref. 4).

The total estimated annual burden is 166 hours and $115,711 (per year), which is based on an estimated per request burden of 166 hours.

In addition, EPA's evaluation of the potential costs associated with this action is discussed in Unit VII.B. Since the incremental impacts of this rule involve the activities that a manufacturer requesting a risk evaluation must perform, the estimated incremental costs to the public are expected to be negligible.

II. Background

The background for this rulemaking, including the statutory requirements for risk evaluation, the judicial review of the 2017 final rule, EPA's review of the 2017 final rule, and lessons learned from the Agency's implementation of the risk evaluation program are discussed in the notice of proposed rulemaking (Ref. 5 at pp. 74293 through 74294).

In response to public comments on the proposed rule and as described in Units III. and IV., EPA is making a number of changes in this final rule to provide additional clarification to EPA's process for conducting risk evaluations under TSCA. These include, among other changes, clarifications to: (1) Communications around which conditions of use are significantly contributing to a determination that a chemical substance presents unreasonable risk; (2) assumptions with respect to worker exposures and consideration of reasonably available information; (3) calculation of risk-based occupational exposure values in the risk evaluation; (4) EPA's commitment to conduct risk evaluations consistent with the ''best available science'' and based on the weight of the scientific evidence; (5) application of systematic review and methodological approaches consistent with those principles; (6) the process and requirements for manufacturer-requested risk evaluations; (7) EPA's potential identification of an overburdened community as a potentially exposed or susceptible subpopulation; and (8) peer review on TSCA risk evaluations.

EPA intends that the provisions of this rule be severable. While there may be provisions of this rule that are inextricably intertwined with other provisions, most of the provisions of this rule could function sensibly without particular invalidated provisions. Specifically, in many cases, the amendments to 40 CFR part 702 finalized in this rule involve separate elements of the risk evaluation process—or even separate processes all together—and EPA's decision to amend one portion of the rule was not dependent or reliant upon its decision to amend other portions of the rule. Especially because of the scope of the rule, it is not feasible to anticipate or address every permutation of this concept here. However, EPA has considered how the rule would function in various configurations and intends to preserve the rule to the fullest extent possible if any individual provision or part of this rule is invalidated.

To illustrate how various portions of this rule may be severable, EPA proffers the following two examples. First, if a court were to find flaw with a particular process provision (*e.g.,* a provision pertaining to publishing scope documents) and strike that provision, it would not prevent EPA in any way from looking to other process provisions (*e.g.,* a provision on soliciting peer review or on determining whether a chemical presents an unreasonable risk) in conducting its risk evaluations under this amended rule. While invalidating such provisions could perhaps be disruptive to ongoing risk evaluations, it would not prevent EPA from completing the rest of the evaluation consistent with both the remaining portions of the rule and its obligations under TSCA. Second, there are provisions that have little to no level of interrelation in this rule. For example, EPA's processes under this rule for conducting EPA-initiated risk evaluations and for reviewing manufacturer requests for risk evaluations are wholly independent and the invalidation of a provision (or even every provision) pertaining to one such process would not impact EPA's ability to rely on the remainder of the rule for the other process.

In additional to these examples, EPA notes that the ability of the various provisions of this rule to function sensibly without invalidated provisions is further illustrated by the history of the first 10 risk evaluations following the 2016 amendments to TSCA. Between 2016 and today, EPA has operated under the statutory mandate itself, the 2017 final rule (82 FR 33726), and the version of that rule that existed after *Safer Chemicals, Healthy Families* v. *EPA,* 943 F.3d 397 (9th Cir. 2019). Throughout this time, the risk evaluation process as a whole has continued to function sensibly even as EPA promulgated particular provisions and concepts through the 2017 rule and some of those provisions and concepts were subsequently vacated by the Ninth Circuit (*e.g.,* the applicability of criminal penalties, determinations on scientific standards, and the exclusion of legacy uses). For the forgoing reasons, EPA finds that the amendments in this final rule are generally severable.

III. Response to Public Comments

In response to the proposed rule, EPA received 30,434 public comments. EPA determined that 90 were unique and responsive to the request for comments (2 of which were form letter masters),

30,323 were copies of form letters, 11 were duplicates, and 10 were non-germane. The commenters included industry trade associations, advocacy organizations, a union, federal/state government agencies, a tribal council, academic institutions, and individuals. Major comments are discussed in the context of particular provisions in Unit IV. A more detailed discussion is provided in the Response to Comment Document for this rule and available in the docket (Ref. 6).

IV. Overview of Provisions in Final Rule

The purpose of this rulemaking is to update the risk evaluation process established in 40 CFR part 702, subpart B outlining how EPA will determine, pursuant to TSCA section 6(b)(4)(A), whether a chemical substance presents an unreasonable risk of injury to health or the environment. EPA's general objectives for the amendments to the procedural rule are to: (1) Better align the TSCA risk evaluation process with the statutory text and structure and Congressional intent; (2) ensure that the risk evaluation process under TSCA is consistent with the best available science and based on the weight of the scientific evidence; (3) address the outcome of the Ninth Circuit litigation on the 2017 final rule; (4) apply lessons learned to date to improve the Agency's processes moving forward; and (5) enhance the public's understanding of how EPA expects to carry out subsequent TSCA risk evaluations. Improvements to the risk evaluation process in these proposed amendments will result in stronger scientific products that can support needed public health and environmental protections to limit exposure to dangerous chemicals.

To accomplish these objectives, EPA is making targeted changes to and clarifying the existing process by which the Agency evaluates risk from chemical substances for purposes of TSCA section 6. The amended procedural rule will ensure that the risk evaluation process and outcomes are both scientifically and legally defensible, and transparent, while allowing the Agency flexibility to adapt and keep pace with changing science as it conducts TSCA risk evaluations into the future.

A. General Provisions

EPA is finalizing the general provisions at 40 CFR 702.31 as proposed. As stated in the rule at 40 CFR 702.31(c), the procedures apply to all risk evaluations initiated 30 days after the date of the final rule or later. EPA received several comments regarding the applicability of the procedures to ongoing manufacturer-requested risk evaluations (MRREs). For risk evaluations in process as of the date of the final rule, EPA would expect to apply the proposed changes to those risk evaluations only to the extent practicable, taking into consideration the statutory requirements and deadlines. For MRRE requests that EPA has already granted, for example, it would not be practicable to apply the new upfront processes that occur prior to granting requests, or the content requirements for incoming requests. EPA believes it will be practicable, however, to make a single determination of unreasonable risk on the chemical substance as contemplated in the law and codified in this rule.

Similarly, EPA is finalizing the minor clarification with respect to the applicability of this rule to risk evaluations on categories of chemical substances in 40 CFR 702.31(d). EPA received comments in support of this clarification, but also some comments that were more generally apprehensive of category approaches in risk evaluations. This rule does not prescribe how or whether the Agency will identify categories appropriate for prioritization and risk evaluation. The criteria for establishing categories are specified in TSCA section 26(c). If EPA does categorize chemicals as a category, EPA will provide, on a case-by-case basis, the justification for inclusion of the chemicals in a category. EPA fully recognizes the challenges and complexities associated with defining categories and carrying out risk evaluations on categories of chemical substances, and the need for its action and decisions to be consistent with the best available science. EPA also agrees that transparency on the rationale and approach will be important should the Agency prioritize a category of chemical substances for risk evaluation in the future. The intent of the rule is simply to clarify that the procedural framework for evaluating chemical substances also applies to risk evaluations on categories of chemical substances.

EPA is also finalizing removal of the currently codified regulatory text at 40 CFR 702.31(d) in accordance with the Ninth Circuit's vacatur and remand of this provision applying criminal penalties to the submission of inaccurate or incomplete information to EPA pursuant to a manufacturer-requested risk evaluation (Ref. 7).

B. Technical Corrections and Reorganization

The proposed rule reflected a number of minor updates and corrections and general organizational restructuring. Specifically, references to 15 U.S.C. 2605(b)(2)(A) were removed in light of the fact that the law's one-time requirement related to identification of the first group of 10 chemicals for risk evaluation has been satisfied and is no longer applicable for purposes of the procedural rule. EPA made minor updates to the regulatory text to correct typos and to ensure consistency in use of certain phrases (*e.g.,* manufacturer-requested risk evaluations). Additionally, EPA aimed to improve the readability of certain provisions, and, ultimately, enhance the public's ability to understand how EPA will undertake TSCA risk evaluations. As part of this effort, EPA has reorganized the sequence and structure of regulatory provisions to establish sections that distinguish between the components of the risk evaluation, the analytic considerations to be applied in the risk evaluation, and the associated procedural timeframes and actions. The Agency received very few comments on these changes and no commenter expressed confusion or decreased lack of clarity. Therefore, EPA carried these changes through into the final rule.

In addition, EPA made minor clarifying edits to the final rule at 40 CFR 702.35(b) regarding the number of allowable manufacturer-requested risk evaluations as compared to the number of ongoing EPA-initiated risk evaluations. Although this provision codifies the statutory requirement at 15 U.S.C. 2605(b)(4)(E)(i), EPA slightly modified the phrasing to make it easier for the reader to understand and follow.

C. Definitions

EPA is finalizing minor updates to definitions for ''pathways,'' ''routes,'' ''aggregate exposure,'' and ''sentinel exposure.'' The final rule also maintains the definitions for ''act,'' ''conditions of use,'' ''reasonably available information,'' ''uncertainty,'' or ''variability''—all unchanged from the 2017 final rule.

EPA proposed to eliminate the codified definitions for ''best available science'' and ''weight of scientific evidence.'' In the proposed rule, EPA explained that having codified definitions in the procedural rule for these scientific terms was both unnecessary and could inhibit the Agency's flexibility to quickly adapt to and implement advancing scientific practices and approaches. EPA received a number of comments on these proposed changes, including both support for and opposition to eliminating the codified definitions. Commenters who opposed generally expressed concern that elimination of

the definitions would reduce transparency and clarity about the scientific standards that EPA will apply in risk evaluations, and/or call into question whether EPA would still meet the scientific standards in the law. EPA can say with confidence that the Agency is fully committed to meeting the requirements in the law, and to being transparent in each risk evaluation with respect to how scientific information, technical procedures, measures, methods, protocols, methodologies, or models are being employed in a manner consistent with the best available science and how decisions are based on the weight of the scientific evidence, as required by 15 U.S.C. 2625(h) and (i). As such, EPA is finalizing the removal of these definitions from the codified regulatory text. Unit IV.H provides additional discussion of how EPA will ensure that TSCA risk evaluations are consistent with the best available science and based on the weight of the scientific evidence.

EPA also proposed changes to the definition of ''potentially exposed or susceptible subpopulation'' (PESS), which currently include ''infants, children, pregnant women, workers or the elderly.'' Namely, EPA proposed to add the phrase ''overburdened communities'' to the list of other examples of PESS that EPA might identify like ''infants, children, pregnant women, workers, or the elderly.'' EPA received a number of comments on the proposed changes to this definition. Many commenters supported the change, and EPA's authority to expand upon the illustrative list of examples Congress provided in the statutory definition. Others opposed the change, citing concerns that it reflects an intention by EPA to dramatically expand the scope of risk evaluations in ways that can't conceivably be completed within statutory deadlines. Others shared concern that the rule did not provide objective criteria regarding how EPA would go about identifying communities that are ''overburdened.'' After considering the comments, EPA has determined to finalize the change to the PESS definition as proposed. As a primary matter, the addition of ''overburdened communities'' to this definition is not itself a determination. Rather, it's an example of a subpopulation that EPA may identify as a PESS in future risk evaluations, and it is reflective of the reality that—in addition to groups like children and pregnant women—there are communities of people that may experience disproportionate risks from chemicals due to greater exposure or susceptibility to environmental and health harms. EPA fully appreciates the enormity of its responsibilities under TSCA—meeting statutory deadlines while ensuring robust evaluations of risks to human health and the environment, including risks to the most vulnerable populations—and is mindful that meeting those challenges will require comprehensive approaches that are carried out in a fit-for-purpose manner. EPA is also committed to maximizing the transparency of its decisions—including the identification of PESS—and believes that the requirements in this rule will further all of these objectives. Additional discussion of EPA's expected implementation of statutory requirements related to PESS can be found in Unit IV.F.4.

D. Scope of TSCA Risk Evaluations

TSCA was amended in 2016 amidst a backdrop of tens of thousands of unreviewed existing chemical substances in commerce, with no mandate that EPA conduct any assessments to determine whether those existing chemicals present unreasonable risk of injury to health or the environment. The few assessments that EPA did undertake prior to 2016 were narrowly focused on specific uses of chemicals (*e.g.,* paint and coating removal, vapor degreasing, etc.). The 2016 amendments required EPA to systematically prioritize those tens of thousands existing chemicals for review, and then to evaluate their risks, holistically, under the chemical's ''conditions of use''—a phrase that Congress defined to capture a chemical's full lifecycle, *i.e.,* ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.'' (15 U.S.C. 2602(4)). In so doing, Congress recognized that comprehensive progress on evaluating tens of thousands of existing chemicals would not be made without this mandate, coupled with a strong risk-based safety standard and deadlines for completing the work. In the absence of comprehensive risk evaluations on chemical substances (*i.e.,* under an approach that considered only a subset of a chemical's uses or exposures), uncertainty as to whether EPA had fully addressed a chemical's unreasonable risk would fester, eroding public confidence in the safety of chemicals pervasive in our households, communities and the environment, and encouraging states to adopt a patchwork of regulatory measures to address chemical risks.

EPA's 2017 final rule left some ambiguities with respect to the scope of TSCA risk evaluations, including whether EPA has discretion to exclude conditions of use or exposure pathways, the limits of EPA's discretion to determine what constitutes the conditions of use for a particular chemical, and what other flexibilities that EPA may have in its analytical approaches to ensure that comprehensive risk evaluations can still be completed within Congress' aggressive statutory deadlines. EPA proposed a number of important clarifications regarding the scope of TSCA risk evaluations that EPA believes will result in stronger scientific products that can support needed public health and environmental protections to address risks from dangerous chemicals. Those changes, a discussion of the public comments received, and EPA's approach for the final rule are discussed in the sections that follow.

1. *Inclusion of all conditions of use.* EPA proposed a number of changes to the regulatory text to make clear that the scope of TSCA risk evaluations will not exclude any ''conditions of use'' (*e.g.,* the statement in 702.37(b)(4) that ''EPA will not exclude conditions of use from the scope of the risk evaluation . . .''). As described in the proposed rule, EPA believes that the better reading of TSCA's statutory text and structure is that EPA lacks authority to exclude conditions of use from the scope of the risk evaluation. Risk evaluations are to be conducted on the circumstances under which the chemical is known, intended and reasonably foreseen to be manufactured, processed, distributed in commerce, used, and disposed of (*i.e.,* activities that constitute the ''conditions of use'' within the meaning of TSCA section 3(4)) (15 U.S.C 2602(4)). The plain language of TSCA section 6(b)(4)(A) specifies that EPA must determine in a risk evaluation whether ''a chemical substance'' presents an unreasonable risk of injury to health or the environment ''under the conditions of use.'' Further, EPA believes the phrase ''as determined by the Administrator'' in the statutory definition of ''conditions of use'' means that EPA must apply fact and professional judgment in determining whether or not a particular circumstance is known, intended or reasonably foreseen—and should not be viewed as authority to select among those circumstances for inclusion or exclusion (15 U.S.C. 2602(4)).

A number of commenters supported EPA's proposed rule on this important

point. Of the commenters who opposed this change, several pointed to the language in TSCA section 6(b)(4)(D), which requires EPA to identify—as part of the risk evaluation scope—the hazards, exposures, and conditions of use that EPA ''expects to consider.'' EPA believes this phrase is best read as directing the Agency to undertake a factual identification of the conditions of use associated with the chemical substance while acknowledging that the Agency's expectations at the scoping phase may not always align perfectly with the conditions of use actually considered and assessed in draft and final risk evaluations. EPA does not interpret the ''expects to consider'' language in TSCA section 6(b)(4)(D) to allow EPA to pick and choose which exposures to include in a risk evaluation of a chemical substance. However, EPA has *some* discretion; the identification of a chemical's conditions of use falls squarely within EPA's purview and will necessarily involve the Agency applying both fact and professional judgment, particularly with respect to identifying whether a circumstance is reasonably foreseen. See Unit IV.D.2. EPA also has discretion in tailoring its level of analysis with respect to individual conditions of use within the scope of the risk evaluation and may choose to, for example, take a more qualitative approach to conditions of use that it determines are negligible contributors to exposures and risks based on the reasonable available information. EPA does not, however, view the statute as providing authority to categorically exclude known conditions of use or exposures from the scope of the risk evaluation entirely.

Contrary to some commenters' suggestions, EPA further believes that such a reading is consistent with Congressional intent. The purpose of the requirement to evaluate the ''chemical substance'' was to ensure that the Agency, through the TSCA risk evaluation process, would comprehensively determine whether a chemical substance, under the known, intended, and reasonably foreseen circumstances of manufacture, processing, distribution in commerce, use and disposal, presents an unreasonable risk. If EPA were to take the approach suggested by commenters and only evaluate a subset of a chemical's conditions of use, the existence of unevaluated uses and exposures would perpetuate uncertainties as to the safety of existing chemicals in the marketplace—the very problem Congress sought to address through its reform efforts.

Some commenters suggest that the Ninth Circuit's opinion in *Safer Chemicals, Healthy Families* v. *USEPA* (Ref. 2) affirmatively determined the issue of discretionary scoping authority, namely that EPA could permissibly consider only some conditions of use in TSCA risk evaluations. EPA disagrees; the Court did not state or imply as much anywhere in its opinion (Ref. 2). To the contrary, the Court held that the petitioners' challenge to the 2017 final rule on this point was not ripe for review because EPA had not yet finalized a risk evaluation that excluded conditions of use and the 2017 final rule text was ambiguous on whether EPA actually would do so. Separately, the Court was, however, unequivocal in striking down EPA's statements in the preamble to the 2017 final rule regarding its intention to categorically exclude ''legacy uses'' from TSCA risk evaluations, finding that such an approach ''contradicts TSCA's plain language'' directing EPA to evaluate risks from chemical substances under the conditions of use.

Several commenters characterized TSCA as a ''gap filling'' statute—regulating only exposures and conditions of use that are not adequately addressed under other statutes. Although EPA is familiar with the phrase from the legislative history of the original 1976 TSCA, it is not found anywhere within the statute—original or as amended—and has more recently been used in tandem with interpretive arguments to inappropriately narrow the scope of TSCA risk evaluations. EPA firmly rejected these arguments—that EPA should exclude conditions of use and exposure pathways from TSCA risk evaluations when those uses/exposures could be managed under the purview of another environmental statute—in the proposed rule at Unit III.E. Such an interpretation contradicts the plain language of the 2016 TSCA amendments directing EPA to, without caveat, evaluate risks from chemical substances under the conditions of use. EPA recognizes that there is a relevant statutory provision (*i.e.,* TSCA section 9) about whether risk *management* to address identified risks is better achieved under TSCA or another federal law. OCSPP is actively coordinating actions taken under TSCA with actions taken under other Federal laws administered by EPA. However, these risk management considerations cannot logically occur until after risks are identified in the TSCA risk evaluation process—not before or during—and are therefore inappropriate to use as a risk evaluation scoping mechanism.

Finally, as described in the proposed rule, consideration of all conditions of use in TSCA risk evaluations is also necessary from a scientific perspective to ensure development of a technically sound determination as to whether a chemical substance presents an unreasonable risk of injury to health or the environment. Consideration of all conditions of use ensures risk evaluations are consistent with the best available science and based on the weight of scientific evidence (15 U.S.C. 2625(h) and (i)). There may be situations where certain individual conditions of use are associated with relatively lower exposures, but when considered in aggregate contribute to unreasonable risk. Exclusion of conditions of use from risk evaluations—irrespective of the Agency's intention in so doing—may deprive the public of a complete picture of the chemical's risk, and prevent EPA from putting necessary protections in place to mitigate such risk to the general population or potentially exposed or susceptible subpopulations.

Risk evaluations that are comprehensive in scope—and therefore consistent with the law—may also need to be balanced with fit-for-purpose analytic approaches to keep the assessments manageable and able to be completed within the law's deadlines. EPA is committed to continuing to pursue and refine fit-for-purpose approaches in the context of individual risk evaluations in a manner that enables EPA to achieve Congress' goals for the protection of human health and the environment, while also completing its actions within statutory deadlines.

For these reasons, EPA is finalizing the changes to the rule ensuring EPA will not exclude conditions of use from consideration within the scope of TSCA risk evaluations.

2. *Determination of* ''*conditions of use.*'' As described in the preamble to the proposed rule, EPA is distinguishing between the Agency's lack of discretion to exclude conditions of use as described in the previous section, and EPA's ability to exercise judgment in making its determination as to whether a particular circumstance is intended, known, or reasonably foreseen, and therefore falls within the definition of ''condition of use'' for a particular chemical. For each risk evaluation, and consistent with the phrase ''as determined by the Administrator'' in the statutory definition of ''conditions of use,'' EPA must analyze the reasonably available information and apply the facts, Agency expertise and professional judgment to determine that chemical's conditions of use.

For example, when information suggests that a circumstance of manufacture, processing, distribution in commerce, use or disposal is known to be occurring, EPA will determine that known circumstance to be a condition of use and include it within the scope of the risk evaluation, irrespective of other factors like the likelihood of that particular condition of use to be a significant contributor to risk. Likewise, where, in the Agency's professional judgment, a circumstance is reasonably foreseen to occur in the future, EPA will determine that circumstance to be a condition of use and include it within the scope of the risk evaluation, even where that condition of use may not contribute significantly to the Agency's ultimate conclusions on risk.

As described in the preamble to the proposed rule, there are a number of general categories of circumstances that are squarely conditions of use that generally must be included within the scope of TSCA risk evaluations, including ''legacy use'' and ''associated disposal,'' production of a chemical as a byproduct, and the presence of a chemical as an impurity or within an article. Conversely, the Ninth Circuit opined that ''legacy disposal'' falls outside the definition of conditions of use. Likewise, EPA does not expect to consider ''intentional misuse'' of a chemical as a ''condition of use,'' consistent with the legislative history (Ref. 8). EPA provided several examples in the proposed rule of how the Agency would analyze the reasonably available information to make the determination on conditions of use—particularly with respect to determining whether or not a circumstance is reasonably foreseen. EPA discussed, for example, weighing whether exposures from spills, leaks, accidents and climate-related impacts would be regular or predictable, versus those that are unsubstantiated, speculative or otherwise not likely to occur. A future one-time accident caused by an atypical one-time set of circumstances, for example, would likely not be considered ''reasonably foreseen.'' EPA believes that this approach is consistent with the statutory text and structure, as well as Congressional intent.

EPA received a number of comments in this area, including support for considering chemical spills, accidents and other unplanned but foreseeable chemical releases and comments urging EPA to consider such scenarios on a more routine basis. Other commenters expressed concern that EPA did not articulate precise criteria or a standard for determining when a circumstance is reasonably foreseen. Consistent with the discussion in the proposed rule preamble, EPA maintains, however, that the determination of whether a particular circumstance is reasonably foreseen—and therefore an exposure that must be considered within the scope of the risk evaluation—is necessarily going to require a fact-specific, chemical-by-chemical analysis. Ultimately, EPA's determination on the chemical's conditions of use and the rationale to support those conclusions will be subject to public review and comment as part of each risk evaluation.

EPA also received comments that EPA should exclude so-called ''de minimis'' uses from consideration in risk evaluations—such as uses where a chemical may only be present in small amounts as an impurity or within an article. EPA disagrees, and maintains the position described in the preamble to the proposed rule. As described previously, relatively low exposures individually may contribute to unreasonable risk when considered in aggregate. Further, as EPA noted in the proposed rule, even where a condition of use is not expected to be a significant contributor to risk from a particular chemical, TSCA nonetheless requires EPA to include it in the scope of the risk evaluation. Such uses may, however, be appropriate for more tailored or qualitative analyses—as supported by the reasonably available information and documented in the risk evaluation—allowing EPA to focus more detailed/intensive efforts on the conditions of use that pose the greatest potential for exposure and therefore risk. Although TSCA provides EPA with authority to ''determine'' the conditions of use, it does not provide EPA with discretion to exclude from the scope of risk evaluations known circumstances associated with the chemical (*e.g.,* legacy uses and associated disposal, production of the chemical as a byproduct, presence of the chemical in trace or de minimis amounts such as an impurity or within an article, etc.). Nonetheless, EPA expects to conduct risk evaluations in a fit-for-purpose manner, tailoring the level of analysis based on factors such as the substance's physical-chemical properties; environmental fate and transport properties; the likely duration, intensity, frequency, and number of exposures under the condition of use; reasonably available information about the release to the environment; and other relevant considerations.

3. *Inclusion of all exposure pathways.* EPA also proposed regulatory changes to ensure that EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use. See 40 CFR 702.39(d)(9). As described in both the proposed rule and in Unit IV.D.1 of this rule, EPA does not interpret TSCA section 6(b)(4)(D) to provide authority to exclude conditions of use or exposure pathways from the scope of TSCA risk evaluations. Likewise, EPA proposed additional regulatory text to ensure that EPA would no longer exclude from the scope of TSCA risk evaluations exposure pathways that are addressed or could in the future be addressed by other EPA-administered statutes and regulatory programs or under another Federal law administered by another agency. See 40 CFR 702.39(d)(9). EPA does not interpret TSCA section 9 to authorize exclusion of exposure pathways from TSCA risk evaluations.

A number of commenters supported EPA's interpretation that the plain language of the law requires the consideration of all relevant exposure pathways in TSCA risk evaluations. Commenters who opposed EPA's interpretation again pointed to the language in TSCA section 6(b)(4)(D), which requires EPA to identify—as part of the risk evaluation scope—the hazards, exposures and conditions of use that EPA ''expects to consider.'' As described in Unit IV.D.1, EPA believes the law requires the Agency to factually identify relevant exposures associated with the chemical substance, while the ''expects to consider'' phrasing reflects the reality of the process: that the Agency's early expectations at the scoping phase may not always align perfectly with the conditions of use actually considered and assessed in the subsequent draft and final risk evaluations. For example, exposures that EPA initially expects to consider may change as EPA further considers and refines the reasonably available information during the risk evaluation process. In any event, EPA does not view the ''expects to consider'' language in TSCA section 6(b)(4)(D) as providing EPA with discretion to, for example, exclude known exposures.

Other commenters suggested that EPA's approach is inconsistent with Congress' intent. EPA disagrees. The law's requirement that EPA evaluate the ''chemical substance'' under the ''conditions of use'' was to ensure that the Agency, through the risk evaluation process, would comprehensively determine whether a chemical substance, under the known, intended, and reasonably foreseen circumstances of manufacture, processing, distribution in commerce, use and disposal, presents an unreasonable risk. Further, it is only through this holistic approach to chemical risk evaluation that EPA will

be able to drive forward progress on the tens of thousands of unreviewed existing chemical substances in commerce. As described earlier in Unit IV.D.1, the 2016 TSCA reform efforts were designed to create more certainty and more confidence in the safety of existing chemicals in the marketplace. However, and contrary to Congress' goals, evaluating a subset of a chemical's exposures or conditions of use would only perpetuate uncertainties.

EPA further disagrees with commenters that argued consideration of a particular exposure pathway in a risk evaluation would conflict with or duplicate other regulatory programs. First, where another regulatory program has already assessed the risks from a chemical associated with a particular exposure pathway, EPA would necessarily consider this information—along with all other reasonably available information—as part of its evaluation under TSCA. Where unreasonable risk has been identified, EPA would consider, consistent with TSCA section 9, whether all or part of such risk might be more appropriately managed under another regulatory program implemented by EPA or another Federal agency. Consideration of an exposure pathway in a TSCA risk evaluation does not automatically mean that EPA will determine the chemical to present unreasonable risk or that EPA will propose regulatory requirements related to that particular exposure pathway. Nonetheless, EPA recognizes that intra- and interagency coordination is integral to ensuring that EPA actions are well-informed, effective, and efficient, and expects to continue and expand upon efforts to maximize such coordination moving forward.

Finally, EPA appreciates concerns expressed by some commenters that this approach could result in more complex and challenging risk evaluations. EPA disagrees, however, that considering all relevant exposure pathways in TSCA risk evaluations is a ''missed opportunity'' to streamline its assessments. As discussed, EPA concludes in this rule that the best interpretation of TSCA is that the law does not authorize the exclusion of relevant exposure pathways from consideration in a risk evaluation. EPA also observes that certain risk evaluations published by EPA during the prior Administration were challenged, including on the grounds that EPA's prior approach of excluding exposure pathways was inconsistent with the requirements of TSCA. The approach adopted in this rule may conserve judicial, EPA, and other federal government resources by avoiding or reducing the need for such litigation. In addition, EPA has discretion to carry out TSCA risk evaluations in a fit-for-purpose manner, tailoring the depth or extent of analysis commensurate with the nature and significance of the decision, and expects to employ these approaches to enable completion of risk evaluations within the statutory deadlines.

Accordingly, EPA is finalizing the changes in 40 CFR 702.39(d) as proposed to ensure that EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other federal statutes.

4. *Comprehensive but fit-for-purpose.* EPA noted in the preamble to the proposed rule that it does not believe risk evaluations under TSCA should be so complex or procedurally cumbersome that they cannot reliably be completed within the timeframes required by the statute. At the same time, EPA cannot produce partial or incomplete TSCA risk evaluations or pursue risk evaluations in a manner that is otherwise incompatible with the statutory framework. The preamble to the proposed rule provided a discussion of how EPA expected to balance resource expenditure and manageability—namely by taking fit-for-purpose approaches that allow for varying types and levels of analysis.

Some commenters supported this discussion, while others shared reservations regarding whether fit-for-purpose approaches would ensure adequate consideration of risks from low-volume chemicals, and whether such approaches would meet the law's scientific standards in section 26. EPA fully recognizes that chemicals produced or used in low volumes may not mean that such chemicals present low risk, particularly with respect to persistent, bioaccumulative and toxic chemicals or aggregate exposure. Any fit-for-purpose approach in a risk evaluation on such chemicals would reflect this reality. Furthermore, EPA's fit-for-purpose approaches will be subject to notice and numerous opportunities for comment during the risk evaluation process. If a stakeholder believes, for example, that EPA's qualitative approach to assessing a particular condition of use or that its consideration of aggregate exposures is insufficient, EPA would welcome specific feedback in the context of that risk evaluation. EPA also agrees that it must adhere to the scientific standards in TSCA section 26 when making science-based decisions under TSCA section 6, including when conducting risk evaluations in a fit-for-purpose manner, and appreciates the suggestion that EPA consider developing guidance for how the Agency might apply fit-for-purpose approaches in different circumstances. EPA believes that fit-for-purpose approaches in risk evaluations are an essential part of implementing the TSCA program and sustaining it over the long-term.

5. *Additional efficiencies.* In the spirit of finding additional efficiencies to help EPA meet the aggressive timeframes in the law for completing risk evaluations, EPA sought comment on the idea of the Agency publishing and taking comment during prioritization on preliminary information to inform the scope of the potential risk evaluation—a process that could result in the publication of the ''draft scope'' before the initiation of a risk evaluation. EPA believes that a more sustainable process necessitates earlier—either before or during the prioritization process—review of reasonably available information, identification of data needs and gaps, and preliminary efforts to scope the potential risk evaluation. EPA did not propose to change the regulatory text requiring publication of a draft scope ''no later than'' three months after initiation, but described an approach where EPA would publish such information as early as the prioritization process (*e.g.,* concurrent with the proposed high-priority designation), to allow the Agency more time to review and effectively use the public input in the development of the risk evaluation's scope.

Several commenters expressed support for this approach, noting that it could result in clearer scopes, more efficient risk evaluations, allow stakeholders to provide data earlier in the process, and increase the value of public engagement. Some commenters who opposed the approach argued that it was contrary to TSCA, which requires publication of the risk evaluation scope ''not later than 6 months after the initiation of the risk evaluation.'' Others suggested that EPA instead provide a preliminary list of conditions of use during prioritization and make it available for public comment.

EPA notes that TSCA does not actually require the development of a draft scope. It is a regulatory requirement in the 2017 final rule (and maintained in this rule) designed to afford the public an opportunity to provide comment on the scope of the risk evaluation before it is finalized. EPA will continue to abide by the statutory requirement to publish the final scope within the first 6 months

after initiation of a risk evaluation. EPA has already been maintaining the practice of publishing a preliminary list of conditions of use during the Proposed Designation step of the prioritization process, as some commenters suggest. However, EPA sees additional value in publishing more robust preliminary information on the conditions of use, hazards, exposures and potentially exposed or susceptible subpopulations that the Agency expects to consider and any early indications as to how the Agency may apply fit-for-purpose approaches. Public comments received on this information can inform the final priority designation and, if the chemical is then designated as a high priority substance, the scope of the risk evaluation.

E. Risk Determinations

1. Single determination on the ''chemical substance.'' EPA proposed to codify a requirement that EPA make a single risk determination on the chemical substance at the conclusion of the TSCA risk evaluation process, as opposed to individual risk determinations on each individual use of the chemical. As explained in the proposed rule, EPA believes that this approach reflects a plain reading of the statutory text and structure. EPA also believes that this approach is consistent with Congressional intent, and will enable the Agency's risk determinations to better reflect the potential for combined exposures across multiple conditions of use. TSCA section 6(b)(4)(A) specifies that a risk evaluation must determine whether ''a chemical substance'' presents an unreasonable risk of injury to health or the environment ''under the conditions of use.'' EPA views this language as requiring an evaluation on the chemical substance—not individual conditions of use—and for the evaluation to be based on the chemical's ''conditions of use.'' As further described in the proposed rule, EPA explained its intention to continue to consider exposures associated with each condition of use, but to no longer make separate risk determinations.

EPA received comments supportive of this interpretation and its proposed codification, and others that disagreed with the interpretation. Commenters who disagreed with EPA's interpretation argued that the phrase ''under the conditions of use'' modifies the statutory directive in TSCA section 6(b)(4)(A) requiring EPA to determine ''whether a chemical substance presents an unreasonable risk of injury to health or the environment'' and that EPA could therefore not determine risks from a chemical substance independently from those conditions of use. EPA agrees that TSCA requires consideration of the chemical's conditions of use (*i.e.,* the intended, known and reasonably foreseen circumstances under which the chemical is manufactured, processed, distributed in commerce, used or disposed of) and that the potentially different exposure scenarios presented by different conditions of use should be reflected in the risk evaluation's exposure assessment. However, the plain language of the law requires EPA to determine whether the chemical substance, rather than individual conditions of use, presents an unreasonable risk. Moreover, the plain language instructs EPA to do so ''under the conditions of use'' (plural), not under each individual condition of use. As such, EPA's determination is based on analysis of the chemical's conditions of use—rather than on each condition of use ''independently'' as commenters would suggest. In addition to aligning EPA's process with the statutory text and structure, this approach ensures that the Agency is best positioned to incorporate reasonably available information, make determinations consistent with the best available science and based on the weight of scientific evidence, including, where appropriate, risk determinations that consider aggregate exposure resulting from multiple conditions of use. (15 U.S.C. 2625(h), (i), and (k)).

As such, EPA's interpretation is unchanged from the discussion in the proposed rule, and EPA is finalizing the regulatory text and conforming changes that ensure risk evaluations will always culminate in a single risk determination on the ''chemical substance,'' including the language in 40 CFR 702.37(a)(5) and 40 CFR 702.39(f)(1).

2. *Risk communication related to single risk determination.* EPA is aware of concerns that a single risk determination on the chemical substance—especially where only certain uses are contributing to that determination—could lead to public confusion regarding the chemical's risks. EPA believes these risk communication issues are addressable, and it is a priority area the Agency is committed to improve upon. As a start, EPA is no longer referring to this as a ''whole chemical'' approach, as the Agency believes that phrase may be misinterpreted. A single determination that a chemical substance presents an unreasonable risk does not mean that the entirety or whole of that chemical's uses—or even a majority of uses—presents an unreasonable risk. Where one or more conditions of use for the chemical present an unreasonable risk, the chemical substance itself necessarily presents an unreasonable risk. EPA is committed to being clearer in its communications on this point, including what to expect during risk management as described in the next section. To provide some additional assurances, EPA proposed regulatory text at 40 CFR 702.37(a)(5) that states: ''. . . where EPA makes a determination of unreasonable risk, EPA intends to identify the conditions of use that significantly contribute to such determination.''

Commenters nonetheless continued to express concern that the single risk determination would result in EPA determining that every chemical presents unreasonable risk, and ultimately create confusion within the general public regarding which uses of a chemical do or do not present risk. EPA appreciates the concerns regarding clear risk communication as part of each risk determination but disagrees with the suggestion that the single risk determination approach will lead to a finding of unreasonable risk in every instance. EPA does not pre-determine the outcome of any risk evaluation activity. Likewise, the law does not provide for or guarantee a particular risk determination outcome either.

In response to these comments, EPA is strengthening its commitment in the final rule to identify which conditions of use are significant contributors to the unreasonable risk by changing the text to indicate a more affirmative ''will identify'' from the proposed ''intends to'' and by moving the regulatory text directly into the section on the ''Unreasonable Risk Determination'' at 40 CFR 702.39(f). While not necessarily a perfect indicator of how EPA will ultimately regulate to address unreasonable risk, this communication should give industry stakeholders significant insight and more certainty. Additionally, the process for developing risk management rules under TSCA provides numerous opportunities for public and stakeholder engagement, and allows EPA to consider existing risk management controls and approaches. In addition to providing a rationale and explanation in the risk determination itself, the Agency is further committed to clearly communicating on the Agency's analysis of particular uses in other venues, and will refrain from making unqualified statements about the risk associated with the chemical substance that could generate the type of confusion commenters are concerned about.

EPA would caution, however, on placing too much emphasis on

communicative value of the risk determination itself. For those chemical substances that EPA determines present unreasonable risk, the risk evaluation is not the end of the TSCA process. The primary purpose of a risk evaluation is not to provide the public with guidance or suggested actions with respect to particular chemical uses. Risk evaluations are scientific documents intended to inform EPA decisions on the regulatory actions needed to address any identified unreasonable risk to human health or the environment. Ultimately, when the TSCA existing chemicals review process—including any TSCA section 6(a) rulemaking to manage risk—is complete, the public should have full confidence that the chemical can only be manufactured, processed, distributed in commerce, used and disposed of in accordance with the associated risk management requirements, and that the chemical substance no longer presents an unreasonable risk.

3. *Regulatory approaches based on single risk determination.* Several commenters suggested that EPA will use a singular risk determination to regulate in an overly broad manner, creating unnecessary and duplicative requirements, and shifting the burden to industry to demonstrate that they should not be regulated.

An unreasonable risk determination on the chemical substance does not mean that EPA will regulate all conditions of use for that chemical, and EPA disagrees with commenters' suggestion to the contrary. To be clear: a single risk determination on the chemical substance will not increase regulatory burden. The determination itself (*i.e.,* ''EPA has determined that 'chemical x' presents an unreasonable risk . . .'') has no bearing on which conditions of use EPA will focus on during the risk management phase. EPA's statutory authority to regulate chemicals under TSCA section 6 is available only ''to the extent necessary so that the chemical substance or mixture no longer presents [unreasonable] risk.'' (15 U.S.C. 2605(a)). The basis for EPA to determine the extent of necessary regulation in this context comes from the entirety of the risk evaluation—not simply the risk determination. Take for example, a scenario where an unreasonable risk is driven by just a few conditions of use, and EPA determines that such risk can be eliminated through regulations that apply narrowly to just those conditions of use. EPA would expect to target its risk management approaches accordingly and would not apply requirements more broadly. Further, a single risk determination on the chemical substance does not shift burdens from EPA to industry. It remains EPA's burden to provide the scientific support for any proposed and final rules to address unreasonable risk, and to demonstrate how such proposed action is necessary to address the unreasonable risk identified in the risk evaluation.

EPA also strongly disagrees that a single risk determination on the chemical substance would be unscientific or arbitrary. EPA's basic methodological approach to risk assessments is unchanged in this rule. For every chemical, EPA will, using the best available science and based on the weight of scientific evidence, conduct a hazard assessment, conduct an exposure assessment based on the chemical's conditions of use, characterize the risks, propose a determination as to whether the risk is unreasonable under TSCA, and conduct a transparent and independent scientific peer review with opportunities for public comment. The process itself is embodied in this procedural framework rule and has been subject to public notice and comment, as will each individual draft risk evaluation.

4. *Preemption of state laws/regulations.* EPA received comments suggesting that making a single risk determination on a chemical substance would undermine Congress' intent with respect to the state preemption provisions in TSCA section 18. Some commenters suggest that this risk determination approach—coupled with the belief that it would result in a determination of unreasonable risk in every case—would either effectively eliminate the possibility of preemption for specific conditions of use that do not present an unreasonable risk or alter the scope of preemption applied. Some commenters also note that EPA's approach results in a delay in application of permanent preemption. Specifically, commenters point out that a ''no unreasonable risk'' determination for a particular condition of use under commenters' approach could lead to a section 6(i)(1) determination triggering permanent preemption sooner than under EPA's approach. As a result, under EPA's approach, commenters suggest that state-specific approaches to regulating chemicals will increase during that delay time, resulting in the patchwork of state regulations that Congress sought to address in the 2016 amendments.

Commenters have a fundamental misunderstanding of EPA's interpretation of TSCA section 18 as it relates to preemption. Even if one were to accept commenters' hypothesis that a single risk determination would lead to a determination of unreasonable risk in every case (which EPA rejects), such an approach does not eliminate preemption or otherwise make any aspect of TSCA section 18 superfluous for conditions of use EPA addresses in its risk evaluation. First, pause preemption under section 18(b) applies only during the risk evaluation process and is entirely unaffected by how EPA frames its risk determination at the conclusion of that process. Permanent preemption is triggered under section 18(a)(1)(B)(ii) if EPA issues first a scope of the risk evaluation under section 6(b)(4)(D) and then a section 6(a) final rule or section 6(i)(1) determination based on the risk evaluation. The scope of this preemption is addressed in section 18(c)(3) and EPA reads this provision to apply permanent preemption to any condition of use within the scope of the risk evaluation which is the support document for any resulting section 6(a) rule or section 6(i)(1) determination. In the context of a section 6(a) rule, this is the case irrespective of whether those uses contribute to the unreasonable risk and/or are targeted for risk management. Thus, the scope of permanent preemption is the same under either a single risk determination for the chemical substance or the use-based approach previously applied. Consequently, while EPA disagrees with commenters' reading of TSCA with respect to the requirement for a single risk determination on the chemical substance, EPA agrees with commenters that Congress intended permanent preemption to apply to conditions of use EPA addresses in the risk evaluation.

The real distinction between the risk determination approaches is not whether preemption will occur or the scope of that preemption, but when (since, under the prior use-based approach, an order of no unreasonable risk could precede a rulemaking on other uses that do present unreasonable risk). EPA is not persuaded that such difference will result in a patchwork of unworkable and confusing requirements among the states as claimed by commenters. It is entirely speculative—and quite unlikely in EPA's view—to suggest that multiple States will seek to inconsistently regulate a particular chemical or certain conditions of use for a particular chemical during such a short period of time, *i.e.,* after issuance of the risk determination when pause preemption ceases and prior to the effective date of a TSCA section 6(a) rule when permanent preemption

applies, while EPA actively works to finalize a comprehensive national approach to risk management for that same chemical.

Regardless, as explained in Unit IV.E.1., EPA has concluded that the chemical-based approach to risk determination is required under a plain reading of the statutory text and structure and consistent with Congressional intent. EPA further notes, as described in the proposed rule, that the plain language in TSCA section 18 also supports the view that Congress intended EPA to make a single risk determination on the chemical substance, namely, the numerous references to ''chemical substance'' as opposed to uses of a chemical substance, and ''determination'' in the singular.

5. ''*Unreasonable risk*'' *considerations.* Neither TSCA nor this rule define ''unreasonable risk'' given the inherently unique nature of each risk evaluation and the need for EPA to make this determination on a case-by-case basis. The proposed rule included a discussion of considerations EPA may weigh in determining unreasonable risk, including, but not limited to: The effects of the chemical substance on health and human exposure to such substance under the conditions of use (including cancer and non-cancer risks); the effects of the chemical substance on the environment and environmental exposure under the conditions of use; the population exposed (including any potentially exposed or susceptible subpopulations), the severity of hazard (the nature of the hazard, the irreversibility of hazard), and uncertainties. Additionally, the proposed rule includes a discussion of how EPA will also consider, where relevant, the Agency's analyses on aggregate exposures and cumulative risk in its risk determinations. EPA also proposed to codify at 40 CFR 702.39(f)(1) the statutory requirement to consider the risks to potentially exposed or susceptible subpopulations as part of its risk determination on a chemical substance. EPA did not receive significant comments on this topic and is finalizing this rule as proposed.

F. Risk Evaluation Considerations

1. *Occupational exposure assumptions.* EPA proposed new regulatory text at 40 CFR 702.39(f)(2) to ensure that ''consideration of occupational exposure scenarios will take into account reasonably available information'' and that EPA will ''not consider exposure reduction based on assumed use of personal protective equipment as part of the risk determination.'' As described in the proposed rule, EPA had previously assumed that workers were provided and always used personal protective equipment (PPE) in a manner that achieves the stated assigned protection factor (APF) for respiratory protection, or used impervious gloves for dermal protection. However, EPA believes that the assumed use of PPE in a risk determination could lead to an underestimation of the risk to workers. For example, as described in the proposed rule, workers may be highly exposed because they are not covered by Occupational Safety and Health Administration (OSHA) standards, their employers are out of compliance with OSHA standards, the PPE is not sufficient to address the risk from the chemical, or their PPE does not fit or function properly. Many of OSHA's chemical-specific permissible exposure limits were adopted in the 1970s and have not been updated since they were established (Ref. 9). Additionally, TSCA risk evaluations are subject to statutory science standards, an explicit requirement to consider risks to potentially exposed or susceptible subpopulations, and a prohibition on considering costs and other non-risk factors when determining whether a chemical presents an unreasonable risk that warrants regulatory actions—all requirements that do not apply to development of OSHA regulations. The proposed addition would codify EPA's more recent practices and ensure fulsome consideration of exposure and risks to workers as part of TSCA risk evaluations.

A number of commenters strongly supported EPA's proposed changes, arguing that EPA's previous approach was inconsistent with the law. Others disagreed, stating that the proposed changes would result in overestimates of worker exposures, inaccurate risk determinations, and overly restrictive risk management actions. EPA recognizes that many companies likely have well-established occupational control measures in place. EPA has, in various contexts, received public comments from industry about occupational safety practices currently in use at their facilities, including adherence to OSHA standards and non-OSHA industry guidelines. EPA also acknowledges that other Federal agencies and their contractors that use chemicals may similarly have well-established occupational control measures in place. EPA would emphasize that the proposed rule states ''in determining whether unreasonable risk is presented, EPA's consideration of occupational exposure scenarios will take into account reasonably available information. . . .'' Where information on known occupational control measures is made available, the Agency is committed to taking that information into account in the exposure assessment. EPA has been consistent in urging industry to provide the Agency with information regarding worker exposure controls. Information from the risk evaluation's exposure assessment is also considered in risk management action and can be useful in facilitating consistency with broader industry best practices where possible. EPA encourages commenters to continue engaging with EPA on this point on chemical-specific actions and to provide the Agency with timely and relevant data that can be considered during the TSCA process.

Other commenters took issue with what they characterized as EPA's lack of support for an assumption that workers disregard PPE requirements, or that there is widespread noncompliance with OSHA. EPA disagrees with these characterizations. The proposed change in this rule is that EPA will not ''assume use'' of PPE for purposes of the risk determination—not that EPA will assume no use of PPE. Likewise, EPA is not asserting there is widespread noncompliance with OSHA requirements. As described earlier, EPA's exposure assessment on each chemical will be informed by the reasonably available information, and EPA encourages companies to submit information on their occupational exposure control practices, including the extent to which those practices may be standard for an industry, and any associated support. Further, EPA distinguishes ''assumed use'' of PPE from use that is supported by the reasonably available information and therefore known to be inherent in the performance of an activity. For example, where EPA has reasonably available information that substantiates use, fit, and effectiveness of PPE (*e.g.,* information demonstrating that performance of a condition of use is impossible in the absence of PPE), EPA would expect to take that information into account in the risk determination.

A number of commenters also argue that the proposed changes in the TSCA risk evaluation process would result in TSCA risk management efforts that duplicate or confuse OSHA standards. EPA's development of risk management rules under TSCA is a separate process that provides numerous opportunities for public engagement, and allows EPA to consider existing risk management controls and approaches to avoid or

minimize regulatory overlap or duplication. EPA rejects the notion that Congress provided OSHA with exclusive jurisdiction over worker safety. Congress explicitly directs EPA to evaluate and manage chemical risks to workers in TSCA. Although EPA has not suggested that OSHA is not meeting its own statutory requirements, OSHA itself acknowledges the limits of its authority to regulate exposures to hazardous chemicals. For example, and as described more in the proposed rule, OSHA lacks direct jurisdiction over state and local government workers, and does not cover self-employed workers, military personnel, and uniquely military equipment, systems, and operations, and workers whose occupational safety and health hazards are regulated by another Federal agency (for example, the Mine Safety and Health Administration, the Department of Energy, or the Coast Guard). EPA coordinates with OSHA on TSCA actions on a regular basis. Where unreasonable risk to workers has been identified, EPA would consider, consistent with TSCA section 9, whether such risk might be more appropriately managed under another regulatory program implemented by EPA or another Federal agency.

Similarly, EPA disagrees that the proposed changes regarding worker PPE assumptions would duplicate or confuse existing standards in other industries. Where stakeholders have information that demonstrates effective occupational exposure control practices for the chemical undergoing risk evaluation—whether through implementation of regulatory requirements imposed by other Agencies or in keeping with the standards of a particular industry—EPA encourages submission of that information to inform both the risk evaluation and risk management processes.

After consideration of these comments, EPA is finalizing the regulatory text at 40 CFR 702.39(f)(2) as proposed. However, and to further emphasize EPA's commitment to consider reasonably available information with respect to occupational exposure control practices as part of the risk evaluation, EPA is finalizing additional regulatory text to that effect in the exposure assessment section at 40 CFR 702.39(d). As described in Unit IV.F.5., EPA is further committing to make publicly available any risk-based occupational exposure values calculated as part of the risk evaluation.

2. *Aggregate exposure.* The proposed rule included regulatory text committing the Agency to consider aggregate exposures as part of TSCA risk evaluations and, when supported by reasonably available information, consistent with the best available science and based on the weight of scientific evidence, to include an aggregate exposure assessment in the risk evaluation, or otherwise explain the basis for not doing so. See 40 CFR 720.39(d)(8). EPA also proposed minor revisions to the definition of ''aggregate exposure.'' These changes relate to the implementation of TSCA section 6(b)(4)(F)(ii), which provides that EPA must ''describe whether aggregate or sentinel exposures to a chemical substance under the conditions of use were considered, and the basis for that consideration.'' These changes are consistent with the definition used in *General Principles for Performing Aggregate Exposure and Risk Assessments* (Ref. 10).

Several commenters expressed support for this change and offered additional suggestions to strengthen the requirement. Other commenters, while supportive of consideration of aggregate exposure generally, shared some concerns that aggregate exposure assessments may extend the time it will take EPA to complete a risk evaluation. Still other commenters argue that consideration of aggregate exposure will unnecessarily complicate risk evaluations and prevent the Agency from meeting its statutory deadlines. These comments reflect two broad competing challenges for EPA: how to carry out robust risk evaluations that capture the full extent of risks faced by communities—including risks from aggregate exposures—that will position EPA to protect against those risks, and how to keep those processes manageable in order to meet clear statutory requirements and deadlines set by Congress and to actually provide protections via risk management.

EPA believes the consideration of an aggregate exposure assessment may be particularly important to characterize and assess chemical risks to overburdened communities. If a community is exposed to a chemical substance through multiple routes and/or pathways (*e.g.,* exposure via air, land, and water, exposure via drinking water and water recreation, and/or exposure via occupation-related activities) and/or from multiple sources (*e.g.,* through different conditions of use occurring at multiple nearby facilities or from multiple products), the Agency has clear authority to aggregate those exposures, subject to the scientific standards in TSCA section 26. Furthermore, in developing a comprehensive risk estimate for a chemical substance, it is the Agency's responsibility, when supported by the best available science, to consider the aggregation of individual exposures from individual conditions of use as well as consider aggregate exposure from multiple routes of exposure that may contribute to unreasonable risk. As described in the proposed rule, it may be appropriate to consider potential background exposures from non-TSCA uses that are not within the scope of the risk evaluation as part of an aggregate exposure assessment. Likewise, EPA could consider the disproportionate impacts that background exposures may have on overburdened communities to inform the final unreasonable risk determination.

On the other hand, EPA is mindful that Congress did not intend for TSCA risk evaluations to take longer than the 3.5 years allotted in the statute. Aside from just meeting legal responsibilities, staying within statutory deadlines also allows EPA to keep pace on working through the tens of thousands of unreviewed existing chemicals and propose/finalize rules to afford meaningful protections for human health and the environment.

EPA believes the proposed rule strikes the appropriate balance on considering aggregate exposures in TSCA risk evaluations, and, after considering public comments on this issue, is finalizing the new regulatory text as proposed.

3. *Cumulative risk.* Although EPA did not propose any regulatory changes regarding consideration of cumulative risk, advancing the science of cumulative risk is a high priority for the Agency to inform EPA's effort to better understand and mitigate risks to potentially exposed and susceptible subpopulations. In the preamble to the proposed rule, EPA noted that the best available science may indicate that the development of a cumulative risk assessment—looking at the combined health risk from multiple chemicals—is appropriate to ensure that risk to human health and the environment is adequately characterized. EPA further noted that TSCA provides the Agency the authority to consider the combined risk from multiple chemical substances or a category of chemical substances. (15 U.S.C. 2625(c)). EPA sought comment on how the Agency could incorporate provisions for cumulative risk assessment into the risk evaluation procedures in a way that would accommodate future advancements in the science of cumulative risk assessment as well as ensure that the scope and complexity of any such assessments is consistent with what

Congress envisioned when it established deadlines for conducting risk evaluations.

Some commenters offered support for EPA's discussion on cumulative risk assessment as well as suggestions for going further, such as including a definition of ''cumulative risk'' in the rule. Another commenter cautioned against qualitative fit-for-purpose approaches undermining EPA's ability to effectively carry out a cumulative risk assessment. Another commenter, while supportive of advancing the science on cumulative risk assessment, shared concern about such an approach preventing EPA from timely completing risk evaluations and proposing necessary regulatory protections. Other commenters opposed consideration of cumulative risk. A number of commenters suggested that provisions requiring consideration of cumulative risk would further delay completion of risk evaluations. Others argued that such considerations are not allowable under TSCA.

EPA appreciated the range of perspectives shared by commenters. With respect to the comment that EPA should define cumulative risk in the regulatory text, EPA is not inclined to do so at this time, as there is no mention of ''cumulative risk'' in the rule or the law that would warrant a codified definition. EPA did, however, describe cumulative risk assessment in the preamble to the proposed rule, and has defined the phrase in ''EPA's Framework for Cumulative Risk Assessment'' (Ref. 11). EPA expects to continue to develop robust methodology for the inclusion of cumulative risk assessment in TSCA risk evaluations, and to continue to engage with stakeholders as part of that process. EPA believes that quantitative analyses may be necessary to support cumulative risk assessments, and will consider the appropriate analyses carefully when developing and pursuing any fit-for-purpose approaches. EPA disagrees with the suggestion that cumulative risk assessment is not allowable under TSCA. As described in the proposed rule, TSCA requires that EPA consider the reasonably available information, consistent with the best available science, and make decisions based on the weight of the scientific evidence (15 U.S.C. 2625(h), (i), and (k)). For some chemical substances undergoing risk evaluation, the best available science may indicate that the development of a cumulative risk assessment is appropriate to ensure that risk to human health and the environment is adequately characterized. Finally, EPA again appreciates commenters' concerns regarding the potential for cumulative risk analyses to increase the complexity of TSCA risk evaluation and create challenges for the Agency to timely complete them. As described in Unit IV.D.4, EPA intends to apply fit-for-purpose approaches in risk evaluations to ensure completion within the statutory timeframes, while also building a robust scientific basis for the effective characterization and management of unreasonable risk to human health and the environment.

After considering these comments, EPA is finalizing this rule without an explicit requirement related to cumulative risk assessment. EPA is nonetheless committed to considering and applying cumulative risk assessment approaches for future chemicals undergoing risk evaluation, where supported by the reasonably available information and best available science.

4. *Potentially exposed or susceptible subpopulations.* TSCA requires EPA to evaluate risk to ''potentially exposed or susceptible subpopulation[s]'' identified as relevant to the risk evaluation by the Administrator, under the conditions of use. (15 U.S.C. 2605(b)(4)(A)). TSCA defines potentially exposed or susceptible subpopulation (PESS) as ''a group of individuals within the general population identified by the EPA who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.'' (15 U.S.C. 2602(12)). EPA codified the statutory definition in the 2017, noting at that time that TSCA does not further define ''greater susceptibility'' or ''greater exposure'' giving the Agency discretion to interpret these terms. As such, the law authorizes EPA to identify any subpopulation that may be at greater risk due to greater susceptibility or exposure, and, likewise, to identify additional subpopulations beyond those examples listed in the statute, as relevant to a risk evaluation.

In this rule, and as described in Unit IV.C., EPA proposed to amend the regulatory definition of PESS by adding the term ''overburdened communities'' to the list of example subpopulations. This additional term reflects the Agency's understanding and acknowledgment that a chemical substance may disproportionately expose and/or may disproportionately impact communities already experiencing disproportionate and adverse human health or environmental burdens. Such disproportionality can be as a result of greater exposure or vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased exposure or vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to impact health and the environment and contribute to persistent environmental health disparities. These situations may apply to communities with environmental justice concerns.

Many commenters supported this proposed change and agreed with EPA that the examples provided in the statutory definition were illustrative rather than limiting. Others urged EPA to go even further by either specifically defining ''overburdened communities'' or including additional factors in the definition of ''potentially exposed and susceptible subpopulations'' like the consideration of non-chemical stressors (Ref. 12) that may increase susceptibility. Other commenters opposed adding ''overburdened communities'' to the definition of PESS, arguing that EPA lacks authority to add additional criteria to the PESS definition beyond what's included in the law. A few commenters suggested that ''overburdened communities'' does not fit with the other types of groups provided as examples in TSCA because they refer to individuals rather than a subpopulation defined by its location or geographic proximity. Some commenters argued the term was too subjective and that EPA did not provide sufficient clarity in how it would identify such communities or quantify ''overburdened.''

EPA does not believe it is necessary to define ''overburdened communities'' as part of this rule. In the same way that EPA considers whether children or workers or the elderly are a PESS in the context of a specific risk evaluation, EPA will look to whether ''overburdened communities'' are subject to exposure or susceptibility greater than the general population. EPA does not intend this term to be confined to a location or geographic proximity, but would use reasonably available information for each chemical to determine the inclusion of specific communities. Those experiencing ''greater exposure'' could include individuals or communities experiencing higher levels of exposure to a chemical substance due to

geography (*e.g.,* fenceline communities in close proximity to facilities emitting air pollutants or living near effluent releases to water), unique exposure pathways that differ from those of the general population (*e.g.,* Tribal communities where reliance on subsistence fishing results in increased chemical exposure via ingestion), and/or aggregate exposure via multiple conditions of use (*e.g.,* a worker who lives in close proximity to facilities emitting air pollutants). As discussed in Unit III.G.4. of the proposed rule, communities with ''greater susceptibility'' could include communities that due to their proximity to a higher proportion of industrial emitters may be experiencing greater burden or those with an increased risk of experiencing an adverse effect due to one's lifestage or a pre-existing condition or circumstance (Ref. 5). Although EPA certainly agrees that non-chemical stressors can increase susceptibility to adverse health outcomes, EPA does not believe that including such specific factors within the PESS regulatory definition is necessary.

EPA disagrees with commenters that EPA lacks authority to add ''overburdened communities'' to the list of potential PESS examples. Congress' inclusion of ''such as'' in the statutory definition provides EPA with clear discretion to go beyond the statute's list of examples. EPA further disagrees that this addition is substantively changing the criteria for identification of PESS (*i.e.,* greater exposure or susceptibility and greater risk than general population). EPA believes that an ''overburdened community'' or those that may be disproportionately exposed or impacted by environmental harms, is clearly an example of a group that may frequently be at greater risk than the general population.

While EPA appreciates commenters' desire for more transparency on how ''overburdened communities'' might be identified and associated risks quantified, such rationale and transparency is already a necessary component of every risk evaluation. In identifying PESS more generally, EPA expects to engage the public throughout the TSCA prioritization and risk evaluation processes, and to work with other EPA offices. Currently available screening tools, such as EJSCREEN (Ref. 13) or EnviroAtlas (Ref. 14), and other tools may allow the Agency to capture greater susceptibility or greater exposure using the data layers for socioeconomic factors (*e.g.,* income/poverty, education) or location (*e.g.,* housing, employment, geography), and for environmental indicators (*e.g.,* air toxics cancer risk, respiratory hazard index, particulate matter levels, ozone, Superfund site proximity, hazardous waste proximity, proximity to multiple chemical manufacturing or processing facilities). EPA also continues to develop approaches for assessing the risk to communities at greater exposures to chemical emissions. For example, EPA developed a screening level methodology to evaluate the potential chemical exposures and associated potential risks to fenceline communities (Ref. 15), and, following peer review, EPA has been applying these approaches in subsequent risk evaluations (*e.g.,* Draft Risk Evaluation for Tris(2-chloroethyl) Phosphate (TCEP) (Ref. 16) and 1,4-dioxane Draft Supplemental Risk Evaluation (Ref. 17)). The Agency continues to develop risk evaluation approaches to help determine risk from all relevant exposure pathways with an emphasis on exposures to these commonly overburdened communities.

After considering the comments, and as described in Unit IV.C., EPA is finalizing the changes to the PESS definition as proposed to better reflect the Agency's commitment to fully consider the impacts a chemical undergoing TSCA risk evaluation may present to communities already experiencing disproportionate and adverse human health or environmental burdens.

5. *Risk-based occupational exposure values.* As part of the proposed rule, EPA solicited comment on how EPA could improve the transparency of any risk-based occupational exposure values derived from the risk evaluation process. Commenters generally expressed a strong desire for more opportunity for public review and scientific input on how risk-based occupational exposure values are derived, and a more formalized approach for the development of any corresponding regulatory limits.

Although occupational exposure values for some of EPA's first 10 chemicals came out at a different time than the risk evaluations themselves, EPA does not intend this to be the practice moving forward. More recently, for example, EPA put out a draft risk-based occupational exposure value in the Draft Risk Evaluation for TCEP (Ref. 16) released for peer review. EPA will continue to do that as a matter of practice. Further, and in response to comments on the proposed rule, EPA is including a commitment in the regulatory text to calculate a risk-based occupational exposure value in the draft risk evaluation where unreasonable risk to workers through inhalation is identified. As part of this commitment, EPA will explain in each risk evaluation how the value was calculated.

To avoid confusion, EPA is no longer referring to the risk-based occupational exposure value calculated in the risk evaluation as an Existing Chemical Exposure Limit (ECEL). The risk-based occupational exposure value calculated in the risk evaluation is based on the most sensitive hazard endpoint and standard occupational exposure scenarios assumption (*i.e.,* 8 hours a day, 5 days a week, 250 days a year, for 40 years), and by law, cannot consider costs or other non-risk factors. The value is not a regulatory limit or level, though it can be used to inform risk management. The value is only relevant to workers in occupational settings—not to consumers or the general population. The value also does not take into account any existing occupational exposure controls, though, as described elsewhere in this document, EPA will consider such controls as part of developing regulations required under TSCA section 6(a) to address unreasonable risk.

Considerations for risk management approaches are outside the scope of this rule. However, when proposing any regulatory limit during the risk management phase, EPA may consider costs and other non-risk factors, such as technological feasibility, the availability of alternatives, the continued need for critical or essential uses, the potential for different occupational requirements for these uses, and existing occupational exposure control approaches and technologies. As such, any regulatory occupational existing chemical exposure limit or ECEL for risk management purposes could differ from the occupational exposure value calculated in the risk evaluation based on additional consideration of exposures and non-risk factors consistent with TSCA section 6(c).

While in many cases EPA won't be aware of all of those non-risk factors until it actively engages in the risk management process for a specific chemical, there are also times when EPA will be able to describe in the risk evaluation circumstances that may lead any regulatory limit to differ from the calculated occupational exposure value. In the Draft Risk Evaluation for Formaldehyde (Ref. 18), for example, EPA was able to state with certainty that any ECEL developed for occupational safety risk management purposes would be certain to differ from the calculated exposure value included in the draft Risk Evaluation. In that instance, EPA was able to recognize unique challenges

associated with the formaldehyde draft risk evaluation, including indistinguishable sources of exposure and a calculated occupational exposure value that fell below the 50th to 95th percentile of measured concentrations in residential indoor air. Where such information is available, EPA would expect to provide similar clarity on this point in future risk evaluations.

EPA has valued the engagement with industry and other Federal agency stakeholders on some of EPA's proposed risk management measures to date, and the Agency is committed to making adjustments as appropriate to ensure any occupational regulatory restrictions are both protective and implementable. As described in Unit IV.F.1., EPA recognizes that in some instances and in certain workplace locations, particularly advanced manufacturing facilities (*e.g.,* those involved in the aerospace and defense industrial base industrial sectors), there could be well-established occupational safety protections in place, including adherence to OSHA standards and non-OSHA industry guidelines. EPA also acknowledges that other Federal agencies and their contractors that use chemicals may similarly have well-established occupational control measures in place. EPA will consider comments received during the risk evaluation process, as well as other information on use of PPE and other ways industry and Federal agencies protect their workers, as potential ways to address unreasonable risk during the risk management process. As EPA moves forward with risk management rules, the Agency will strive for consistency with existing OSHA requirements and/or best industry practices when those measures would address the identified unreasonable risk and would adopt a similar approach when making decisions about managing risks for uses of chemicals that are required to meet national security and critical infrastructure mission imperatives for other Federal agencies.

G. Scientific Guidance and Procedures

1. *In general.* Congress recognized the importance of Agency policies, procedures and guidance necessary to facilitate implementation of the 2016 amendments to TSCA. (15 U.S.C. 2625(l)(1)). EPA codified the use of appropriate Agency guidance (which can also include Agency guidelines, frameworks, handbooks, or standard operating procedures) in the development of risk evaluations in the 2017 final rule and proposed to maintain that regulatory text in the proposed rule (40 CFR 702.37(a)(1)). EPA received support from public commenters on this provision and is finalizing it as proposed. TSCA risk evaluations require the Agency to conduct hazard, exposure, and fate assessments, quantify both acute and chronic effects, as well as assess the risks to the environment. The breadth of risk evaluations requires a breadth of expertise and methods, processes, protocol, and models. Agency guidance and methodology documents have and will continue to provide process and method transparency to Agency scientific work products. EPA will use the appropriate guidance based on the application of methods, approaches, and science policy decisions used in TSCA risk evaluations. EPA will continue to use existing Agency guidances in the development of TSCA risk evaluations. EPA may develop and use additional guidance as needed using a transparent process. Additionally, the TSCA program will work closely with other EPA offices to ensure the use of the best available science, specifically where another office may have expertise specific to a certain chemistry or method employed in a risk evaluation.

2. *Peer review.* Science is the foundation that supports the work of EPA. The use of best available science is vital to the credibility of the Agency's determination of whether a chemical presents an unreasonable risk, decisions on how best to manage that risk, the Agency's effectiveness in pursuing its mission to protect human health and the environment, and the public's trust in Agency decisions. Peer review, as recognized by TSCA section 26(h), is an integral consideration in ensuring Agency decisions are consistent with the best available science. Peer review can ensure the use of reasonably available information to make decisions is based on the weight of scientific evidence. Conducting transparent and independent scientific peer review, along with providing opportunities for public comment, has been and will remain an important component of the TSCA risk evaluation process. Peer reviews on TSCA risk evaluations to date have proven extremely instructive and resulted in more robust and scientifically defensible products and improvements to EPA methods used in the risk evaluation process.

The 2017 final rule codified peer review as a component of the risk evaluation process. In the proposed rule, EPA included amendments to the regulatory text on peer review attempting to clarify the Agency's flexibility in determining how and what to peer review. The proposed regulatory text read: ''EPA expects that peer review activities on risk evaluations conducted pursuant to 15 U.S.C. 2605(b)(4)(A), or portions thereof will be consistent with the applicable peer review policies, procedures, guidance documents, and methods pursuant to guidance promulgated by Office of Management and Budget, EPA, and in accordance with 15 U.S.C. 2625(h) and (i).'' EPA received many comments on the proposed changes to this regulatory provision, most of which were unsupportive. Many expressed concern that the flexibility sought in this change may result in limited and less transparent peer reviews, counter to the scientific standards required by the statute. Specifically, commenters found that use of the phrase ''expected'' to conduct peer review left open the possibility that EPA could forgo peer review altogether. Commenters also expressed concern about a piecemeal approach that may result if the Agency only peer reviewed ''portions'' of future risk evaluations, which commenters noted could result in portions of a risk evaluation not undergoing peer review, or that EPA may shield from peer review particular lines of evidence used in making a determination of unreasonable risk.

The Agency fully intends to act consistently with the EPA Peer Review Policy Statement, which states in part, ''For influential scientific information intended to support important decisions, or for work products that have special importance in their own right, external peer review is the approach of choice . . .'' (Ref. 19). In the final rule EPA has amended the proposed regulatory text to affirm that EPA will conduct peer review: ''EPA *will* conduct peer review activities on risk evaluations . . .'' (40 CFR 702.41). EPA agrees with commentors that peer review is necessary and integral to robust TSCA risk evaluations, and the Agency fully intends to continue to conduct peer review on TSCA risk evaluations consistent with longstanding Agency and OMB guidance.

With respect to EPA's use of ''or portions thereof'' of in the proposed rule regulatory text, EPA did not intend that phrase to reflect a policy change, but rather a clarification of the allowable scope of peer review under both the EPA Peer Review Handbook 4th Edition 2015 (EPA Handbook) (Ref. 20) and OMB's Information Quality Bulletin for Peer Review (Peer Review Bulletin) (Ref. 21). As a general matter, EPA believes that peer reviewing all or most of the risk evaluation will likely be standard practice for the foreseeable future. EPA notes that, under the Peer Review Bulletin, Agencies also have ''broad

discretion in determining what type of peer review is appropriate.'' The Peer Review Bulletin instructs agencies ''to consider tradeoffs between depth of peer review and timeliness''. This includes the consideration of costs of peer review—both direct costs and costs of potential delay in government and private actions that result from peer review, including delays in risk management actions to address unreasonable risks.

After consideration of comments, EPA has removed the ''or portions thereof'' language in the regulatory text, as this in an unnecessary codification of a practice that is already allowed under existing guidance documents. The final rule makes clear that EPA will conduct peer review activities on TSCA risk evaluations, and expects those activities and related decisions regarding the appropriate scope and type of peer review to be consistent with the applicable guidances from OMB and EPA.

EPA expects that, at some point in the future, risk evaluations may use previously peer reviewed scientific approaches, models, and/or methods for similar chemicals or exposure scenarios. In those cases, peer review can focus on the novel information, applications, and analysis that will benefit from independent, expert peer review. For some risk evaluations, it may be more appropriate to peer review solely the weight of evidence determination. The intent of the proposed provision was to ensure Agency discretion and flexibility when determining the approach to and scope of peer review. Both the Peer Review Bulletin and the EPA Handbook clearly outline circumstances where additional peer review may not be necessary. An example would include work that has been previously peer reviewed in a manner consistent with the Peer Review Bulletin and the EPA Handbook. For each risk evaluation, EPA will consider the complexity, novelty, and any prior peer review to determine the appropriate approach to and scope of peer review to apply.

Additionally, and as discussed in the proposed rule, EPA also expects that a TSCA risk evaluation may use peer reviewed products (*e.g.,* risk assessments, hazard assessments, models), or portions thereof, developed by another EPA office or other authoritative body (*e.g.,* state, national, or international programs). EPA will use existing assessments and review scientific information in a transparent manner, including documenting how the information used represents the best available science, is fit-for-purpose, and supports the weight of evidence.

Some commenters question EPA's position of not seeking peer review on the unreasonable risk determination. Consistent with the 2017 final rule, EPA will not seek peer review of any determination as to whether the risk is ''unreasonable,'' which is an Agency policy determination. Consistent with OMB and EPA guidance, the purpose of peer review is the independent review of the science underlying the TSCA risk evaluation, not a review of EPA's policy determinations. TSCA expressly reserves to the Agency the final determination of whether risk posed by a chemical substance is ''unreasonable.'' (15 U.S.C. 2605(i)). This is consistent with the statutory purpose of the SACC, ''to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this title'' (15 U.S.C. 2625(o)(2)).

EPA received a number of comments on the type of peer review that may be employed for TSCA risk evaluations. Consistent with the 2017 final rule, EPA has not codified the type of peer review or specific reviewers. The Peer Review Bulletin recognizes that ''different types of peer review are appropriate for different types of information.'' The Peer Review Bulletin grants Agencies discretion in determining what type of peer review is appropriate. Agencies are directed to choose a peer review mechanism that is adequate, ''[considering] the novelty and complexity of the science to be reviewed, the relevance of the information to decision-making, the extent of prior peer reviews, and the expected benefits and costs of additional review''. The level of rigor of the peer review should be based on whether the information contains methods or models that are precedent-setting, presents conclusions that are likely to change prevailing practices, or will likely affect policy decisions that have a significant impact.

EPA retains the discretion to employ various types of peer review, including panel or letter reviews. EPA expects to use letter reviews as appropriate, but anticipates that letter reviews will be the exception while panel reviews will be preferred. EPA will continue to use on a case-by-case basis the Science Advisory Committee on Chemicals (SACC) (the advisory committee required by TSCA section 26(o)) to provide independent advice and expert consultation with respect to the scientific and technical aspects of issues relating to the implementation of TSCA.

Finally, EPA proposed removing the reference to specific versions of guidance documents. The Agency recognizes that guidance may be updated and/or names modified and, to avoid confusion as to which guidance documents will be used, the Agency proposed to refer instead to ''applicable peer review policies, procedures, guidance documents, and methods adopted by EPA and the Office of Management and Budget (OMB) to serve as the guidance for peer review activities.'' A number of commenters expressed concern at the ambiguity and lack of clarity that could arise for both EPA staff and stakeholders without specific documents named. For the final rule, EPA determined not to codify specific titles and has retained the proposed language with minor adjustments for additional clarity. Codifying specific documents into regulatory text is problematic if and when documents are updated or are supplanted by a new version. Although not named in the regulatory text, EPA peer review activities for TSCA risk evaluations will generally by guided by EPA Peer Review Handbook 4th Edition 2015 (Ref. 20) and OMB's Information Quality Bulletin for Peer Review (Ref. 21), successor versions of these documents, and/or any requirements that may later supplant these documents.

H. Scientific Standards

TSCA section 26(h) and (i) require the Agency to make decisions under TSCA section 6 in a manner that is consistent with the best available science and based on the weight of scientific evidence. Specifically, TSCA section 26(h) requires that in carrying out TSCA sections 4, 5, and 6, to the extent the Agency makes decisions based on science, the Agency shall ''use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science.'' TSCA section 26(i) states ''the Administrator shall make decisions under sections 4, 5, and 6 based on the weight of scientific evidence.'' TSCA does not define either ''best available science'' or ''weight of scientific evidence'' and there is no requirement in the statute to define them by rule.

As described in Unit IV.C., EPA proposed to eliminate both definitions from the regulatory text. Aside from being unnecessary, EPA believes codifying definitions for these scientific terms limits the Agency's ability to adapt to the changing science of risk evaluation, as well as the science that informs risk evaluation, and limits the Agency's flexibility to implement and

advance novel science. Additional discussion on how EPA intends to uphold TSCA's scientific standards for ''best available science'' and ''weight of scientific evidence,'' as well as EPA's expected application of systematic review methods for identifying and assessing reasonably available information, is provided in the sections that follow.

1. *Best available science.* As described in the 2017 final rule, EPA continues to believe that the ''best available science'' is science that is reliable and unbiased. Use of best available science involves the use of supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data). Additionally, as required in TSCA section 26(h), in determining the ''best available science,'' EPA must consider as applicable:

2.

(1) The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;

(2) The extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;

(3) The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;

(4) The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and

(5) The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models.

EPA's implementation of the ''best available science'' standard in TSCA is further informed by longstanding EPA and OMB guidance. The OMB Information Quality Guidelines ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies'' (Pub. L. 106–554; 114 Stat. 2763A–153 through 2763A–154). The *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency* (Ref. 22), also referred to as EPA's Information Quality Guidelines, contain EPA's policy and procedural guidance for ensuring and maximizing the quality of information disseminated in Agency work products. Section 6.4 of EPA's Information Quality Guidelines discuss how the Agency ensures and maximizes the quality of information used in risk assessment. EPA's Information Quality Guidelines go on to say: ''In applying these principles, 'best available' usually refers to the availability at the time an assessment is made. However, EPA also recognizes that scientific knowledge about chemical risk is rapidly advancing and that risk information may need to be updated over time.''

As described in Unit IV.C., the Agency does not believe codifying a definition of ''best available science'' provides any additional transparency or improves consistency, as EPA must for each risk evaluation determine what is the best available science based on the reasonably available information. EPA is furthering its commitment to transparency by finalizing the proposed regulatory text requiring EPA to ''document that the TSCA risk evaluation is consistent with the best available science and based on the weight of the scientific evidence'' in 40 CFR 702.37(a). With respect to ''best available science,'' EPA is also finalizing the list of considerations for determining what constitutes the best available science—considerations that are taken directly from TSCA section 26(h). In response to some commenters' concerns that the prefacing language (*i.e.,* ''shall include, but are not limited to, . . .'') did not match with section 26(h)—and could imply an intention by EPA to ignore the statutory considerations or opaquely apply different ones—EPA is adjusting that language in the final rule to state, as the law states, that EPA ''shall consider as applicable . . .''.

As the Agency identifies reasonably available information to inform a TSCA risk evaluation of a given chemical, EPA may consider existing risk assessments, or reviews performed on the chemical in question to be the best available science. This may include assessments conducted by EPA that adhere to existing Agency Guidance, use methodologies that have been externally peer reviewed, and undergo public comment. Similarly, the Agency may also look to consider assessments or portions of assessments conducted by other federal, state or international authoritative bodies. EPA may consider whether these existing assessments or reviews represent the best available science as required under TSCA and use portions of them to directly inform a risk evaluation. Additionally, where appropriate and consistent with the White House's *Guidance for Federal Departments and Agencies on Indigenous Knowledge,* EPA will consider including and applying Indigenous Knowledge to inform decisions related to the best available science (Ref. 23).

As stated in 40 CFR 702.37(a)(1), the Agency will use appropriate Agency guidance in the development of the TSCA risk evaluations under this rule. TSCA section 26(l) provides further support for this approach, requiring the Agency to use and develop guidance documents that are necessary in carrying out the statute. TSCA further requires the revisions of guidance documents as necessary to ''reflect new scientific developments and understandings.'' Reliance on Agency guidance for determining the ''best available science'' in TSCA risk evaluations ensures the desired transparency and consistency, while still allowing for more nimble adaptation over time. This approach is also consistent with the approach taken in other EPA programs (*e.g.,* Office of Water's implementation of the Clean Water Act and the Office of Air and Radiation's implementation of the Clean Air Act), none of which codify a definition of ''best available science.''

2. *Systematic review and fit-for-purpose approaches.* As described in Unit IV.C., EPA is, as proposed, eliminating the codified definition of ''weight of scientific evidence'' in the final rule, which EPA believes inappropriately conflated the concepts of ''weight of scientific evidence'' with ''systematic review.'' Many commenters supported this approach and further support the requirement that EPA codify the use of systematic review, but recommended further clarification as to how EPA will incorporate systematic review into the process for conducting TSCA risk evaluations.

TSCA risk evaluations use reasonably available information to draw the conclusions that are supported by the best available science. Reasonably available information is identified and evaluated comprehensively through unbiased, transparent and objective data collection and data evaluation, using methods consistent with the general principles of systematic review. EPA believes that integrating appropriate and applicable systematic review methods into the TSCA risk evaluations is critical to meeting the scientific standards as described in TSCA section 26(h) and (i). Systematic review methods may include a systematic review, such as that described in the *Draft TSCA Systematic*

Review Protocol Supporting TSCA Risk Evaluations for Chemical Substances: A Generic TSCA Systematic Review Protocol with Chemical-Specific Methodologies (Ref. 24) or the EPA's *Office of Research and Development Staff Handbook for Developing IRIS Assessments* (Ref. 25), or may be an approach that incorporates the principles of systematic review. The principles of systematic review are well-established and include ''transparent and explicitly documented methods, consistent and critical evaluation of all relevant literature, application of a standardized approach for grading the strength of evidence, and clear and consistent summative language'' (Ref. 26). EPA has finalized the requirement to use and document systematic review methods to assess reasonably available information, and included flexibility to consider the appropriate level of review for a given evidence stream, while still ensuring EPA meets the requirements of TSCA sections 26(h) and (i) (see § 702.37(b)(2)).

The flexibility to apply appropriate and relevant systematic review methods is necessary in the development of TSCA risk evaluations. The National Academies of Science Engineering and Medicine (NASEM) report (Ref. 27), in their review of the *Application of Systematic Review in TSCA Risk Evaluations* (Ref. 28), highlights this need for alternative approaches, stating that ''under some circumstances there may be reasonable alternatives to carrying out a de novo systematic review; for example, the relevant literature may be non-existent or too limited in scope or there may be a recent systematic review that meets quality standards. In some cases, it may be possible to use an alternative approach to systematic review as long as it meets the transparency, consistency, reproducibility, and comprehensiveness requirements of evidence-based methodologies.'' EPA expects that future risk evaluations may use, for example, an existing hazard assessment conducted by an authoritative source, in lieu of conducting a de novo assessment. EPA would review this assessment in a transparent, unbiased and objective way, which may require supplementing the assessment with more recent literature or reviewing the weight of evidence, but may not repeat systematic review on all supporting information. In alignment with the recommendations from the NASEM report, when EPA uses an alternative methodology, it will document why it has done so in lieu of the more traditional systematic review.

Traditional systematic review includes performing—as described and documented in a defined protocol that can be applied across multiple lines of evidence—a literature search and screening to identify relevant information, followed by data quality evaluation (addressing factors such as relevancy and bias), data extraction, and evidence integration. The TSCA program recognizes that the science of systematic review continues to evolve, and will continue to develop its systematic review methods of data collection, data evaluation, evidence synthesis and integration, while partnering with other EPA Offices to advance and implement tools, methods, and efficiencies to systematically collect and evaluate literature. The procedures required for ensuring objectivity, transparency and limiting bias to extent possible in the collection and review of data for TSCA risk evaluations must be flexible enough to account for the variety of hazard and exposure information available to inform TSCA risk evaluations, and also be implementable within the statutory deadlines. EPA has and will continue to implement chemical specific approaches, including the development of chemical-specific protocols that are flexible, timely, and relevant for the types, quality, and quantity of information available and needed in a risk evaluation. EPA will apply and document the systemic review methods of data collection, evaluation, and integration that are commensurate with the relevant complexity of the assessment and nature of the information available, and carried out in a transparent manner that permits completion of risk evaluations within the timeframes that Congress provided.

3. *Weight of scientific evidence.* As described in Unit IV.C., EPA is, as proposed, eliminating the codified definition of ''weight of scientific evidence''—instead relying on long-established Agency guidance documents to guide weight of scientific evidence analyses under TSCA.

There are certain principles of WOSE that are universal, including foundational considerations such as objectivity, transparency and consideration of the strengths and weaknesses of lines of evidence. The phrase WoSE or weight of evidence (WoE) is used by EPA and other scientific bodies to describe the strength of the scientific inferences that can be drawn from a given body of evidence, specifically referring to the quality of the studies evaluated, and how findings are assessed and integrated. EPA broadly uses the WoSE approach in many existing programs and has described the application of WoSE in Agency guidance used to classify carcinogens (Ref. 29). EPA believes WoSE inherently involves application of professional judgment, in which the significant issues, strengths, limitations of the data, uncertainties, and interpretations are presented and highlighted.

As noted by the National Academies of Science, ''because scientific evidence used in WoE evaluations varies greatly among chemicals and other hazardous agents in type, quantity, and quality, it is not possible to describe the WoE evaluation in other than relatively general terms'' (Ref. 30). EPA agrees with this assessment, and, as such, concluded that an alternative codified definition would not provide additional transparency or certainty to the required use of WoSE in TSCA risk evaluations. However, as described in Unit IV.H.1., this rule codifies a commitment to transparency by finalizing the proposed regulatory text requiring EPA to ''document that the TSCA risk evaluation is consistent with the best available science and based on the weight of the scientific evidence'' in 40 CFR 702.37(a).

To meet the law's requirement to base decisions in TSCA risk evaluations on the ''weight of the scientific evidence,'' EPA expects to rely on established Agency guidance documents. These peer reviewed guidances provide consistency and formality to a process that looks to integrate multiple and often heterogenic lines of evidence. At this time, EPA will primarily look to four documents for implementing WoSE in TSCA risk evaluations: *Weight of Evidence in Ecological Assessment* (Ref. 31), *Guidelines for Carcinogen Risk Assessment* (Ref. 29), *Endocrine Disruptor Screening Program Weight-of-Evidence: Evaluating Results of EDSP Tier 1 Screening to Identify the Need for Tier 2 Testing* (Ref. 32), and *ORD Staff Handbook for Developing IRIS Assessments* (Ref. 25). EPA recognizes that there are other international approaches that may also be applicable and will transparently document their use. These documents all similarly describe the WoSE assessment as based on the strengths, limitations, and interpretation of data available, information across multiples lines of evidence and how these different lines of evidence may or may not fit together when drawing conclusions. The results from the scientifically relevant published or publicly available studies in the peer reviewed scientific journals, studies conducted in accordance with Organization for Economic Cooperation

and Development (OECD) or EPA guidelines, gray literature, and/or any other studies, scientific information, or lines of evidence that are of sufficient quality, relevance, and reliability, are evaluated across studies and endpoints into an overall assessment. WOSE assessments examine multiple lines of evidence considering a number of factors, including for example the nature of the effects within and across studies, including number, type, and severity/magnitude of effects and strengths and limitations of the information. EPA will provide a summary WoSE narrative or characterization to accompany a detailed analysis to transparently describe the conclusion(s), as well as explain the selection of the studies or effects used as the main lines of evidence and relevant basis for conclusions.

I. Process for EPA Revisions to Scope or Risk Evaluation Documents

As part of the proposed rule, EPA added procedures and criteria for whether and how EPA would endeavor to revise or supplement final scope documents, and draft or final risk evaluations. The 2017 final rule did not provide any such criteria or procedures. As described in the proposed rule, EPA reasoned that these new procedures and criteria would provide greater certainty and transparency for stakeholders, and would enable EPA to make forward progress on prioritizing, reviewing and managing existing chemicals as Congress intended, without diverting limited resources towards continuously revisiting final risk evaluations.

With respect to final scope documents, EPA proposed that subsequent changes—if any—to the scope of the risk evaluation after publication of the final scope be reflected and described in the draft risk evaluation instead of a revised final scope document. The proposed rule further contemplated that EPA could, in its discretion, publish a notice in the **Federal Register** notifying the public that EPA has made information regarding changes to the risk evaluation scope available in the docket before releasing the draft risk evaluation. EPA received no public comments on these changes and is finalizing as proposed.

With respect to draft risk evaluations, EPA proposed to reflect and describe any changes to the draft document in the final risk evaluation rather than reissue the risk evaluation in a second draft form. EPA noted that, where changes from draft to final are significant in nature, nothing in the proposed rule would prevent EPA from seeking additional advice or feedback from its independent scientific advisors or additional public comment on relevant topics, provided that such actions can be completed within the timeframes Congress contemplated for TSCA risk evaluations. Further, this ensures that feedback is appropriately considered and reflected without unduly delaying progress towards completion of the risk evaluation.

A few commenters objected to this aspect of the new procedures, and argued that EPA must share significant changes to draft risk evaluations prior to finalization under the Administrative Procedures Act (APA) (5 U.S.C. 551 *et seq.*). EPA shares commenters' perspective regarding the need for transparency during the risk evaluation process, and the importance of considering stakeholder feedback. In light of the improvements EPA is finalizing in this procedural rule, EPA does not anticipate many significant changes between draft and final risk evaluations moving forward. However, where there are significant changes, the rule provides EPA with flexibility to seek additional public comment or independent review of those changes prior to finalizing. With respect to the comment about the APA, TSCA risk evaluations are scientific work products—not regulatory actions—and fall outside the scope of APA requirements related to proposed and final rulemaking. As such, EPA is finalizing this provision as proposed.

With respect to revision of final risk evaluations, EPA also proposed a general practice and certain exceptions to that practice. As general practice, where circumstances warrant revisiting a chemical risk evaluation that has already been finalized—which EPA believes are likely to be infrequent—the Agency may identify that chemical as a potential candidate for high-priority designation, and follow the procedures at 40 CFR part 702, subpart A. As noted in the proposed rule, EPA believes that this general practice aligns with Congress' intent for the Agency to work systematically through the universe of existing chemicals within the statutory framework and aggressive deadlines associated with prioritization, risk evaluation and risk management. (15 U.S.C. 2605(b)(2)(C) and (b)(4)(G)). Revisiting risk evaluations outside of re-prioritizing the chemical substance results in unanticipated and potentially unbudgeted work that can siphon resources from statutorily mandated responsibilities under TSCA section 6. Conversely, re-prioritizing the chemical provides the public with ample notice and opportunity to engage, provides anticipatable milestones and process, and better positions the Agency to maintain a manageable workload.

EPA proposed to make exceptions to that general practice where revisions to a final risk evaluation outside of re-prioritization of a chemical are in the interest of protecting human health or the environment. For example, the exception might be warranted in the event a scientific error meaningfully impacts the evaluation or the Agency's ability to appropriately address risks through rulemaking. Where EPA endeavors to revise or supplement a final risk evaluation outside of re-prioritization, the proposed rule further requires EPA to follow the same process and requirements for TSCA risk evaluations described in this rule, including publication of a new draft and final risk evaluation, solicitation of public comment, and, as appropriate, peer review.

Commenters were generally supportive of this change, noting its potential to provide greater efficiency and increased pace of chemical review. One commenter noted that regulatory text had a potentially inadvertent mistake in describing the exception, referring to human health *and* the environment, instead of human health *or* the environment (see 40 CFR 702.43(g) as proposed—''. . . except where EPA has determined it to be in the interest of protecting human health and the environment to do so . . .''). EPA agrees with commenter and did not intend to limit application of the exception to instances where there is both a human health and environmental interest. As such, EPA is replacing the ''and'' with an ''or'' in the final rule, but is otherwise finalizing these provisions as proposed.

J. Process and Requirements for Manufacturer-Requested Risk Evaluations

EPA proposed a number of changes to the process and requirements for manufacturer- requested risk evaluations (MRREs). TSCA section 6(b)(4)(C)(ii) allows a chemical manufacturer to request that the Agency conduct a risk evaluation of a chemical substance that they manufacture. Consistent with TSCA section 6(b)(4)(C)(ii), EPA established the ''form . . . manner and . . . criteria'' for such requests in the 2017 final rule. Based on experience in implementing that process to date, EPA believes the proposed modifications are necessary to increase clarity and expectations, and to better position the Agency to grant and carry out MRREs moving forward.

As described in the proposed rule, the current process for MRREs is unrealistic and unsustainable. Amongst other things, the current process allows MRRE requesters to provide EPA with a narrow set of information relevant to only certain conditions of use; requires EPA to quickly grant or deny the request, and then starts the clock for EPA to complete an entire risk evaluation on the chemical substance with the three-year statutory deadline. The proposed changes would require that more fulsome information be included in incoming requests, allow EPA additional time to properly review requests and determine any additional information needs prior to initiating the evaluation, and provide flexibility in the process to accommodate additional data collection or development during the risk evaluation.

EPA received a number of comments on the proposed changes ranging from general support to general opposition. Some commenters provided suggestions for further clarifying requirements, improving the contemplated processes, and increasing overall transparency. Other commenters shared concerns that, on the whole, the changes would make MRREs unattractive to those who might otherwise consider submitting requests. EPA describes these comments further in this section, as well as in the Agency's Response to Comments document (Ref. 6). After consideration of the comments, EPA is finalizing much of the regulatory text at 40 CFR 702.45 as proposed, notwithstanding the changes described in this section. EPA would refer the public to the preamble to the proposed rule for a more fulsome discussion of each of the substantive provisions, and EPA's expected implementation (Ref. 5).

1. *Scope of request.* The 2017 final rule allowed manufacturers to request a risk evaluation on particular conditions of use of interest to the requesting manufacturer, leaving the Agency with the heavy burden of identifying the remaining conditions of use for the chemical substance. For some, this provision created the misperception that, in instances where the requesting manufacturer only identifies a narrow set of circumstances, EPA would or could carry out a similar, narrowly-scoped risk evaluation. Such an action would unequivocally contravene EPA's statutory authority. In the proposed rule, EPA adjusted this language so that manufacturers are only permitted under the law to make requests for evaluations of a chemical substance—not individual conditions of use or subsets of conditions of use—consistent with the statutory language in TSCA section 6(b)(4)(C) (stating that EPA ''shall conduct and publish risk evaluations . . . on a chemical substance . . .'').

This aspect of the proposed rule generated a range of comments. Several commenters supported the clarification and agreed that conducting use-based MRREs was beyond EPA's statutory authority. Others objected to the change as setting too broad a scope that would eliminate incentive for submitting MRREs, and frustrate Congress' intent in establishing this process as a ''facilitator in interstate commerce.''

EPA would emphasize that the proposed rule does not expand the scope of MRREs. In the 2017 final rule, EPA noted that ''Although manufacturers may request that EPA conduct a risk evaluation based on a subset of the conditions of use, EPA intends to conduct the risk evaluation in the same manner as any other risk evaluation conducted under section 6(b)(4)(A) . . . . As such, EPA intends to conduct a full risk evaluation that encompasses both the conditions of use that formed the basis for the manufacturer request, and any additional conditions of use that EPA identifies, just as EPA would if EPA had determined the chemical to be high priority.'' (Ref. 1). TSCA requires EPA to conduct risk evaluations—including MRREs—on a chemical substance under the conditions of use—not on an individual use or a subset of a chemical's conditions of use. TSCA section 6(b)(4)(E)(ii) also mandates that EPA ''shall not expedite or otherwise provide special treatment'' to MRREs. Based on public comments regarding the scope of MRREs, it is abundantly clear that this important clarification to the regulatory text is necessary to ensure no future misunderstandings about the required scope of MRREs.

As part of this rule and as discussed in the next section, EPA proposed to require MRRE submitters to provide a more holistic set of information on the chemical as part of the request to better position EPA to grant and successfully undertake MRREs. While EPA acknowledges that it is possible that the additional information requirements may dissuade some manufacturers from submitting these requests, EPA disagrees that the rule would eliminate all incentive. The primary benefit afforded to MRRE requesters is the opportunity to advance a chemical of their choosing ahead of other chemicals that EPA might prioritize, so long as they provide EPA with the requisite information and fees. Additionally, MRRE-driven TSCA section 6(a) final rules or section 6(i)(1) determinations will trigger preemption of state laws and regulations. Nothing in this rule would impact the preemptive effect of an MRRE action (and any associated risk management action) to help reconcile discrepant state-level regulations and facilitate interstate commerce.

Finally, EPA disagrees with commenters that suggest EPA is further disincentivizing MRREs with the single risk determination approach on the chemical substance. Again, the risk determination approach does not mean EPA will, in every instance, find that a chemical substance presents unreasonable risk. While perhaps MRRE requesters would prefer that EPA determine that the condition(s) of use of interest of their chemical does not present unreasonable risk, such an outcome is not their prerogative. Further, EPA does not believe the possibility of an unreasonable risk determination should be a deterrent to future MRRE requesters. At the end of regulatory process, when EPA has eliminated any identified unreasonable risks pursuant to TSCA section 6(a), the manufacturer gets regulatory certainty. And the public can have confidence that the chemical can be safely used in commerce.

2. *Contents of request.* EPA also proposed some specific updates to the required contents of a MRRE, and the criteria upon which EPA will judge completeness and sufficiency. A manufacturer requesting that EPA conduct a risk evaluation should bear the primary burden of providing EPA with all information necessary to conduct a risk evaluation on the chemical substance. Congress also shared this sentiment in TSCA section 2, stating that ''adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such information should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.'' 15 U.S.C. 2601(b). With respect to MRRE requests, Congress authorized EPA to establish the ''form . . . manner and . . . criteria'' for such requests in order to support successful implementation (15 U.S.C. 2605(b)(4)(C)). As described in the proposed rule, EPA believes that the 2017 final rule inappropriately shifted much of the information gathering burden for MRREs to the Agency.

Amongst other criteria, EPA proposed to require that MRRE requests identify all intended, known and reasonably foreseen circumstances of the chemical's manufacture, processing, distribution in commerce, use and disposal, and provide all available

information regarding the chemical's hazards and exposures—not just information of relevance to the requesting manufacturer's interests. These changes would require more fulsome information come in as part of the request, enabling a more effective process for reviewing the request, and making it more likely that EPA will ultimately be able to grant and undertake the evaluation within the statutory timeline provided.

A number of commenters supported these changes, and expressed agreement with EPA's reasoning and proposed approach. Several commenters offered suggestions for including more specificity in the requirements for MRRE contents at 40 CFR 702.45(c). In response to these comments, EPA is making a number of adjustments to the regulatory text in the final rule.

First, EPA agrees with adding more clarity on how manufacturers should determine the ''known or reasonably ascertainable'' information that must be included in the request. As described in the preamble to the proposed rule, information that is known to or reasonably ascertainable by the manufacturer would include all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. The standard requires an exercise of due diligence, and the specific information-gathering activities that may be necessary for manufacturers to achieve this standard may vary from case-to-case. In the context of preparing a MRRE request and to meet the requirements in 40 CFR 702.45(c), EPA believes that due diligence would, at a minimum, involve a thorough search and collection of publicly available information on the chemical's hazards, exposures and conditions of use. EPA would further expect that requesting manufacturers conduct a reasonable inquiry not only within the full scope of their organization regarding manufacturing processes and products (including imports), but also outside of their organization to fill gaps in knowledge. For example, such activities might include inquiries to upstream suppliers or downstream users or employees or other agents of the manufacturer, including persons involved in the research and development, import or production, or marketing for information pertinent to the criteria listed in the proposed rule. In response to comments on the proposed rule, EPA is codifying certain additional aspects of this discussion on the due diligence standard in regulatory text in the final rule to further underscore and clarify expectations for information to be submitted as part of an MRRE. Specifically, EPA is modifying 40 CFR 702.45(a) to describe the level of effort that should be undertaken to gather information that is ''known to or reasonably ascertainable by'' the requesting manufacturer. Relatedly, EPA is clarifying in the regulatory text that, in the event that a group of manufacturers submits a MRRE, the information requirements in paragraphs (a), (c) and (i) would apply to all manufacturers—not just the primary contact submitting the request. Second, at the suggestion of several commenters, EPA is striking the regulatory text in the final rule regarding identification of potentially exposed or susceptible subpopulations that the manufacturer believes to be relevant. As noted by commenters, EPA must ultimately identify PESS—not the requesting manufacturer. Elimination of this requirement would lessen burden on requesters and avoid confusion that a requester's judgment on this issue could supplant that of EPA. Third, EPA agrees with commenter that an additional requirement of identifying the known locations where the chemical is used, and the consumer products (if any) containing the chemical would be helpful to EPA in ensuring consideration of all exposures and conditions of use. While EPA believes submission of this information already falls within the umbrella of 40 CFR 702.45(c)(5), EPA sees value in explicitly describing this in the regulatory text as the commenter suggests, and is adjusting the final rule accordingly.

EPA also appreciates the concern shared by some commenters that ambiguity in the information/content requirements may create uncertainty for manufacturers weighing whether or not to submit a request, particularly in light of the commitment MRRE requesters make to provide EPA with information necessary to carry out the risk evaluation and the associated fee requirements for MRREs. While EPA believes the changes described in the proposed rule and the additional ones contemplated for the final rule do bring additional clarity, EPA welcomes and encourages pre-submission consultations to discuss information needs further. Moreover, the additional processes EPA is contemplating in this rule for MRREs should help bring greater clarity to information needs much *earlier* in the process—either before EPA has granted request, or prior to EPA having undertaken significant amounts of work—and therefore before significant expenses have been incurred under the fee schedule. Lastly, EPA developed a guidance document in 2017 to assist interested persons in developing draft risk evaluations for submittal to EPA (Ref. 33). While the MRRE process does not require submittal of a draft risk evaluation, the guidance describes the science standards, data quality considerations and other information relevant to EPA's risk evaluation process that may be of use to manufacturers interested in developing an MRRE request. As resources allow, EPA may consider updating this 2017 guidance and further developing particular sections to better assist potential MRRE submitters.

A few commenters disagreed with EPA that the primary burden should be on manufacturers to provide sufficient information for the risk evaluation, and that EPA may be better positioned to gather the necessary information using its various statutory authorities. EPA believes that requesting manufacturers should be making a reasonable amount of effort to gather all available information on the chemical—whether that information is available to the general public, or otherwise available to the manufacturer—and compile it for the Agency's review as part of an MRRE. Still, EPA recognizes that manufacturers may not, after making a reasonable amount of effort, be able to provide the Agency with all the information necessary to complete the risk evaluation. EPA proposed processes for how such shortcomings will be identified and addressed, including opportunities for manufacturers to request EPA exercise its statutory authorities to fill in any gaps. These changes set clearer expectations for what EPA needs to undertake in a risk evaluation, and establishes a process for productive engagement with requesting manufacturers toward meeting those needs.

These amendments also satisfy the Ninth Circuit's remand without vacatur of the relevancy and consistency provisions of the currently codified language at 40 CFR 702.37(b)(4) and (6), which address the information requirements for, and application of the TSCA section 26 scientific standards to, an MRRE (Ref. 7).

3. *EPA process for reviewing requests.* EPA proposed a number of changes to how the Agency will review MRREs in 40 CFR 702.45, including additional measures for transparency and public engagement. EPA would again refer the public to the preamble of the proposed rule for a general description of the procedural steps. At a high level, the process steps can be summarized as

follows: Upon receipt of a MRRE, EPA will provide the public with notice and begin reviewing the request for completeness. Where the MRRE request appears complete, EPA will open a docket for the MRRE and supporting information, and solicit public comment. Following a second review, where EPA believes there is sufficient information, EPA will grant the request, and proceed to publish a draft list of conditions of use and solicit additional comment. Following this comment period, and when EPA believes it has all necessary information, EPA will formally initiate the evaluation and follow all the same processes and requirements for EPA-initiated risk evaluations in subpart B. The proposed rule also included processes to resolve information needs as they might arise during the process, and an opportunity for requesting manufacturers to withdraw their request.

Nearly all commenters expressed support for the new process steps, agreeing with EPA that the process in the 2017 final rule does not allow enough time for adequate review of MRREs. Commenters also agreed that Congress did not intend MRREs to differ from EPA-initiated risk evaluations, that TSCA does not permit increased burdens to be placed on EPA in evaluating MRREs, and shared their support for making the new MRRE process and timeframes more comparable to those that precede EPA-initiated risk evaluations. One commenter questioned EPA's characterization of how it would publicly share supplemental information received from the requesting manufacturer during the process (*i.e.,* that EPA would ''endeavor, to the extent possible'' to publish such information). EPA agrees with the commenter that this was not confidence-inspiring language. Instead, EPA is committing as part of this final rule to promptly publish in the MRRE docket any supplemental information received from the requesting manufacturer, subject to the Agency's requirements with respect to the protection from disclosure of CBI.

The same commenter also pointed out an inconsistency between the ''preference'' criteria in TSCA section 6(b)(4)(E)(iii) and the language in the proposed rule. Upon further review, EPA agrees with the commenter that the language in 40 CFR 702.45(j)(2) warrants adjustment and is striking the phrase ''in excess of the 25% threshold'' in the final rule accordingly, in order to be more consistent with the statutory text on this point. Namely, when reviewing MRRE requests, TSCA requires EPA to give preference to requests for risk evaluations on chemical substances for which restrictions imposed by one or more States have the potential to have a significant impact on interstate commerce or health or the environment. To date, EPA has not had to apply any preference criteria as the number of MRRE requests pending at any given time has been below the 25% threshold.

For clarity and consistency with the TSCA fees provisions in 40 CFR 700.45, EPA has added a parenthetical to the regulatory text about fees in the event of withdrawal. Specifically, the proposed text referred to 40 CFR 700.45(c)(2)(x) or (xi) and EPA has added a parenthetical to recognize that, for subsequent fiscal years, the fees rule already incorporates an inflation adjustment per 40 CFR 700.45(d). EPA is also making minor changes to the regulatory text at 40 CFR 700.45(e)(8) and (9) on unfulfilled information needs and the initiation of the risk evaluation to increase clarity in the process, and at 40 CFR 700.45(k) to correct a typo in the statutory citation.

Aside from the minor adjustments noted in this section, EPA is finalizing the remainder of the regulatory text at 40 CFR 702.45 as proposed.

K. Interagency Collaboration

EPA is also finalizing 40 CFR 702.47 as proposed. As part of EPA's commitment to identify information earlier in the prioritization and risk evaluation processes, the Agency expects to continue to engage and enhance coordination with other Federal agencies that may have chemical-specific information. EPA continues to collaborate with other relevant Federal agencies and plans to further coordinate with them regarding interagency engagement and collaboration when carrying out the functions and responsibilities assigned to the Agency under TSCA section 6(b), starting even before the initiation of the prioritization process. EPA intends to develop and, subject to the interests of Federal agencies involved, execute Memoranda of Understanding that memorialize these interagency information exchange, review and comment, and collaboration best practices. Such practices would address engagement and collaboration with Federal partners to help ensure EPA has timely access to information to support a comprehensive understanding of, and not limited to, a chemical substance's conditions of use and their importance to national security or critical infrastructure, the hazard and exposure potential of that chemical, and existing safety measures Federal agencies already have in place for their uses.

With respect to critical/essential uses by other Federal agencies, EPA recognizes that identification and documentation of such uses requires substantial and early interagency engagement, as well as safeguards for national security or other sensitive information. Uses of a chemical that may be critical/essential are conditions of use of the chemical and, as such, will be evaluated in risk evaluations. Federal agencies should identify their uses (including those they believe to be critical or essential uses) as early as possible (*e.g.,* during the prioritization and/or risk evaluation processes) to help inform EPA's development of regulations for chemical substances under TSCA section 6(a) to the extent necessary to address unreasonable risk upon completion of relevant risk evaluations. EPA will engage with agencies that identify critical/essential uses to obtain the necessary level of information to support the consideration of those uses in advance of any proposed rule. For each chemical substance, EPA intends to engage at least four times with interested Federal agencies and departments: first, before EPA begins the prioritization process for the substance; second, during the 9-to-12 month prioritization process; third, during the development of the draft risk evaluation; and fourth, after the draft risk evaluation has been released for public comment. At each engagement, in addition to receiving any information about the substance Federal agencies wish to share, EPA would share scientific and other information about its progress on the risk evaluation, including any information it has developed related to Federal agency uses of the substance.

V. Reliance Interests

As described in the proposed rule, EPA considered to what extent stakeholders may have reliance interests in previous statutory interpretations underpinning the 2017 final rule, and concluded that there are either no reliance interests on those past statutory interpretations, or that any such interests are minor (Ref. 5 at p. 74316). The current rule and proposed changes largely pertain to internal Agency procedures that guide the Agency's risk evaluation activities under TSCA and mostly do not directly impact external parties, with the exception of modified procedural requirements for voluntary requests for risk evaluation that are submitted by manufacturers.

A few commenters disagreed with EPA's discussion of reliance interests. They argued, for example, that companies submitted MRREs under the

2017 procedural rule with expectations related to use-specific risk determinations and preemption outcomes. Another argued that all manufacturers who deal with chemicals under review will become subject to capricious regulation in light of the elimination of the ''best available science'' and the peer review requirements. Another commenter suggested the high likelihood of inconsistency between risk evaluations creates substantial reliance interests.

First, with respect to commenters' arguments regarding preemption, as described previously, EPA believes commenters fundamentally misunderstand the applicability of TSCA section 18(a), and how the preemptive effects of that provision are unaffected by a single chemical risk determination. As noted earlier, permanent preemption is triggered under section 18(a)(1)(B)(ii) if EPA issues first a scope of the risk evaluation under section 6(b)(4)(D) and then a section 6(a) final rule or a section 6(i)(1) determination based on the risk evaluation. These factors are not affected by a single risk determination approach. Further, because the 2017 rule does not mandate use-based risk determinations, EPA disagrees that MRRE submitters, for example, could have demonstrable reliance interests on that particular approach or outcome. Second, with respect to ''best available science,'' nothing in this rule modifies the statutory requirement that EPA apply the best available science in all risk evaluations. Likewise, nothing in this rule would eliminate peer review on future risk evaluations. Third, EPA disagrees that this rule will create a high level of inconsistency between risk evaluations. To the contrary, EPA believes this rule—and the important clarifying changes it would codify—will bring greater consistency to future risk evaluations and more certainty and transparency for the regulated community and public.

EPA further maintains that, to the extent there were any reliance interests on the prior interpretations, or the risk evaluations that were developed based on the previous procedural requirements, nothing in this rule is intended to apply retroactively. EPA does not believe stakeholders have reliance interests pertaining to the process for future, yet-to-be-completed risk evaluations that will be carried out in accordance with this final rule.

VI. References

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

1. U.S. EPA. Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act; Final Rule. **Federal Register**. 82 FR 33726, July 20, 2017 (FRL–9964–38). *https://www.govinfo.gov/content/pkg/FR-2017-07-20/pdf/2017-14337.pdf.*
2. U.S. Court of Appeals for the Ninth Circuit. Safer Chemicals, Healthy Families v. USEPA, No. 17–72260 No. 17–72501 No. 17–72968 No. 17–73290 No. 17–73383 No. 17–73390, Opinion. November 14, 2019. 943 F.3d 397, 425–426. *https://cdn.ca9.uscourts.gov/datastore/opinions/2019/11/14/17-72260.pdf.*
3. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register**. 86 FR 7037, January 25, 2021. *https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf.*
4. U.S. EPA. Information Collection Request (ICR) for the Final Rule: Procedures for Chemical Risk Evaluation Under TSCA (RIN 2070–AK90). EPA ICR No.: 2781.02 and OMB Control No. 2070–0231. April 17, 2024.
5. U.S. EPA. Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act; Proposed Rule. **Federal Register**. 88 FR 74292, October 30, 2023 (FRL–8529–01). *https://www.govinfo.gov/content/pkg/FR-2023-10-30/pdf/2023-23428.pdf.*
6. U.S. EPA. Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA); Proposed Rule; EPA Response to Public Comments (RIN 2070–AK90). EPA–HQ–OPPT–2023–0496. April 17, 2024.
7. *Safer Chemicals, Healthy Families; et al.,* v. *U.S. Environmental Protection Agency,* No. 17–72260, 17–72501, 17–72968, 17–73290, 17–73383, 17–73390, 2019 WL 6041996 (9th Cir. November 14, 2019).
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12. U.S. EPA. Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development. EPA 600/R–22/014a. Office of Research and Development. Washington, DC. September 30, 2022. *https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf.*
13. U.S. EPA. EJSCREEN: Environmental Justice Screening and Mapping Tool. *https://www.epa.gov/ejscreen.*
14. U.S. EPA. EnviroAtlas. *https://www.epa.gov/enviroatlas.*
15. U.S. EPA. Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0. EPA/744/D/22/001. Washington, DC. *2022. https://www.epa.gov/system/files/documents/2022-01/draft-fenceline-report_sacc.pdf.*
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VII. Statutory and Executive Order Reviews

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

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

This action is a ''significant regulatory action'' as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an analysis of the potential costs associated with this action. This analysis, which is in the docket, is summarized in Unit VII.B.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared to replace an existing approved ICR has been assigned EPA ICR No. 2781.02 and is identified by OMB Control No. 2070–0231. You can find a copy of the new ICR document (Ref. 4) in the docket for this rule, and it is briefly summarized here.

The information activities related to the current requirements for manufacturer-requested risk evaluations are already approved by OMB in an ICR entitled, ''Procedures for Requesting a Chemical Risk Evaluation under TSCA'' (EPA ICR No. 2559.03 and OMB Control No. 2070–0202) (Ref 4). The rule replacement ICR addresses the information collection requirements contained in the current regulations as well as in the amendments identified in this final rule. As addressed in the currently approved ICR and pursuant 40 CFR 702, subpart B, the information collection activities are those carried out by a chemical manufacturer in requesting a specific chemical risk evaluation under TSCA be conducted by EPA. EPA established the process for conducting risk evaluations under TSCA. Chemicals that will undergo this evaluation include chemicals designated by the Agency as high-priority in accordance with 40 CFR 702, subpart A, as well as chemicals for which EPA has granted requests made by manufacturers to have the chemicals evaluated under EPA's risk evaluation process. The replacement ICR addresses amendments to information requirements for manufacturer-requested risk evaluations, including amendments to information requirements addressing joint submissions, the scope of the requested risk evaluation, and the information to be provided in support of the requested risk evaluation, and fee payment. Please see Unit IV.J. for additional information about these amendments.

The replacement ICR addresses adjustments to the estimated number of respondents, time for activities, and wage rates related to the current regulatory requirements as approved under OMB Control No. 2070–0202. In addition, the replacement ICR addresses program changes related to the proposed amendments, including changes to content requirements for manufacturer-requested risk evaluation request and associated process changes. The estimated annual burden approved by OMB under OMB Control No. 2070–0202 is 419 hours. The total estimated annual respondent burden associated with the amended requirements in the replacement ICR is 166 hours, a net decrease of 253 hours. The primary driver in the burden decrease is the estimated number of responses dropping to 1 per year based on the number of requests EPA has received to date. Certain information included with a manufacturer-requested risk evaluation may be claimed as TSCA CBI in accordance with TSCA section 14 (15 U.S.C. 2613), and any such claims must be substantiated in accordance with the Act.

Respondents/affected entities: Persons that manufacture chemical substances and request a chemical be considered for risk evaluation by EPA. Such persons may voluntarily request a risk evaluation but would be required to comply with the requirements for such a request. See Unit I.A.

Respondent's obligation to respond: Voluntary (15 U.S.C. 2605(b)(4)).

Estimated number of respondents: 1 annually.

Frequency of response: On occasion.

Total estimated burden: 166 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $115,711 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are manufacturers of chemical substances that submit requests to EPA seeking chemical risk evaluations. The Agency has determined that a low number of small entities may be impacted by voluntarily submitting a request to EPA for a chemical to undergo a risk evaluation. The 2017 final rule considered firms in 60 different NAICS codes that may choose to pursue a manufacturer-requested risk evaluation (approximately 30,000 firms) of which 76 percent were classified as small business (approximately 22,000 firms). When EPA promulgated the 2017 final rule, the Agency estimated that it would receive 5 MRRE submissions per year. However, manufacturers have submitted only 4 MRRE requests since 2017 (or less than one request per year, on average). Therefore, based on the number of submissions received by EPA since 2017, the Agency estimates it will receive only one manufacturer-requested risk revaluation per year. That is, only one out of approximately 22,000 small businesses is expected to choose to incur the submission costs ($115,711) in any one year and, thus, a significant number of small businesses would not be impacted by this rule. The decision to request a risk evaluation for a chemical is voluntary and manufacturers may decide not to make such a request. Details of this analysis are presented in the rule-related ICR.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. The costs involved in this action are imposed only on the private sector entities (manufacturers) that may voluntarily elect to submit a request for a risk evaluation as they would be required to comply with the requirements for such requests.

E. Executive Order 13132: Federalism

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

TSCA section 18(c)(3) defines the scope of federal preemption with respect to any final rule EPA issues under TSCA section 6(a). That provision provides that federal preemption of ''statutes, criminal penalties, and administrative actions'' applies to ''the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to [TSCA section 6(a)].'' EPA reads this to mean that states are preempted from imposing requirements through statutes, criminal penalties, and administrative actions relating to any ''hazards, exposures, risks, and uses or conditions of use'' evaluated in the final risk evaluation and informing the risk determination that EPA addresses in the TSCA section 6(a) rulemaking. For example, federal preemption applies even if EPA does not regulate in that final rule a particular COU, but that COU was evaluated in the final risk evaluation.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–201 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

Since this action does not concern human health risks, EPA's Policy on Children's Health also does not apply. This procedural rule addresses how EPA evaluates the risks of existing chemicals under TSCA, including potential risks to children and other PESS. EPA must initiate a rulemaking to address the unreasonable risk to human health or the environment that the Agency may determine are presented by a chemical substance as set forth in a TSCA risk evaluation. Although this procedural rule itself does not directly affect the level of protection provided to human health or the environment, EPA expects that this rule will improve the Agency's consideration of risks to children and other PESS and, in turn, better inform the Agency's determination of whether a chemical substance presents an unreasonable risk of injury to health under its conditions of use. An EPA rulemaking to address an unreasonable risk of injury to health that the Administrator determines is presented by a chemical substance following a risk evaluation could qualify as a covered regulatory action under E.O. 13045 and could be subject to EPA's Policy on Children's Health.

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

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of OMB's Office of Information and Regulatory Affairs as a ''significant energy action.''

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns consistent with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14096 (88 FR 25251, April 26, 2023). This action amends the procedures that EPA will use to evaluate the risk of existing chemical substances pursuant to TSCA, and the Agency cannot foresee the final results of those evaluations. However, by specifically including overburdened communities in the regulatory definition of PESS, the Agency believes that this action will assist EPA and others (including the public) in understanding, and will assist EPA in determining the potential exposures, hazards and risks to the public, including for overburdened communities associated with existing chemicals as part of a TSCA risk evaluation. The inclusion of overburdened communities among the PESS considered in a chemical risk evaluation will also enable the Agency to design appropriate risk management approaches to address the unreasonable risk that the Agency may determine is presented by a chemical to all potentially affected people, including any unreasonable risk that is disproportionately borne by communities with environmental justice concerns.

The information supporting this Executive Order review is presented in Unit IV.F.4.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 702

Environmental protection, Chemicals, Chemical substances, Hazardous substances, Health and safety, Risk evaluation.

Dated: April 26, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended to read as follows:

PART 702—GENERAL PRACTICES AND PROCEDURES

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

Authority: 15 U.S.C. 2605 and 2619.

■ 2. Revise and republish subpart B to read as follows:

Subpart B—Procedures for Chemical Substance Risk Evaluations

Sec.

Subpart B—Procedures for Chemical Substance Risk Evaluations

§ 702.31 General provisions.

(a) *Purpose.* This subpart establishes the EPA process for conducting a risk evaluation to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment as required under TSCA section 6(b)(4)(B) (15 U.S.C. 2605(b)(4)(B)).

(b) *Scope.* These regulations establish the general procedures, key definitions, and timelines EPA will use in a risk evaluation conducted pursuant to TSCA section 6(b) (15 U.S.C. 2605(b)).

(c) *Applicability.* The requirements of this part apply to all chemical substance risk evaluations initiated pursuant to TSCA section 6(b) (15 U.S.C. 2605(b)) beginning June 3, 2024. For risk evaluations initiated prior to this date, but not yet finalized, EPA will seek to apply the requirements in this subpart to the extent practicable. These requirements shall not apply retroactively to risk evaluations already finalized.

(d) *Categories of chemical substances.* Consistent with EPA's authority to take action with respect to categories of chemicals under 15 U.S.C. 2625(c), all references in this part to ''chemical'' or ''chemical substance'' shall also apply to ''a category of chemical substances.''

§ 702.33 Definitions.

All definitions in TSCA apply to this subpart. In addition, the following definitions apply:

Act means the Toxic Substances Control Act (TSCA), as amended (15 U.S.C. 2601 *et seq.*).

Aggregate exposure means the combined exposures from a chemical substance across multiple routes and across multiple pathways.

Conditions of use means the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

EPA means the U.S. Environmental Protection Agency.

Pathways means the physical course a chemical substance takes from the source to the organism exposed.

Potentially exposed or susceptible subpopulation means a group of individuals within the general population identified by EPA who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, the elderly, or overburdened communities.

Reasonably available information means information that EPA possesses or can reasonably generate, obtain, and synthesize for use in risk evaluations, considering the deadlines specified in TSCA section 6(b)(4)(G) for completing such evaluation. Information that meets the terms of the preceding sentence is reasonably available information whether or not the information is confidential business information, that is protected from public disclosure under TSCA section 14.

Routes means the ways a chemical substance enters an organism after contact, *e.g.,* by ingestion, inhalation, or dermal absorption.

Sentinel exposure means the exposure from a chemical substance that represents the plausible upper bound of exposure relative to all other exposures within a broad category of similar or related exposures.

Uncertainty means the imperfect knowledge or lack of precise knowledge of the real world either for specific values of interest or in the description of the system.

Variability means the inherent natural variation, diversity, and heterogeneity across time and/or space or among individuals within a population.

§ 702.35 Chemical substances subject to risk evaluation.

(a) *Chemical substances undergoing risk evaluation.* A risk evaluation for a chemical substance designated by EPA as a High-Priority Substance pursuant to the prioritization process described in subpart A or initiated at the request of a manufacturer or manufacturers under § 702.45, will be conducted in accordance with this part, subject to § 702.31(c).

(b) *Percentage requirements.* Pursuant to 15 U.S.C. 2605(b)(4)(E)(i) and in accordance with § 702.45(j)(1), EPA will ensure that the number of chemical substances for which a manufacturer-requested risk evaluation is initiated pursuant to § 702.45(e)(9) is not less than 25%and not more than 50% of the number of chemical substances for which a risk evaluation was initiated upon designation as a High-Priority Substance under subpart A.

(c) *Manufacturer-requested risk evaluations for work plan chemical substances.* Manufacturer requests for risk evaluations, described in paragraph (a) of this section, for chemical substances that are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments will be granted at the discretion of EPA. Such evaluations are not subject to the percentage requirements in paragraph (b) of this section.

§ 702.37 Evaluation requirements.

(a) *Considerations.* (1) EPA will use applicable EPA guidance when conducting risk evaluations, as appropriate and where it represents the best available science.

(2) EPA will document that the risk evaluation is consistent with the best available science and based on the weight of the scientific evidence. In determining best available science, EPA shall consider as applicable:

(i) The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;

(ii) The extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;

(iii) The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;

(iv) The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and

(v) The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models.

(3) EPA will ensure that all supporting analyses and components of the risk evaluation are suitable for their intended purpose, and tailored to the problems and decision at hand, in order to inform the development of a technically sound determination as to whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, based on the weight of the scientific evidence.

(4) EPA will not exclude conditions of use from the scope of the risk evaluation, but a fit-for-purpose approach may result in varying types and levels of analysis and supporting information for certain conditions of use, consistent with paragraph (b) of this section. The extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment.

(5) EPA will evaluate chemical substances that are metals or metal compounds in accordance with 15 U.S.C. 2605(b)(2)(E).

(b) *Information and information sources.* (1) EPA will base each risk evaluation on reasonably available information.

(2) EPA will apply systematic review methods to assess reasonably available information, as needed to carry out risk evaluations that meet the requirements in TSCA section 26(h) and (i), in a manner that is objective, unbiased, and transparent.

(3) EPA may determine that certain information gaps can be addressed through application of assumptions, uncertainty factors, models, and/or screening to conduct its analysis with respect to the chemical substance, consistent with 15 U.S.C. 2625. The approaches used will be determined by the quality of reasonably available information, the deadlines specified in TSCA section 6(b)(4)(G) for completing the risk evaluation, and the extent to which the information reduces uncertainty.

(4) EPA expects to use its authorities under the Act, and other information gathering authorities, when necessary to obtain the information needed to perform a risk evaluation for a chemical substance before initiating the risk evaluation for such substance. EPA will also use such authorities during the performance of a risk evaluation to obtain information as needed and on a case-by-case basis to ensure that EPA has adequate, reasonably available information to perform the evaluation. Where appropriate, to the extent practicable, and scientifically justified, EPA will require the development of information generated without the use of new testing on vertebrates.

(5) Among other sources of information, EPA will also consider information and advice provided by the Science Advisory Committee on Chemicals established pursuant to 15 U.S.C. 2625(o).

§ 702.39 Components of risk evaluation.

(a) *In general.* Each risk evaluation will include all of the following components:

(1) A Scope;

(2) A Hazard Assessment;

(3) An Exposure Assessment;

(4) A Risk Characterization; and

(5) A Risk Determination.

(b) *Scope of the risk evaluation.* The scope of the risk evaluation will include all the following:

(1) The condition(s) of use the EPA expects to consider in the risk evaluation.

(2) The potentially exposed populations, including any potentially exposed or susceptible subpopulations as identified as relevant to the risk evaluation by EPA under the conditions of use that EPA plans to evaluate.

(3) The ecological receptors that EPA plans to evaluate.

(4) The hazards to health and the environment that EPA plans to evaluate.

(5) A description of the reasonably available information and scientific approaches EPA plans to use in the risk evaluation.

(6) A conceptual model that describes the actual or predicted relationships between the chemical substance, its associated conditions of use through predicted exposure scenarios, and the identified human and environmental receptors and human and ecological health hazards.

(7) An analysis plan that includes hypotheses and descriptions about the relationships identified in the conceptual model and the approaches and strategies EPA intends to use to assess exposure and hazard effects, and to characterize risk; and a description, including quality, of the data, information, methods, and models, that EPA intends to use in the analysis and how uncertainty and variability will be characterized.

(8) EPA's plan for peer review consistent with § 702.41.

(c) *Hazard assessment.* (1) The hazard assessment process includes the identification, evaluation, and synthesis of information to describe the potential health and environmental hazards of the chemical substance under the conditions of use.

(2) Hazard information related to potential health and environmental hazards of the chemical substance will be reviewed in a manner consistent with best available science based on the weight of scientific evidence and all assessment methods will be documented.

(3) Consistent with § 702.37(b), information evaluated may include, but would not be limited to: Human epidemiological studies, in vivo and/or in vitro laboratory studies, biomonitoring and/or human clinical studies, ecological field data, read across, mechanistic and/or kinetic studies in a variety of test systems. These may include but are not limited to: toxicokinetics and toxicodynamics (*e.g.,* physiological-based pharmacokinetic modeling), and computational toxicology (*e.g.,* high-throughput assays, genomic response assays, data from structure-activity relationships, in silico approaches, and other health effects modeling).

(4) The hazard information relevant to the chemical substance will be evaluated for identified human and environmental receptors, including all identified potentially exposed or susceptible subpopulation(s) determined to be relevant, for the exposure scenarios relating to the conditions of use.

(5) The relationship between the dose of the chemical substance and the occurrence of health and environmental effects or outcomes will be evaluated.

(6) Hazard identification will include an evaluation of the strengths, limitations, and uncertainties associated with the reasonably available information.

(d) *Exposure assessment.* (1) Where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use will be considered.

(2) Exposure information related to potential human health or ecological hazards of the chemical substance will be reviewed in a manner consistent with best available science based on the weight of scientific evidence and all assessment methods will be documented.

(3) Consistent with § 702.37(b), information evaluated may include, but would not be limited to: chemical release reports, release or emission scenarios, data and information collected from monitoring or reporting, release estimation approaches and assumptions, biological monitoring data, workplace monitoring data, chemical exposure health data, industry practices with respect to occupational exposure control measures, and exposure modeling.

(4) Chemical-specific factors, including, but not limited to physical-chemical properties and environmental fate and transport parameters, will be examined.

(5) The human health exposure assessment will consider all potentially exposed or susceptible subpopulation(s) determined to be relevant.

(6) Environmental health exposure assessment will characterize and evaluate the interaction of the chemical substance with the ecological receptors and the exposures considered, including populations and communities, depending on the chemical substance and the ecological characteristic involved.

(7) EPA will describe whether sentinel exposures under the conditions of use were considered and the basis for their consideration.

(8) EPA will consider aggregate exposures to the chemical substance, and, when supported by reasonably available information, consistent with the best available science and based on the weight of scientific evidence, include an aggregate exposure assessment in the risk evaluation, or will otherwise explain in the risk evaluation the basis for not including such an assessment.

(9) EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other federal statutes.

(e) *Risk characterization.* (1) *Requirements.* To characterize the risks from the chemical substance, EPA will:

(i) Integrate the hazard and exposure assessments into quantitative and/or qualitative estimates relevant to specific risks of injury to health or the environment, including any potentially exposed or susceptible subpopulations identified, under the conditions of use;

(ii) Not consider costs or other non-risk factors; and

(iii) Describe the weight of the scientific evidence for the identified hazards and exposures.

(2) *Summary of considerations.* EPA will summarize, as applicable, the considerations addressed throughout the evaluation components, in carrying out the obligations under 15 U.S.C. 2625(h). This summary will include, as appropriate, a discussion of:

(i) *Considerations regarding uncertainty and variability.* Information about uncertainty and variability in each step of the risk evaluation (*e.g.,* use of default assumptions, scenarios, choice of models, and information used for quantitative analysis) will be integrated into an overall characterization and/or analysis of the impact of the uncertainty and variability on estimated risks. EPA may describe the uncertainty using a qualitative assessment of the overall strength and limitations of the data and approaches used in the assessment.

(ii) *Considerations of data quality.* A discussion of data quality (*e.g.,* reliability, relevance, and whether methods employed to generate the information are reasonable for and consistent with the intended use of the information), as well as assumptions used, will be included to the extent necessary. EPA also expects to include a discussion of the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models used in the risk evaluation.

(iii) *Considerations of alternative interpretations.* If appropriate and relevant, where alternative interpretations are plausible, a discussion of alternative interpretations of the data and analyses will be included.

(iv) *Additional considerations for environmental risk.* For evaluation of environmental risk, it may be necessary to discuss the nature and magnitude of the effects, the spatial and temporal patterns of the effects, implications at the individual, species, population, and community level, and the likelihood of recovery subsequent to exposure to the chemical substance.

(f) *Risk determination.* (1) As part of the risk evaluation, EPA will make a single determination as to whether the chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use.

(2) In determining whether unreasonable risk is presented, EPA's consideration of occupational exposure scenarios will take into account reasonably available information, including known and reasonably foreseen circumstances where subpopulations of workers are exposed due to the absence or ineffective use of

personal protective equipment. EPA will not consider exposure reduction based on assumed use of personal protective equipment as part of the risk determination.

(3) EPA will determine whether a chemical substance does or does not present an unreasonable risk after considering the risks posed under the conditions of use and, where EPA makes a determination of unreasonable risk, EPA will identify the conditions of use that significantly contribute to such determination.

§ 702.41 Peer review.

EPA will conduct peer review activities on risk evaluations conducted pursuant to 15 U.S.C. 2605(b)(4)(A). EPA expects such activities, including decisions regarding the appropriate scope and type of peer review, to be consistent with the applicable peer review policies, procedures, and methods in guidance promulgated by the Office of Management and Budget and EPA, and in accordance with 15 U.S.C. 2625(h) and (i).

§ 702.43 Risk evaluation actions and timeframes.

(a) *Draft scope.* (1) For each risk evaluation to be conducted, EPA will publish a document that specifies the draft scope of the risk evaluation EPA plans to conduct and publish a notice of availability in the **Federal Register**. The document will address the elements in § 702.39(b).

(2) EPA generally expects to publish the draft scope during the prioritization process concurrent with publication of a proposed designation as a High-Priority Substance pursuant to § 702.9(g), but no later than 3 months after the initiation of the risk evaluation process for the chemical substance.

(3) EPA will allow a public comment period of no less than 45 calendar days during which interested persons may submit comment on EPA's draft scope. EPA will open a docket to facilitate receipt of public comments.

(b) *Final scope.* (1) EPA will, no later than 6 months after the initiation of a risk evaluation, publish a document that specifies the final scope of the risk evaluation EPA plans to conduct, and publish a notice of availability in the **Federal Register**. The document shall address the elements in § 702.39(b).

(2) For a chemical substance designated as a High-Priority Substance under subpart A of this part, EPA will not publish the final scope of the risk evaluation until at least 12 months have elapsed from the initiation of the prioritization process for the chemical substance.

(c) *Draft risk evaluation.* EPA will publish a draft risk evaluation, publish a notice of availability in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation. The document shall include the elements in § 702.39(c) through (f).

(d) *Final risk evaluation.* (1) EPA will complete and publish a final risk evaluation for the chemical substance under the conditions of use as soon as practicable, but not later than 3 years after the date on which EPA initiates the risk evaluation. The document shall include the elements in § 702.39(c) through (f) and EPA will publish a notice of availability in the **Federal Register**.

(2) EPA may extend the deadline for a risk evaluation for not more than 6 months. The total time elapsed between initiation of the risk evaluation and completion of the risk evaluation may not exceed 3- and one-half years.

(e) *Final determination of unreasonable risk.* Upon determination by the EPA pursuant to § 702.39(f) that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA will initiate action as required pursuant to 15 U.S.C. 2605(a).

(f) *Final determination of no unreasonable risk.* A determination by the EPA pursuant to § 702.39(f) that the chemical substance does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action, effective on the date of issuance of the order.

(g) *Substantive revisions to scope documents and risk evaluations.* The circumstances under which EPA will undertake substantive revisions to scope and risk evaluation documents are as follows:

(1) *Draft documents.* To the extent there are changes to a draft scope or draft risk evaluation, EPA will describe such changes in the final document.

(2) *Final scope.* To the extent there are changes to the scope of the risk evaluation after publication of the final scope document, EPA will describe such changes in the draft risk evaluation, or, where appropriate and prior to the issuance of a draft risk evaluation, may make relevant information publicly available in the docket and publish a notice of availability of that information in the **Federal Register**.

(3) *Final risk evaluation.* For any chemical substance for which EPA has already finalized a risk evaluation, EPA will generally not revise, supplement, or reissue a final risk evaluation without first undergoing the procedures at § 702.7 to re-initiate the prioritization process for that chemical substance, except where EPA has determined it to be in the interest of protecting human health or the environment to do so, considering the statutory responsibilities and deadlines under 15 U.S.C. 2605.

(4) *Process for revisions to final risk evaluations.* Where EPA determines to revise or supplement a final risk evaluation pursuant to paragraph (g)(3) of this section, EPA will follow the same procedures in this section including publication of a new draft and final risk evaluation and solicitation of public comment in accordance with §§ 702.43(c) and (d), and peer review, as appropriate, in accordance with § 702.41.

§ 702.45 Submission of manufacturer requests for risk evaluations.

(a) *General provisions.* (1) One or more manufacturers of a chemical substance may request that EPA conduct a risk evaluation on a chemical substance.

(2) Such requests must comply with all the requirements, procedures, and criteria in this section.

(3) Subject to limited exceptions in paragraph (e)(7)(iii) of this section, it is the burden of the requesting manufacturer(s) to provide EPA with the information necessary to carry out the risk evaluation.

(4) In determining whether there is sufficient information to support a manufacturer-requested risk evaluation, EPA expects to apply the same standard as it would for EPA-initiated risk evaluations, including but not limited to the considerations and requirements in § 702.37.

(5) EPA may identify data needs at any time during the process described in this section, and, by submitting a request for risk evaluation under this section, the requesting manufacturer(s) agrees to provide, or develop and provide, EPA with information EPA deems necessary to carry out the risk evaluation, consistent with the provisions described in this subpart.

(6) EPA will not expedite or otherwise provide special treatment to a manufacturer-requested risk evaluation pursuant to 15 U.S.C. 2605(b)(4)(E)(ii).

(7) Once initiated in accordance with paragraph (e)(9) of this section, EPA will conduct manufacturer-requested risk evaluations following the procedures in §§ 702.37 through 702.43 and §§ 702.47 through 702.49 of this subpart.

(8) For purposes of this section, information that is ''known to or reasonably ascertainable by'' the requesting manufacturer(s) would include all information in the requesting manufacturer's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know. Meeting this standard requires an exercise and documentation of due diligence that may vary depending on the circumstances and parties involved. At a minimum, due diligence requires:

(i) A thorough search and collection of publicly available information;

(ii) A reasonable inquiry within the requesting manufacturer's entire organization; and

(iii) A reasonably inquiry outside of the requesting manufacturer's organization, including inquiries to upstream suppliers; downstream users; and employees or other agents of the manufacturer, including persons involved in research and development, import or production, or marketing.

(9) In the event that a group of manufacturers of a chemical substance submit a request for risk evaluation under this section, the term ''requesting manufacturer'' in paragraphs (a), (c), and (i) of this section shall apply to all manufacturers in the group. EPA will otherwise coordinate with the primary contact named in the request for purposes of communication, payment of fees, and other actions as needed.

(b) *Method for submission.* All manufacturer-requested risk evaluations under this subpart must be submitted via the EPA Central Data Exchange (CDX) found at *https://cdx.epa.gov.*

(c) *Content of request.* Requests must include all of the following information:

(1) Name, mailing address, and contact information of the entity (or entities) submitting the request. If more than one manufacturer submits the request, all individual manufacturers must provide their contact information.

(2) The chemical identity of the chemical substance that is the subject of the request. At a minimum, this includes: all known names of the chemical substance, including common or trades names, CAS number, and molecular structure of the chemical substance.

(3) For requests pertaining to a category of chemical substances, an explanation of why the category is appropriate under 15 U.S.C. 2625(c). EPA will determine whether the category is appropriate for risk evaluation as part of reviewing the request in paragraph (e) of this section.

(4) A description of the circumstances under which the chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of, and all information known to or reasonably ascertainable by the requesting manufacturer that supports the identification of the circumstances described in this paragraph (c)(4).

(5) All information known to or reasonably ascertainable by the requesting manufacturer(s) on the health and environmental hazard(s) of the chemical substance, human and environmental exposure(s), and exposed population(s), including but not limited to:

(i) The chemical substance's exposure potential, including occupational, general population and consumer exposures, and facility release information;

(ii) The chemical substance's hazard potential, including all potential environmental and human health hazards;

(iii) The chemical substance's physical and chemical properties;

(iv) The chemical substance's fate and transport properties including persistence and bioaccumulation;

(v) Industrial and commercial locations where the chemical is used or stored;

(vi) Whether there is any storage of the chemical substance near significant sources of drinking water, including the storage facility location and the nearby drinking water source(s);

(vii) Consumer products containing the chemical;

(viii) The chemical substance's production volume or significant changes in production volume; and

(ix) Any other information relevant to the hazards, exposures and/or risks of the chemical substance.

(6) Where information described in paragraph (c)(4) or (5) of this section is unavailable, an explanation as to why, and the rationale for why, in the requester's view, the provided information is nonetheless sufficient to allow EPA to complete a risk evaluation on the chemical substance.

(7) Copies of all information referenced in paragraph (c)(5) of this section, or citations if the information is readily available from public sources.

(8) A signed certification from the requesting manufacturer(s) that all information contained in the request is accurate and complete, as follows:

I certify that to the best of my knowledge and belief:

(A) The company named in this request manufactures the chemical substance identified for risk evaluation.

(B) All information provided in the request is complete and accurate as of the date of the request.

(C) I have either identified or am submitting all information in my possession and control, and a description of all other data known to or reasonably ascertainable by me as required under this part. I am aware it is unlawful to knowingly submit incomplete, false and/or misleading information in this request and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.

(9) Where appropriate, information that will inform EPA's determination as to whether restrictions imposed by one or more States have the potential to have a significant impact on interstate commerce or health or the environment, and that as a consequence the request is entitled to preference pursuant to 15 U.S.C. 2605(b)(4)(E)(iii).

(d) *Confidential business information.* Persons submitting a request under this subpart are subject to EPA confidentiality regulations at 40 CFR part 2, subpart B, and 40 CFR part 703.

(e) *EPA process for reviewing requests.* (1) *Public notification of receipt of request.* Within 15 days of receipt of a manufacturer-requested risk evaluation, EPA will notify the public that such request has been received.

(2) *Initial review for completeness.* EPA will determine whether the request appears to meet the requirements specified in this section (*i.e.,* complete), or whether the request appears to not have met the requirements specified in this section (*i.e.,* incomplete). EPA will notify the requesting manufacturer of the outcome of this initial review. For requests initially determined to be incomplete, EPA will cease review, pending actions taken by the requesting manufacturer pursuant to paragraph (f) of this section. For requests initially determined to be complete, EPA will proceed to the public notice and comment process described in paragraph (e)(3) of this section.

(3) *Public notice and comment.* No later than 90 days after initially determining a request to be complete pursuant to paragraph (e)(2) of this section, EPA will submit for publication the receipt of the request in the **Federal Register**, open a docket for that request and provide no less than a 60-day public comment period. The docket will contain the CBI sanitized copies of the request and all supporting information. The notice will encourage the public to submit comments and information relevant to the manufacturer-requested risk evaluation, including, but not limited to, identifying information not provided in the request, information the commenter believes necessary to conduct a risk evaluation, and any other information relevant to the conditions of use.

(4) *Secondary review for sufficiency.* Within 90 days following the end of the comment period in paragraph (e)(3) of this section, EPA will further consider whether public comments highlight deficiencies in the request not identified during EPA's initial review, and/or that the available information is not sufficient to support a reasoned evaluation. EPA will notify the requesting manufacturer of the outcome of this review. For requests determined to not be supported by sufficient information, EPA will cease review, pending actions taken pursuant to paragraph (f) of this section. For requests determined to be supported by sufficient information, EPA will proceed with request review process in accordance with paragraph (e)(5) of this section.

(5) *Grant.* Where EPA determines a request to be complete and sufficiently supported in accordance with paragraphs (e)(2) and (4) of this section, and subject to the percentage limitations in TSCA section 6(b)(4)(E)(i)(II), EPA will grant the request. A grant does not mean that EPA has all information necessary to complete the risk evaluation.

(6) *Publication of draft conditions of use and request for information.* EPA will publish a notice in the **Federal Register** that identifies draft conditions of use, requests relevant information from the public, and provides no less than a 60-day public comment period. Within 90 days following the close of the public comment period in this paragraph, EPA will determine whether further information is needed to carry out the risk evaluation and notify the requesting manufacturer of its determination, pursuant to paragraph (e)(7) of this section. If EPA determines at this time that no further information is necessary, EPA will initiate the risk evaluation, pursuant to paragraph (e)(9) of this section.

(7) *Identification of information needs.* Where additional information needs are identified, EPA will notify the requesting manufacturer and set a reasonable amount of time, as determined by EPA, for response. In response to EPA's notice, and subject to the limitations in paragraph (g) of this section, the requesting manufacturer may:

(i) *Provide the necessary information.* EPA will set a reasonable amount of time, as determined by EPA, for the requesting manufacturer to produce or develop and produce the information. Upon receipt of the new information, EPA will review for sufficiency and make publicly available to the extent possible, including CBI-sanitized copies of that information; or

(ii) *Withdraw the risk evaluation request.* Fees to be collected or refunded shall be determined pursuant to paragraph (k) of this section and 40 CFR 700.45; or

(iii) *Request that EPA obtain the information using authorities under TSCA sections 4, 8 or 11.* The requesting manufacturer must provide a rationale as to why the information is not reasonably ascertainable to them. EPA will review and provide notice of its determination to the requesting manufacturer. Upon receipt of the information, EPA will review the additional information for sufficiency and provide additional public notice.

(8) *Unfulfilled information needs.* In circumstances where there have been additional data needs identified pursuant to paragraph (e)(7) of this section that are not fulfilled, because the requesting manufacturer is unable or unwilling to fulfill those needs in a timely manner, the requesting manufacture has produced information that is insufficient as determined by EPA, or EPA determines that a request to use TSCA authorities under section 4, 8 or 11 is not warranted, EPA may deem the request to be constructively withdrawn under paragraph (e)(7)(ii) of this section.

(9) *Initiation of the risk evaluation.* Within 90 days of the end of the comment period provided in paragraph (e)(6) of this section, or within 90 days of EPA determining that information identified and received pursuant to paragraph (e)(7) of this section is sufficient, EPA will initiate the requested risk evaluation and follow all requirements in this subpart, including but not limited to §§ 702.37 through 702.43 and §§ 702.47 through 702.49 of this subpart, and notify the requesting manufacturer and the public. Initiation of the risk evaluation does not limit or prohibit the Agency from identifying additional data needs during the risk evaluation process.

(f) *Incomplete or insufficient request.* Where EPA has determined that a request is incomplete or insufficient pursuant to paragraph (e)(2) or (4) of this section, the requesting manufacturer may supplement and resubmit the request. EPA will follow the process described in paragraph (e) of this section as it would for a new request.

(g) *Withdrawal of request.* The requesting manufacturer may withdraw a request at any time prior to EPA's grant of such request pursuant to paragraph (e)(5) of this section, or in accordance with paragraph (e)(7) of this section and subject to payment of applicable fees. The requesting manufacturer may not withdraw a request once EPA has initiated the risk evaluation. EPA may deem a request constructively withdrawn in the event of unfulfilled information needs pursuant to paragraph (e)(8) of this section or non-payment of fees as required in 40 CFR 700.45. EPA will notify the requesting manufacturer and the public of the withdrawn request.

(h) *Data needs identified post-initiation.* Where EPA identifies additional data needs after the risk evaluation has been initiated, the requesting manufacturer may remedy the deficiency pursuant to paragraph (e)(7)(i) or (iii) of this section.

(i) *Supplementation of original request.* At any time prior to the end of the comment period described in paragraph (e)(6) of this section, the requesting manufacturer(s) may supplement the original request with any new information that becomes available to the requesting manufacturer(s). At any point prior to the completion of a manufacturer-requested risk evaluation pursuant to this section, the requesting manufacturer(s) must supplement the original request with any information that meets the criteria in 15 U.S.C. 2607(e) and this section, or with any other reasonably ascertainable information that has the potential to change EPA's risk evaluation. Such information must be submitted consistent with 15 U.S.C. 2607(e) if the information is subject to that section or otherwise within 30 days of when the requesting manufacturer(s) obtain the information.

(j) *Limitations on manufacturer-requested risk evaluations.* (1) *In general.* EPA will initiate a risk evaluation for all requests from manufacturers for non-TSCA Work Plan Chemicals that meet the criteria in this subpart, until EPA determines that the number of manufacturer-requested chemical substances undergoing risk evaluation is equal to 25% of the High-Priority Substances identified in subpart A as undergoing risk evaluation. Once that level has been reached, EPA will initiate at least one new manufacturer-requested risk evaluation for each manufacturer-requested risk evaluation completed so long as there are sufficient requests that meet the criteria of this subpart, as needed to ensure that the number of manufacturer-requested risk evaluations is equal to at least 25% of the High-Priority substances risk evaluations and not more than 50%.

(2) *Preferences.* In conformance with § 702.35(c), in evaluating requests for

TSCA Work Plan Chemicals and requests for non-TSCA Work Plan chemicals, EPA will give preference to requests for risk evaluations on chemical substances:

(i) First, for which EPA determines that restrictions imposed by one or more States have the potential to have a significant impact on interstate commerce, health or the environment; and then

(ii) Second, based on the order in which the requests are received.

(k) *Fees.* Manufacturers must pay fees to support risk evaluations as specified under 15 U.S.C. 2605(b)(4)(E)(ii), and in accordance with 15 U.S.C. 2625(b) and 40 CFR 700.45. In the event that a request for a risk evaluation is withdrawn by the requesting manufacturer pursuant to paragraph (g) of this section, the total fee amount due will be either, in accordance with 40 CFR 700.45(c)(2)(x) or (xi) (as adjusted by 40 CFR 700.45(d) when applicable), 50% or 100% of the actual costs expended in carrying out the risk evaluation as of the date of receipt of the withdrawal notice. The payment amount will be determined by EPA, and invoice or refund issued to the requesting manufacturer as appropriate.

§ 702.47 Interagency collaboration.

During the risk evaluation process, not to preclude any additional, prior, or subsequent collaboration, EPA will consult with other relevant Federal agencies.

§ 702.49 Publicly available information.

For each risk evaluation, EPA will maintain a public docket at *https://www.regulations.gov* to provide public access to the following information, as applicable for that risk evaluation:

(a) The draft scope, final scope, draft risk evaluation, and final risk evaluation;

(b) All notices, determinations, findings, consent agreements, and orders;

(c) Any information required to be provided to EPA under 15 U.S.C. 2603;

(d) A nontechnical summary of the risk evaluation;

(e) A list of the studies, with the results of the studies, considered in carrying out each risk evaluation;

(f) Any final peer review report, including the response to peer review and public comments received during peer review;

(g) Response to public comments received on the draft scope and the draft risk evaluation; and

(h) Where unreasonable risk to workers is identified via inhalation, EPA's calculation of a risk-based occupational exposure value.

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Federal Register

Vol. 89, No. 87

Friday, May 3, 2024

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Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, MAY

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

XVI 34953

3 CFR

Proclamations:
10733 34945
10734 34949
10735 36651
10736 36655
10737 36657
10738 36659
10739 36661
10740 36663
10741 36665
10742 36667
10743 36669

5 CFR

Proposed Rules:
532 36720

7 CFR

1719 34955
1738 34955
1739 34955
1774 34955
1775 34955
1780 subpart A 34959
1940 subpart L 34959
3570 34955
4274 34955
4279 34955
4280 34955
4288 34955

10 CFR

433 35384
435 35384
900 35312

11 CFR

4 35685

13 CFR

120 35688

14 CFR

39 ..... 34961, 34982, 34986, 34988, 35690, 35693, 35695, 35698, 35701

Proposed Rules:
39 35015
71 ..... 35018, 35019, 35021, 35022, 35024, 35025, 35027

17 CFR

23 34991
37 34991

22 CFR

Proposed Rules:
126 35028

28 CFR

106 ..... 36671, 36673, 36675

31 CFR

591 35703

Proposed Rules:
100 36721

32 CFR

1665 35004

Proposed Rules:
776 36723

33 CFR

100 ..... 35006, 35705, 35708
147 35709
165 ..... 35712, 35714, 36671

Proposed Rules:
165 35767

36 CFR

1225 35007

37 CFR

1 36677

39 CFR

111 35716

40 CFR

52 36679
131 35717
228 36681
268 35008
372 35748
702 37028
1500 35442
1501 35442
1502 35442
1503 35442
1504 35442
1505 35442
1506 35442
1507 35442
1508 35442

Proposed Rules:
51 36870
52 ..... 36729, 36870
180 36737

42 CFR

Proposed Rules:
412 35934
413 35934
431 35934
482 35934
485 35934
495 35934
512 35934

43 CFR

2800 35634

45 CFR

75.....36684

47 CFR

73.....36705, 36718

48 CFR

Proposed Rules:

40.....36738

49 CFR

24.....36908
1500.....35580
1503.....35580
1515.....35580
1540.....35580
1542.....35580
1544.....35580
1546.....35580
1548.....35580
1549.....35580
1550.....35580
1552.....35580
1554.....35580
1570.....35580
1572.....35580

Proposed Rules:

385.....36742

50 CFR

17.....36982
92.....35010
622.....35011
648.....35755
660.....35012
679.....35013

Proposed Rules:

216.....35769

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 26, 2024

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